

Report focus

This rapid review summarises the evidence from 17 studies on child protection mediation in Australia, Canada and the United States. It draws together key findings on the procedure and practice of child protection mediation, outcomes, and the experiences of families and children with the aim of helping to inform any future developments in this regard in England and Wales.

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The impact of child protection mediation in public law proceedings on outcomes for children and families

A rapid evidence review



About this report

This rapid review summarises the evidence from 17 studies on child protection mediation in Australia, Canada and the United States. It draws together the key findings on the procedure and practice of child protection mediation, outcomes, and the experiences of families and children in these countries with the aim of helping to inform any decisions or future developments in this regard in England and Wales. It also aims to identify the gaps in the research and priority areas for further enquiry.

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About the Nuffield Family Justice Observatory

Nuffield Family Justice Observatory (Nuffield FJO) aims to support the best possible decisions for children by improving the use of data and research evidence in the family justice system in England and Wales. Covering both public and private law, Nuffield FJO provides accessible analysis and research for professionals working in the family courts.

Nuffield FJO was established by the Nuffield Foundation, an independent charitable trust with a mission to advance social well-being. The Foundation funds research that informs social policy, primarily in education, welfare, and justice. It also funds student programmes for young people to develop skills and confidence in quantitative and scientific methods. The Nuffield Foundation is the founder and co-funder of the Ada Lovelace Institute and the Nuffield Council on Bioethics.

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Contents

Foreword	
0. Executive summary.....	i
Key findings.....	i
Data gaps and future research priorities	iii
Recommendations.....	iii
1. Introduction.....	1
Defining child protection mediation	1
About the review methods	2
2. Context	3
3. Findings	10
What are the experiences of child protection mediation for children and their families? ...	10
What are the experiences of child protection mediation for child protection professionals?14	
What are the outcomes for children and families who use child protection mediation?	15
What are the key enablers of child protection mediation that support positive outcomes for children and their families?	20
What can be considered best practice for setting up child protection mediation services?25	
5. Conclusion and recommendations	30
Resourcing a pilot and establishing a national service.....	30
Ensuring service sustainability.....	31
Competing with other services to engage and empower families.....	31
References	33
Appendix A: Study characteristics	37
Appendix B: Review methodology.....	39
Review questions	39
Review method.....	39
Selection process	40
Inclusion and exclusion criteria.....	41
Data extraction and analysis.....	41
Characteristics of studies.....	41
Appendix C: Codebook and themes.....	42

Foreword

Should mediation be introduced in child protection proceedings in England and Wales? Already in use in some parts of Australia, Canada and the United States, it is an idea that has been considered here too.

Mediation appears to limit the adversarial nature and length of child protection proceedings and increase families' involvement in decisions that are made about them. But the number of research studies about child protection mediation remains quite limited and we have to be careful about drawing conclusions from anecdotal evidence. The Nuffield Family Justice Observatory therefore commissioned this rapid evidence review.

The review contains some valuable insights into how families experience child protection mediation, how it affects the timeliness of proceedings, and the conditions in which mediation is found to work or not work well. Crucially the review also highlights the prevailing gaps in the evidence.

The Nuffield Family Justice Observatory is an organisation dedicated to improving life for children and families by putting data and evidence at the heart of the family justice system. I am very grateful to the authors for their clear synthesis of the research. The findings indicate the types of issues that will need to be addressed if child protection mediation is to be introduced in England and Wales.



Lisa Harker
Director, Nuffield Family Justice Observatory

0. Executive summary

Drawing on the evidence published in 17 English language studies since 2000, this rapid evidence review synthesises findings on the procedure and practice of child protection mediation in Australia (2 studies), Canada (1) and the United States (14):

- what are the experiences of children and their families?
- what are the outcomes for children and families?
- what are the key enablers that support positive outcomes?
- what can be considered best practice for setting up child protection mediation services?

Child protection mediation was introduced in the above countries as a response to the adversarial nature of child protection proceedings, increasing numbers of cases, the need to reduce the length of proceedings, the lack of quality legal representation for parents, and reductions in funding. There is some interest in piloting the same approach in public law proceedings in England and Wales, including from the Family Justice Council (FJC)—and notably since the publication of the Care Crisis Review in 2017/2018 (Family Rights Group 2018).

This rapid review aims to help inform any future development of child protection mediation services in England and Wales, as well as to identify research gaps with a view to prioritising areas for further enquiry.

Key findings

Parents were broadly satisfied with child protection mediation

- There is consistency across the literature that child protection mediation programmes are more inclusive of families than traditional court proceedings, which do not provide a space for families to take part in decision-making.

What is child protection mediation?

Child protection mediation is described by Dobbin, Gatowski and Litchfield as:

a confidential process in which a specifically trained neutral third party who has no authoritative decision-making power (the mediator) assists the family, social worker, attorneys, and other interested parties in a case to talk out and develop their own mutually acceptable agreements with respect to issues relevant to an abuse and neglect case before the court. The goal of child welfare mediation is to develop a plan which everyone agrees is safe and in the best interests of the child, and safe for all the involved adults (2001, p. i).

Child protection mediation facilitates family inclusivity in decision-making and can take place at any point in the child protection proceedings, but most commonly occurs either at the start of proceedings or after a fact-finding hearing. Referrals to mediation are made by the court and screening for characteristics which are inappropriate for mediation are undertaken by a judge or a mediator.

In England and Wales, mediation has been used in private family law proceedings instead of or in addition to court proceedings. Before an application for private Children Act proceedings is made, the applicants must attend a mediation information assessment meeting unless there has been domestic abuse in the relationship, other serious welfare concerns, or the matter is urgent. There is no similar requirement for the use of mediation within public family law proceedings.

Alternative terminology includes: child welfare mediation; dependency mediation; and alternative dispute resolution (ADR) in child protection proceedings.

- There is further consistency that families feel child protection mediation places the best interests of the child at the centre.
- However, while families seemed broadly satisfied with child protection mediation, there were significantly divergent views across the studies. This could be owing to the relationship between the family and children's social care, the (sample of) families who responded to surveys, and/or their case outcomes. It appeared that where families had negative perceptions of child welfare services and professionals before mediation, this was likely to continue after mediation. This was commonly cited by families who did not have a positive experience of child protection mediation.

Child protection mediation is more efficient than traditional court proceedings and more likely to help families reach some form of agreement

- Where agreements were made through mediation, fewer court hearings took place and families spent less time in proceedings. However, in the studies reviewed, only one had a random referral to mediation (Gatowski et al. 2005). Consequently, it is not possible to exclude bias in relation to the cases and parents referred to mediation and the findings presented.
- There is little consensus as to whether full or partial agreement is most common for mediation families. However, families that went through child protection mediation were more likely to reach some form of agreement than those that did not.
- Contact and child living arrangements appeared to be the issues most likely to be agreed through mediation—but further research is needed to understand the types of cases that mediation may or may not work for.
- Reunification with parents/guardians and adoption were often cited as the most common permanency goals. However, there is no consistency in the literature that these goals are directly attributable to child protection mediation alone. Many factors, such as the child's age and ethnicity as well as the complexity of the case and the availability of carers within the family, determine a case's permanency outcome.

Effective and independent mediators and professional training are essential for party involvement

- Mediators can be powerful enablers of successful child protection mediation but can also hinder the process if inexperienced and lacking knowledge about the families and issues before them. Lack of training for professionals, not having enough time to prepare for each conference, tension between professionals, and the lack of clear protocols around programme operation and confidentiality are key issues.
- The distinction between the adversarial system that characterises court proceedings and the inclusive nature of child protection mediation can be difficult for some professionals to adapt to. Therefore, ongoing training about how to behave and work with families in child protection mediation was recommended in many studies as essential.
- Trust in the independence of child protection mediation is key—many families view child welfare services with suspicion, which can upset the balance of power and cause families to disengage when mediation is facilitated by professionals from such services.

Data gaps and future research priorities

- There is a paucity of literature on the actual experiences of children and further research is needed to address this.
- The review was not able to compare the effectiveness of child protection mediation with other approaches to engage families, reduce conflict and make decisions in child protection cases. None of the studies was a randomised controlled trial (RCT), which would have allowed comparison with 'business as usual', nor was it clear what alternative or additional services existed alongside child protection mediation in the areas covered by the studies.
- The evidence suggests that child protection mediation is more effective in cases where the issues presented are more 'straightforward', such as establishing contact arrangements, as opposed to complex cases such as those involving child maltreatment, neglect, alcohol dependency, and substance abuse.
- More research is needed to measure the longitudinal effects of child protection mediation on children coming back into the social care system, either for services and support or for care proceedings.

Recommendations

The review gives rise to a number of factors worth considering in terms of resourcing a potential pilot or establishing a service.

Budgeting and forecasting demand

- Before resources are committed to a pilot, a realistic assessment of the cost of a child protection mediation service is essential, together with a clear plan for future funding. It was clear from the review of the evidence that some child protection mediation services had not been sustained after their initial funding.
- It will not be possible to identify the scale of demand without a pilot—and demand is likely to change over time. Any plans for a sustainable service will need to consider a range of figures for usage.

Defining and supporting service delivery

- In addition to securing funding, setting service parameters and identifying the organisation or organisations responsible for delivery and development are key.
- Service protocols and other materials should be prepared by a multi-disciplinary team with experience of care proceedings, and with guidance from the Family Mediation Council. The team could draw on the good practice materials developed for, and endorsed by, the National Council of Juvenile and Family Court Judges in the United States.
- The review underscores the critical importance of obtaining support from stakeholders—in both pilot and full service contexts. In England and Wales, this should include at least the judiciary, Association of Directors of Children's Services (ADCS), Cafcass and Cafcass Cymru, and the Association of Lawyers for Children. These stakeholders will be crucial in securing buy-in and helping to establish key aspects of the service, including the selection and training of mediators.

- Child protection mediation services will only be sustained if they continue to attract referrals, and the mediations themselves are both effective and viewed positively by stakeholder organisations and the individuals involved. Policies to promote services are unlikely to be effective unless parents and children, the professionals working with them, and those responsible for protecting children and/or making decisions relating to care proceedings believe that services offer something better.
- The pilot budget should include adequate funding for research which, alongside evaluation and surveys, includes: a comparison of experiences, process and outcomes in cases where mediation was and was not used; and involves a sufficient number of cases. Any 'roll out' of child protection mediation services should be informed by the evidence.

Situating child protection mediation amongst other types of services

- Consideration should be given as to whether some benefits of mediation could be achieved by developing systems and services that already exist—including the pre-proceedings process, family group conferences (FGCs) and issues resolution hearings (IRHs). While none of these are directly comparable to mediation for child protection cases, they are helping to engage parents and/or families, reduce conflict and contribute to timely decision-making. For example, pre-proceeding meetings could have neutral chairs and place more emphasis on developing written agreements *with* parents.
- Consideration needs to be given to how best to rationalise services so that all their advantages are maximised and repeated demands to engage are not placed on parents, families, local authorities and professionals.

1. Introduction

This rapid evidence review summarises the English language evidence from 17 research studies on child protection mediation in Australia, Canada and the United States. It looks at:

- the effects of child protection mediation on the operation and timeliness of court proceedings to protect children
- the outcomes of child protection mediation for children and families, including (but not restricted to) children and family satisfaction with the process, the impact on the timeliness of the legal process, stability of placements, stability of contact arrangements or other decisions made
- the enablers and barriers relating to the child protection mediation process that are linked to good outcomes for children and families
- the matters that would need to be considered and addressed setting up a child protection mediation pilot in England and Wales.

The review was commissioned by Nuffield Family Justice Observatory (Nuffield FJO) at the request of the FJC, which is interested in piloting child protection mediation in England and Wales. The review's overall aim is to help inform any developments in this regard, and to identify the gaps in the research as well as priority areas for further enquiry.

Defining child protection mediation

Child protection mediation is described by Dobbin, Gatowski and Litchfield as:

a confidential process in which a specifically trained neutral third party who has no authoritative decision-making power (the mediator) assists the family, social worker, attorneys, and other interested parties in a case to talk out and develop their own mutually acceptable agreements with respect to issues relevant to an abuse and neglect case before the court. The goal of child welfare mediation is to develop a plan which everyone agrees is safe and in the best interests of the child, and safe for all the involved adults (2001, p. i).

In England and Wales, mediation has been used in private family law proceedings instead of or in addition to court proceedings. Before an application for private Children Act proceedings is made, the applicants must attend a mediation information assessment meeting unless there has been domestic abuse in the relationship, other serious welfare concerns, or the matter is urgent. There is no requirement for the use of mediation within public family law proceedings.

Alternative terminology includes: child welfare mediation; dependency mediation; and alternative dispute resolution (ADR) in child protection proceedings. Child protection mediation has previously been the subject of discussion in England and Wales. For example, in 2011, the Family Justice Review stated 'Mediation...has potential and a pilot on the use of formal mediation approaches in public law proceedings should be established' (p.19). In 2018, the Care Crisis Review recommended that it would be valuable 'to explore whether or not there is a greater role for mediation in public care proceedings' (Family Rights Group 2018, p. 36).

In 2019, the Public Law Working Group Interim Report examined the potential for reform to child protection practice in England and Wales (Keehan 2019). It did not refer to child protection

mediation but stated that '[f]amilies should be offered a[n] FGC or equivalent (whether organised "inhouse" or conducted by an independent agency), prior to their child being taken into care, except in an emergency' (p. 53). The report includes a guide for parents and social workers, and states that FGCs are expected to be provided by the local authority (Keehan 2019).

About the review methods

This rapid evidence review includes a total of 17 studies looking at child protection mediation in the United States (14 studies), Australia (2) and Canada (1). The studies are all in the English language and have been published since 2000 (see Appendix A for full details).

The review was conducted over a two-month period between April and June 2020. Searches focused specifically on studies on the impact of child protection mediation on children and families, rather than the impact on the family justice system. A PRISMA diagram was used to track the flow of literature and data through each stage of the review (see Appendix B). The researchers followed the thematic analysis approach described by Guest, MacQueen and Namey (2012), and a codebook was developed to identify themes (see Appendix C).

2. Context

There are substantial differences in the child protection practices across Australia, Canada and the United States, as well as in comparison to practice in England and Wales. There is a single legal system for England and Wales, and the Children Act 1989 parts IV and V currently apply in both countries. However, children's services are a devolved matter and the law relating to children's rights differs in England and Wales.

In England and Wales, different approaches have been taken to the implementation of the different processes to improve decision-making in child protection. There has been continuous work to promote FGCs and to encourage local authorities to commission or create an FGC service. While resource pressures have resulted in the closure of some services, others have opened, particularly with funding from the Department for Education (DfE)'s Children's Social Care Innovation Programme. Pre-proceedings became a formal part of the care proceedings process through inclusion in statutory guidance in 2008, the provision of legal aid for lawyers to attend meetings, and a comprehensive training programme on the care proceedings reforms in 2007 and 2008 (Department for Children, Schools and Families (DCSF) 2008). Similarly, the use of IRHs to resolve cases was promoted as part of the Public Law Outline reforms in 2013 and 2014, with strong leadership from the then President of the Family Division, training for all judiciary in case management, a compulsory, national, implementation pilot (Masson 2015) and inclusion in the Practice Direction. By contrast, attempts to introduce settlement conferences, although backed by the then President of the Family Division, had only limited success. Adopting the scheme was optional and many judges remained unconvinced of the benefits and practitioners were not supportive.

The rest of this section outlines the following in further detail:

- child protection procedures and the history of child protection mediation in the United States, Canada and Australia
- practices used outside the court process alongside care proceedings in England and Wales.

United States

Families in the United States that have children removed from their care do not have access to a welfare system that can support them with housing, healthcare or income. Poverty is often characterised as 'extreme' in the United States and research has found that the vast majority of parents who are subject to care proceedings live in such poverty (Hastings, Taylor and Austin 2006).

Where serious concerns are raised about a child, the state will often remove the child from the parents before filing a dependency petition in the state courts. The court will hold a hearing shortly after to review the removal, and the child protection authority sets out its case to prove child abuse or neglect. The court must determine whether the case is substantiated and there is jurisdiction to impose orders. The court reviews the case, usually every six months, to monitor progress in care plans towards permanency, including reunification. There are time limits on the maximum duration of out-of-home care and attempts at reunification before decisions must be taken on permanency and termination of parental rights (TPR). Court monitoring continues until the permanency plans are implemented.

An example of time frames can be found in Table 1, taken from Gatowski et al. (2005) for Washington State Family Court Time Frames Act.

Table 1: Example of time frames (Washington State Family Court Time Frames Act)

Initial hearing	Within 24 hours of removal or 5 days from the petition filing if children are not removed (DC Code Ann. Sec. 16.2312 & 16.2308).
Adjudication	Within 45 days of petition filing if child not removed (DC Code Ann. Sec. 16.2316.01); within 105 days of petition filing if child removed (DC Code Ann. Sec. 16.2316.01).
Disposition hearing	At completion of adjudication, or upon good cause, may be extended for 15 days after adjudication (DC Code Ann. Sec. 16.2316.01).
First review	Within 6 months of disposition and every 6 months thereafter (DC Code Ann. Sec. 16.2323).
Permanency hearing	Within 14 months from removal (DC Code Ann. Sec. 16.2323).

Source: Gatowski et al. (2005)

Parents are entitled to legal representation in dependency proceedings but only 39 out of 50 states provide this as an absolute right (Gerber et al. 2019). Legal aid is not automatic, it is poorly funded, means-tested, and there have been long-standing concerns regarding the quality of legal advice parents receive from non-specialist sole practitioners representing them in these proceedings. Recently, policy has changed to allow federal funds to be claimed in support of legal representation for parents and children in child protection matters.

There is no children’s guardian service equivalent to Cafcass in the United States. Court-appointed special advocates (CASA) are available in some courts to support lawyers representing children. CASA are trained volunteers who provide information to the child’s lawyer about the child’s views and matters that affect their welfare—such as poor arrangements for contact or unsuitable placements—but do not have the skills or the status in proceedings that family court advisers (FCAs) have in England and Wales.

Child protection mediation was in many ways a response to the adversarial nature of care proceedings (Association of Family and Conciliation Courts 2012). It was piloted in the 1980s, the evaluations of early projects were positive, and the movement slowly began to grow across the United States (Kierkus and Johnson 2019). Momentum for mediation in child protection matters, however, came in the mid to late 1990s when the National Council of Juvenile and Family Court Judges endorsed mediation in child welfare matters (National Council of Juvenile and Family Court Judges 2005).

The Adoption and Safe Families Act (ASFA) 1997 is a federal law that sets limits on the amount of time a child can spend in foster care and that promotes permanency. Child welfare services in each state are monitored on their performance of these permanency targets, and federal funding for child welfare services is reliant on meeting these targets (Gatowski et al. 2005). With an increase in caseloads and a decrease in funding, child protection mediation is identified by courts as a different approach to addressing the permanent placement of a child, and an approach that can be cost and time-effective (Madden and Aguiniga 2013).

The Child Victims Act Model Courts Project was a key proponent of child protection mediation in the United States in the late 1990s. There are currently 34 model courts but this does not mean that 34 states are covered (Livingston County 2020). The courts that joined the scheme have pledged to improve the way they deal with child protection matters and put resources into actively seeking out ways to do this (Edwards 2009). Ideas are shared throughout the jurisdictions and child protection mediation was adopted as an important asset in the programme (Edwards 2009). Child protection mediation is supported by the Model Courts Project, but it is not bound to it; not all model courts use these services. Also, courts outside of the scheme may use child protection mediation.

As child protection mediation continued to develop, key stakeholders from child welfare agencies and professionals from a child welfare background came together and established the Child Welfare Collaborative Decision Making Network in 2007. This network created guidelines for a best practice child protection mediation programme. In 2012, these guidelines were adopted by the Association of Family and Conciliation Courts with the goal of increasing the reach of mediation to other courts across the country and promoting best practice across child mediation programmes (Kierkus and Johnson 2019). The Association of Family and Conciliation Courts remains active today and its 2012 practice guidelines continue to be widely used. In addition to these guidelines for best practice, in 2019 the Association of Family and Conciliation Courts endorsed the Child Protection Mediation Model Mediator Competencies, which sets out the necessary training and skill set mediators need to work in child protection (Bassein et al. 2019).

Canada

Similar to the United States, child protection matters in Canada are dealt with by federated provinces and territories. It is not the state, however, that brings the matter to court, but local Children's Aid Societies, and the nature and quality of legal and child protection services varies widely. There is no automatic legal aid in Canada and although parents have a right to be represented, many parents do not qualify for state support and are unable to afford private lawyers' fees (Kahoe and Wiseman 2012).

Child protection mediation was introduced in the 1990s by the Centre for Child and Family Mediation in response to the Child and Family Services Act in 1984, which had created an increasingly complex and adversarial child welfare system (Maresca 1995). Child protection mediation systems were established in 7 of the country's 13 provinces and territories, with varying degrees of success (Cunningham and Van Leeuwen 2005). Different provinces have different legislation relating to mediation, but the drive behind establishing this method is likely to have come from the escalating legal costs of child protection cases alongside an increase in the number of high conflict cases. Social work cases have increased significantly in Canada, and the courts now play a greater role in resolving child protection issues. However, many child protection mediation schemes proved unsustainable because of a failure to appreciate the complexity of what was involved (Crush 2007).

The history in Canada of institutionalisation of First Nations Children, and the recent recognition and respect of these cultures, has also led to the use of non-adversarial procedures focusing on the family, particularly FGCs, and these are now used with all communities. There is far less research in the Canadian context of child protection mediation in comparison to the United

States and information obtained for this review (Thompson 2020; Dalhousie University 2020) was that there were few schemes currently operating in Canada.

Australia

As in Canada and the United States, child protection welfare in Australia is a matter for the state or territory. The application to take a matter to court is made by the state's department of human services. There are long-standing concerns around the adversarial nature of Australian child protection litigation and the length of these proceedings. Parents can have legal representation in the court process but access to legal services and legal aid varies, and the funding can be withdrawn if a favourable outcome is unlikely. Private fees for legal representation are low but there are also concerns about the quality of legal representation for children and the overall fairness of proceedings (Thomson et al. 2017).

Attempts have been made to introduce less adversarial processes through increased judicial case management, courts taking a more inquisitorial role, and resolution conferences (Wood 2008; Cummins et al. 2012). In 2007, a Special Commission of Inquiry into Child Protection Services in New South Wales (NSW) was launched with the aim of overhauling the child protection system. The ensuing 'Wood report' set out a list of recommendations for child protection in the state (Wood 2008). Funding for alternative dispute resolution was listed as a recommendation (Morgan et al. 2012). In response to the report, in 2009, the NSW government set up a working party to review alternative dispute resolution and child protection mediation. Child protection mediation started towards the end of 2010 and the beginning of 2011 (Morgan et al. 2012).

In Western Australia, it was the introduction of the Children and Community Services Act 2004 that highlighted the need for child protection mediation. As child protection caseloads dramatically increased, and as an increasing number of parents were representing themselves in care proceedings, Western Australia looked to child protection mediation for a solution. Supported by the Wood report and a number of small alternative successful dispute resolution programmes, child protection mediation began in 2009 (Howieson and Legal Aid WA 2011). Again, the literature and research evidence on child protection mediation in Australia is not as comprehensive as in the United States.

England and Wales

Care proceedings are brought by local authorities under the Children Act 1989 to protect children who are suffering or at risk of significant harm. Parents are entitled to legal aid for these proceedings regardless of income or the nature of the legal case. Children also have representation. The court appoints a children's guardian (a qualified social worker) from Cafcass/Cafcass Cymru to represent the child and advise the court, and the children's guardian appoints and instructs a lawyer to represent the child in court. Proceedings require the local authority to disclose its case. There is a time limit of 26 weeks for these proceedings but increasingly this is not met. Negotiations between the parties' lawyers are a common part of the process with adversarial hearings used in a minority of cases where the basis for intervention—or more usually the care plan—is contested (Pearce et al. 2011; Masson et al. 2019).

Child welfare systems have developed a variety of processes and practices to engage and empower families to resolve disputes and avoid the use of out-of-home care and/or legal

proceedings. These reflect both system values of working in partnership with families and system pressures: the goals of timely decision-making and efficient use of court resources are furthered by encouraging participation and agreement and avoiding contested hearings. The processes used in England and Wales include: FGCs (sometimes referred to as family group decision-making); the pre-proceedings process for care proceedings; advice, discussion and negotiation between lawyers and with clients; IRHs; and settlement conferences. Although these differ to a greater or lesser extent from child protection mediation, they arise from the same concerns and serve many of the same purposes. Similar approaches are also used in parts of Australia, Canada and the United States, where they complement or are viewed as forms of child protection mediation.

Family group conferences

FGCs are an established method for shared planning and decision-making about children's care between the family and the state, including where there are child protection concerns.

The use of FGCs in England and Wales has developed steadily over the last 20 years. FGCs have been championed by Family Rights Group, which has also trained FGC coordinators and run accreditation for services, as well as children's organisations such as Barnardo's and Daybreak, which run FGC services for local authorities.

Guidance for local authorities encourages the use of FGCs for children at the edge of care (Department for Education (DfE) 2014).

Daybreak has been developing its FGC service since 2015, supported by the DfE's Social Care Innovation Programme. FGCs are used before (and to avoid the need for) court action, during proceedings (particularly to identify potential carers amongst family and friends) and, subsequently, to identify support for children, parents, and carers. It follows that FGCs can be used alongside the pre-proceedings process and, where parents and local authorities accept the arrangements proposed, to help to resolve care proceedings without a disputed final hearing. Similarly, in jurisdictions where child protection mediation is used, it can be a tool for resolving disputes remaining after a plan has been made at an FGC.

The What Works Centre for Children's Social Care (WWCSC) conducted a systematic review of the research evidence on the effectiveness of shared decision-making compared with usual social work processes, focusing on: reducing the need for out-of-home care and re-entry to care; increasing family reunification; and upholding the participation rights of families, using family empowerment and satisfaction as proxies. The review identified 33 quantitative studies with control groups; 17 of these studies showed favourable results for at least one of the chosen outcome measures but all had at least a moderate risk of bias, and the RCTs did not identify differences in the measures when compared with controls. The review did not provide

What are FGCs?

FGCs were first introduced into New Zealand's child protection system in 1989 to reflect Maori practices of involving family and community. The FGC model gives the family the lead in developing plans for a child; family members are brought together by an FGC coordinator and informed of the concerns about the child's care. They then have 'private family time' to make a plan for the child's care and support. In New Zealand under the Children's and Young People's Welfare Act 1989, an FGC must be held before applying for a child protection order (s.70); and the proposals of an FGC must be accepted unless they are clearly inconsistent with the child's welfare (s.34). FGCs are now widely used in North America, the Netherlands, England and Wales to engage families and family support networks where there are child welfare concerns.

conclusive evidence of more favourable outcomes for FGCs but concluded that family participation should be upheld as a fundamental principle (WWCSC 2020).

Pre-proceedings process for care proceedings

The pre-proceedings process for care proceedings was introduced in 2008 together with reforms to care proceedings, which were supported by a major training programme (Masson 2015). The process aimed to divert cases from care proceedings or, where that was not possible, to enable them to be resolved more quickly by requiring assessments to be completed before a court application was made. The process was set out in statutory guidance (DCSF 2008; DfE 2014), effectively requiring its use by local authorities. There is no national data but use of the process appears to be widespread although there are variations in practice (Keehan 2019). The process consists of the local authority sending a letter to parents detailing its concerns and inviting them to a pre-proceedings meeting to discuss these. The letter entitles parents to free, independent legal advice at the meeting.

Pre-proceedings meetings are not intended as a form of mediation between parents and children's services but to improve communication so that parents understand the local authority's concerns, what services are available to help them, and what the local authority will do if the children's care does not improve. Masson et al. (2013) found that over a quarter of cases were diverted from care proceedings through the process and (2019) that the majority remained out of proceedings for the following six years (the diversion rate declined to 20%). Some parents reported feeling empowered by having a lawyer at their meeting, and social workers noted that parents took more notice of their concerns where they had legal advice (Masson et al. 2013). A more recent study in one local authority from 2014–2018 found that diversion was more likely where cases remained in pre-proceedings longer (Dyke 2019). Small-scale studies of a version of the system (Cafcass Plus), which also involved participation of a children's guardian during the pre-proceedings stage, were also positive (Broadhurst et al. 2013; Holt et al. 2014); Cafcass has not rolled this out nationally, although it remains an option in some areas (Cafcass 2019, 4.24).

Settlement conferences

Settlement conferences in family proceedings were introduced in 2016 in a pilot, judge-led initiative (De Haas 2016), drawing on experience from Canada where such conferences are used in children's proceedings and in other areas of civil litigation. Typically, settlement conferences involve a judge or other judicial officer who has not had involvement with the case. The judge or judicial officer convenes a meeting with the parties and their lawyers to provide 'a neutral evaluation' of the likely outcome, and to identify areas of agreement and dispute between the parties. In effect, the judicial officer takes the role of a mediator, with direct parallels to in-court mediation.

Parallels between child protection mediation and settlement conferences have also been noted in England. The ADCS, Association of Directors of Social Services (ADSS) Cymru, Cafcass and Cafcass Cymru joint position statement on settlement conferences defined these conferences as 'without prejudice judge-led mediation' which can help resolve disputes where parents 'will take notice of a judge but not listen to social workers or mediators' (ADCS, ADSS Cymru, Cafcass and Cafcass Cymru 2016, p. 1). Where agreement is reached in a settlement conference, it may require endorsement by another judge to ensure that any order is in the child's best interests, alternatively a consent order may be made, routinely.

Settlement conferences usually occur towards the end of a case. In some jurisdictions, a conference is required before a case can be listed for a final hearing. Where there is separate provision for mediation, settlement conferences can be used where a mediation has become 'stuck'.

Although Summerfield and Pehkonen (2019) noted that conferences had the potential to encourage open communication and engage parents in family proceedings, there were no interviews with parent participants. Their report raised questions about the further steps that were required for settlement conferences to become an effective part of the family proceedings process, noting the need for more training and guidance for the judiciary. However, no further steps have been taken. There is a lack of current evidence on the use of settlement conferences in care proceedings. They were not mentioned in the draft report of the Public Law Working Group on care proceedings (Keehan 2019).

There are direct parallels between settlement conferences and IRHs, which are a standard part of the court process in care proceedings, intended to resolve cases where possible and to identify outstanding matters to be determined at the final hearing. Both studies of settlement conferences (Brophy 2019; Summerfield and Pehkonen 2019) heard views that well run IRHs could achieve similar outcomes in terms of dispute resolution and concerns that insufficient time was allowed for IRHs. Also, research into the operation of the Public Law Outline found similar levels of case resolution at IRHs as in the settlement conference pilot (Masson et al. 2019).

A possible advantage of settlement conferences is greater participation by parents—but this must be set against concerns that parents may be under pressure from the judge, and a complete lack of evidence as to how parents experienced the process. The low take-up of settlement conferences also provides lessons about the challenges of wide implementation, even where systems have judicial support.

3. Findings

What are the experiences of child protection mediation for children and their families?

Key findings

- Parents were satisfied with child protection mediation.
 - Most parents felt respected, and that child protection mediation was fair and inclusive.
 - A minority of parents raised concerns about being excluded from decision-making, being pressured into decisions, and feeling ignored.
 - Current evidence focuses on the process and organisational approaches of child protection mediation rather than taking a family-focused and child-centred perspective. Further research is needed to explore the latter.
 - There is an absence of children's perspectives.
-

The views and experiences of parents who attended child protection mediation are drawn from post-mediation surveys and interviews with parents immediately after mediation. Questions asked in the surveys include how satisfied parents were with mediation and the process, and whether they would attend mediation again or recommend it to a friend. Both post-mediation surveys and interviews were voluntary and, therefore, the conclusions need to be read cautiously as the sample is self-selecting. Morgan et al. (2012) observed child protection mediation and found that parents who seemed unhappy with it were less likely to complete post-mediation surveys at the end of the session. This review could therefore be missing a considerable number of important views from such parents.

Unfortunately, not all evaluations note the number of parents who completed post-mediation surveys, or the number of surveys completed out of the total number of parents who participated in mediation (Bryan et al. 2011; Dobbin, Gatowski and Litchfield 2001; Shack and Sitko 2018). For those studies that did provide the proportion of parents completing surveys, nearly all had a completion rate of under 50% (Colman and Ruppel 2007; Gatowski et al. 2005; Kierkus and Johnson 2019; Morgan et al. 2012; Shack et al. 2010; Trosch, Sanders and Kugelmass 2002) and one had a completion rate of 60% (Shack and Sitko 2018).

Four studies undertook interviews with parents. In three of these studies, the number of parents interviewed in comparison to the number of parents who participated in child protection mediation was very small (Howieson and Legal Aid WA 2011; Morgan et al. 2012; Shack et al. 2010; Shack and Sitko 2018). While interviewing the majority of parents, the fourth evaluation had a very small sample size of 20 mediation sessions (Cunningham and van Leeuwen 2005).

A greater proportion of professionals completed surveys than parents. However, the questionnaires were process-driven, focusing on the structure and outcomes of the mediation as opposed to its place in the proceedings as a whole and the welfare of the child.

Despite child protection mediation being part of care proceedings, post-mediation surveys did not ask parents how they felt about mediation in comparison to the ongoing court proceedings or as a part of the ongoing proceedings. Instead they focused on the child protection mediation

as a single entity as opposed to a part of a wider system of care proceedings. The questions posed to parents in both interviews and questionnaires also did not focus on the children or the needs of the parents themselves. In the findings below, only two questions in three evaluations are concerned with the best interests of the child.

Satisfaction

When asked in surveys and interviews, parents were satisfied with child protection mediation (Bryan et al. 2011; Colman and Ruppel. 2007; Cunningham and van Leeuwen 2005; Gatowski et al. 2005; Kierkus and Johnson 2019; Morgan et al. 2012; Shack and Sitko 2018), although the proportion of parents who confirmed they were satisfied with mediation varied. For example Bryan et al. (2011) found that 59.1% of parents were satisfied whereas Gatowski et al. (2005) found 82% of mothers were satisfied with mediation. Nevertheless, all studies found that most parents indicated they were satisfied with child protection mediation.

In a further analysis of the parents' views on child protection mediation, Morgan et al. (2012) found a correlation between higher levels of overall satisfaction with how the mediation was run and higher level of overall satisfaction with the child protection mediation outcomes. They found the most likely signifier of overall satisfaction was where parents felt that children's social care had been supportive and rated their satisfaction with children's social care highly.

Kierkus and Johnson (2019) analysed state-wide data from Michigan comparing parent satisfaction surveys completed for the care proceedings court process. They were able to compare the parents' satisfaction of the overall experience of care proceedings where child protection mediation had taken place and cases where it had not. The results show that cases where there was child protection mediation had slightly higher satisfaction rates than those that did not—85.3% compared to 81.3% respectively. These results were not found to be statistically significant.

Fairness, inclusiveness and respect

Many families felt that child protection mediation was inclusive, that they were part of the problem-solving process of mediation, and that decisions were made by all participants in the room. Studies by Colman and Ruppel (2007), Dobbin, Gatowski and Litchfield (2001), Morgan et al. (2012) and Shack et al. (2010) found that over 70% of all parents agreed with at least one of these statements with the positive responses ranging from 71% to 86%. Shack et al. (2010) asked parents to complete an open-ended survey question asking what parents liked about child protection mediation and 12% of parents highlighted inclusiveness. Parents further indicated that child protection mediation was a forum where they were able to gain a clear understanding of what was expected of them within care proceedings (Colman and Ruppel 2007; Gatowski et al. 2005; Howieson and Legal Aid WA 2011; Morgan et al. 2012; Shack and Sitko 2018).

Parents' survey responses were most positive when asked whether they were treated fairly or with respect by the mediator. Nine out of ten parents (90% or over) positively affirmed this in four evaluations (Cunningham and van Leeuwen 2005; Kierkus and Johnson 2019; Morgan et al. 2012; Shack and Sitko 2018) and a fifth had positive scores from over 80% of parent participants (Dobbin, Gatowski and Litchfield 2001). In comparison, Cunningham and van Leeuwen (2005) surveyed a group of parents who did not attend child protection mediation but

who were involved in care proceedings and found that only 57% of them felt that the judge had treated them with respect.

Results from parent surveys regarding being treated with respect by all other parties attending child protection mediation were not as strong as those for the mediator, but were still extremely positive (Colman and Ruppel 2007; Dobbin, Gatowski and Litchfield 2001; Morgan et al. 2012; Shack and Sitko 2018).

Similarly, parents were asked whether they were given the space to share their views and thoughts on the child protection matter. The majority of responses showed that parents did feel they had the opportunity to communicate openly at mediation and ensure that their voice was heard (Colman and Ruppel 2007; Cunningham and van Leeuwen 2005; Gatowski et al. 2005; Howieson and Legal Aid WA 2011; Shack et al. 2010; Shack and Sitko 2018). Noticeably, nine out of ten parents (91%) in Morgan et al.'s (2012) Legal Aid Pilot group felt that they were able to tell their side of the story, and in interviews, parents expressed that they felt less intimidated by mediation because the more informal setting, without the judge, helped them to feel more relaxed.

Children's interests

There is a dearth of evidence on the experiences or feelings of the children who attended child protection mediation. Howieson and Legal Aid WA (2011) draw attention to the importance of focusing on the children and provide one example where a child did attend. However, they only briefly discuss the child's short contribution and do not provide information as to the child's views on participation.

Both Colman and Ruppel (2007) and Morgan et al. (2012) surveyed parents and asked whether they felt professionals participating in child protection mediation cared about the best interests of the child and wanted what was best for the child. For Colman and Ruppel (2007) 87% of parents agreed, which is analogous to the later study by Morgan et al. (2012) in which 83% of one parent group and 87% of another responded positively.

In contrast, Cunningham and van Leeuwen (2005) asked parents whether they felt the social worker understood the needs of the child after participating in child protection mediation. Only a fifth (21%) of parents felt that the social worker understood the child's needs.

Parents and foster parents

An added positive aspect of child protection mediation is that it can create the opportunity for parents and foster parents to meet. In one study parents commented that they were pleased to meet the carer of their child and felt that the child was loved and cared for. In the same study, foster parents similarly stated that they were pleased that they had heard the views and opinions of the parents (Shack et al. 2010). The relationship between foster carers and parents in other circumstances can be complicated but there is no evidence in the literature of cases where this is more complex. This may need further consideration.

Parents concerns about child protection mediation

Although parent responses to child protection mediation were on the whole positive, concerns were raised about the process and fairness of mediation. It is important to note that the evaluations do not measure the quality of the mediators or the mediation itself and it is likely that this will vary from mediation to mediation. However, Colman and Ruppel (2007) found that a fifth of parents (21%) felt pressured to enter into child protection mediation. Dobbin, Gatowski and Litchfield (2001) found that a fifth (20%) of parents felt ignored or unimportant in child protection mediation and Colman and Ruppel (2007) found 22% of parents felt left out of the decision-making process.

Details gathered from interviews demonstrated that parents raised concerns that social workers were not listening to them and that the parents felt the social worker had come to the mediation with preconceived ideas that they were not willing to change (Howieson and Legal Aid WA 2011). This is echoed by parents in Shack et al.'s (2010) programme, who commented that they were not included in discussions and that they felt no sense of control at the mediation session.

Parents were asked if they felt pressured into reaching an agreement at child protection mediation by either the mediator or another party in Gatowski's et al.'s (2005) evaluation. Although few parents did feel pressured, 14% of mothers at child protection mediation felt pressured by another party and 4% of mothers felt pressured to reach an agreement by the mediator. Fathers were less likely to feel pressured into an agreement with only 3% feeling pressured by another party and 9% by the mediator.

On a similar theme, Cunningham and van Leeuwen (2005) asked parents two similar questions after they had attended child protection mediation and the answers revealed very different feelings about their participation at mediation. Although over two thirds of parents in this study (68%) felt equal at the child protection mediation table, three quarters of parents (74%) felt that children's social services had all of the power and that they had none. This highlights the complexity of power imbalance within mediation.

This perception of children's social services is further reflected in the absence of strong findings about an improved relationship between parents and child's social workers after child protection mediation. Studies that explored this found that if the relationship was bad before child protection mediation it was likely to remain this way, and if the relationship was positive, a good relationship remained (Cunningham and van Leeuwen 2005). Changes in relationships were rare and any changes in the relationships were often based on several factors outside of child protection mediation (Shack and Sitko 2018; Morgan et al. 2012).

What are the experiences of child protection mediation for child protection professionals?

Key findings

- Professionals were satisfied with mediation.
 - Professionals felt mediation was fair. There were concerns that mediations meetings took too long.
-

This section presents the views and opinions of professionals who attend child protection mediation. Professionals include lawyers for parents, child protection agency lawyers, social workers, and children’s guardians.

Professionals were positive about working together as a group to problem solve and create a plan (Colman and Ruppel 2007; Howieson and Legal Aid WA 2011), they often felt that mediation was fair (Bryan et al. 2011; Gatowski et al. 2005; Shack and Sitko 2018) and were satisfied with the process and/or outcomes of mediation (Bryan et al. 2011; Colman and Ruppel 2011; Gatowski et al. 2005; Howieson and Legal Aid WA, 2011; Kierkus and Johnson 2019; Morgan et al. 2012; Shack et al. 2010).

Few concerns were raised about mediation, but the key issues professionals commented on included:

- participants being late or underprepared for child protection mediation
- the discussion not staying on track, missing key issues, or delving into areas that did not need to be discussed
- meetings were too long.

(Bryan et al. 2011; Howieson and Legal Aid WA 2011; Shack et al. 2010; Shack and Sitko, 2018).

Judges were interviewed in five evaluations and they too were very positive about child protection mediation. While nothing in the research suggested that the judges had observed child protection mediation personally, they expressed a view that mediation was an opportunity for parties to talk openly to each other and to give parents a voice—which is often missing from court proceedings (Bryant 2011; Howieson and Legal Aid WA 2011; Shack et al. 2010; Shack and Sitko 2018).

Shack et al. (2010) undertook interviews with judges and found that although judges were not directly involved in the mediation itself, they felt that it allowed each party to have a better understanding of each other’s views and reduced the conflict between the parties, which in turn created a better environment for proceedings even if no agreement is reached at mediation.

What are the outcomes for children and families who use child protection mediation?

Key findings

- Child protection mediation can result in fewer cases proceeding through the traditional court route, and fewer court events, such as hearings and appearances.
 - Child protection mediation can reduce the amount of time cases take to reach agreement.
 - Further research is needed to understand family compliance with mediation plans/agreements.
 - Child protection mediation can increase the proportion of families coming to some form of agreement in comparison to cases that use the traditional court proceedings.
-

Efforts have been made to evaluate the performance of child protection mediation programmes by collecting multiple measures of effectiveness and permanency. Common measures of effectiveness include system efficiency, case settlement rates and family compliance with agreements. Studies that measure permanency outcomes do so by measuring reunification with parents, placement with relatives, adoption, and legal guardianship.

The studies used in this section vary in quality and include quantitative studies measuring the effectiveness of programme outcomes with comparison groups. At best is a descriptive research design by Madden and Aguiniga (2013) of 315 in intervention and 315 in comparison groups and a randomly assigned cohort of 200 mediated cases and 200 control cases studied by Gatowski et al. (2005). Mixed methods studies were also included in this section to give a richer contextual understanding of the outcomes, although these did not have comparator groups.

These studies demonstrate that child protection mediation in the United States is a speedier process than the traditional court route—it can mean that fewer court events take place, which saves the courts time and reduces the likelihood of court delays. This is because mediation results in agreement, including agreements in which parental rights are terminated. For families, this means that they spend less time within the court system and reach agreements at a much faster pace. The evidence suggests that child protection mediation is more effective in cases where the issues presented are less complex, such as contact issues, as opposed to establishing child abuse and neglect. As such, further research is needed to understand the types of cases that child protection mediation might be appropriate for, and whether the shorter time frame is appropriate for managing more complex issues.

Few studies measure the long-term outcomes by tracking children and family re-entry into the social care system, and even when this is done it is difficult to attribute any outcomes to the child protection mediation intervention. The research did not consider a wider set of longitudinal indicators, such as the significance of child protection mediation on child and family ongoing access to appropriate services and support to address identified problems or prevent problems from escalating or resurfacing. Further research is needed to understand the longitudinal effects of child protection mediation on families.

System efficiency

Evidence about the effectiveness of child protection mediation suggests that it is speedier than traditional court processes. Evaluations by both Cunningham and van Leeuwen (2005) (Ontario, Canada) and Morgan et al. (2012) (New South Wales, Australia) identified that the length of time from the date an application was made to final orders averaged 5.5 months. For Cunningham and van Leeuwen (2005) the comparison group took on average 3.5 months longer whilst in the later study by Morgan et al. (2012) the comparison group took one month longer. This difference results from there being no need to conduct hearings where matters have been resolved.

The use of child protection mediation can reduce hearing length because matters are agreed. Summers, Wood and Russel (2011) (Washington, United States) found that hearings were often shorter and required less judicial oversight in comparison with non-mediated cases. Nonetheless, child protection mediation may not reduce court time where agreement is not reached. In a small mixed methods study of 20 mediated cases and 20 comparison cases in Ontario, Canada, when successful mediation cases concluded within 5.5 months but if unsuccessful took an average time of 8 months, similar to the 9 months conclusion rate observed in the comparison group (Cunningham and van Leeuwen 2005). Unsuccessful mediation can extend the process for families, subsequently delaying case resolution and costing a similar amount to cases without mediation (Cunningham and van Leeuwen 2005). However, a later study by Shack (2010) found that resolving some issues through mediation could still result in faster court processes for a case because fewer issues were then brought before the court.

Child protection mediation can reduce the amount of time cases take to reach resolution. A descriptive analysis of data pertaining to permanency outcomes in five mediation centres that utilised child protection mediation was compared with data from counties that utilised traditional court processes in the state of Michigan, and found that mediation was substantially more time efficient than traditional court proceedings (Kierkus and Johnson, 2019). It was determined that jurisdictions using child protection mediation were almost twice as likely to close a case. This echoes earlier findings by Gatowski et al. (2005) in which cases receiving early mediation reached adjudication in an average of 49 days after the initial hearing, while cases in the control group reached adjudication an average of 86 days after the initial hearing. However, cases that reach agreement may spend more time in mediation than cases that do not. Colman and Ruppel (2007) highlight that on average, cases that reached agreement mediated for three hours and 19 minutes, while cases that did not reach agreement mediated for two hours and 44 minutes.

Compliance

The term 'compliance' is regularly used in the literature included in this review to describe the extent to which families and/or parents adhere to agreements and plans. Compliance is difficult to measure as what is considered to be 'full' or 'partial' compliance is subjective. Furthermore, each plan is tailored to meet a family's individual needs and as such includes multiple terms. Parental compliance with agreements can be sporadic. They may start to comply with some or all of the terms then stop; or they may move in and out of compliance (Shack and Sitko 2018). Because studies use varying methods to collect evidence as to whether child protection

mediation improves family compliance, it cannot be generalised and cannot be understood by picking one point in time.

There is little evidence focusing on the state's compliance with child protection mediation. When Howieson and Legal Aid WA interviewed parents in their evaluation of child protection mediation they found that parents were concerned that the social workers would not abide by the agreement made (2011). There are, however, no findings in relation to state compliance with mediation.

In two recent studies, Shack and Sitko (2018) found that it is not possible to make a causal connection between mediation and parental compliance with certainty; Kierkus and Johnson (2019) found compliance with mediation agreements was high and parents who took part in mediation were more likely to comply with services than those who did not. This finding was however problematic where parents had significant substance abuse issues as their compliance was lower. Furthermore, an earlier study by Cunningham and van Leeuwen (2005) indicates compliance may be more difficult to attain in complex cases.

In a later study in four New York boroughs—New York, Kings, Queens and the Bronx—compliance was measured through the number of families who were subject to a subsequent abuse or neglect report following the case filing (Thoennes and Kaunelis 2011). The cases were split into three levels of compliance. The first is 'generally compliant' where the parents engage with the agreed mediation plan but there may be occasional slips in compliance, the second is 'partially compliant' where the parent fully engages with some aspects of the mediation plan but does not comply with other areas and thirdly 'generally non-compliant' where the parent either does not engage with the plan at all or begins engaging with the plan but stops shortly after (p. 33). For both mediation and a comparable comparison group, the numbers remained low but mediated cases were more likely than comparison cases to be described as 'in general' compliance, or 'in partial' compliance. Comparison group cases were found to be approximately three times as likely as mediated cases to be described as 'not complying'.

These studies also highlight the fact that child protection mediation services need to understand fully the complexity of family issues such as child abuse, substance, alcohol dependence, domestic abuse, and mental health problems.

Settlement

High settlement rates, in which child protection mediation programmes produce a high proportion of cases that reach some form of settlement, are often considered a positive outcome, despite there being no research to suggest that settlement necessarily results in better outcomes for children and families. Measuring the outcomes and effectiveness of settlement is difficult because cases are often referred to mediation for specific issues but many others might emerge during the mediation and so the number of issues discussed at mediation exceeded the number of issues referred (Thoennes and Kaunelis 2011).

Fully settled cases are those where all referred issues are settled and reduced to a written agreement that is presented to the court, or where the case is withdrawn from court proceedings. Partial settlement refers to an interim agreement or a settlement where only some issues are resolved. It can also refer to cases where additional issues have come to light and been resolved during mediation but where the initial referred issues remain unresolved or only

partially settled. In some studies, agreement reached verbally but not formalised in writing are considered as partially settled or not settled at all.

The evidence demonstrates that use of child protection mediation can increase the proportion of families that come to some form of agreement in comparison to those in traditional court proceedings. In a pilot study by Summers, Wood and Russel (2011), 90% of 22 mediated cases had agreed orders compared with only 75% of non-mediated cases; however, this is not statistically significant. Consistent with Gatowski et al. (2005), 93% of mediated cases in a sample of 200 reached some form of agreement. Full settlement was achieved in 54% of mediated cases, partial settlement in 39% and only 7% resulted in no settlement at all. Thoennes and Kaunelis (2011) reported that neither full nor partial agreement was reached in only some 10% of mediation cases.

There is little consensus as to whether full agreement or partial agreement is the most common agreement outcome for mediated cases. Howieson and Legal Aid WA (2011) found that of 74 cases referred for mediation by the court, 68% settled partially, 15% settled fully, 8% were cancelled, 8% failed to reach a settlement and, in 1%, the party failed to attend. However, an evaluation cohort of 165 mediated cases by Shack et al. (2010) noted that 35% of cases were fully settled, 39% were partially settled, and in 26% of cases no agreement was reached. On the other hand, Kierkus and Johnson (2019) found that 62.6% of cases were mediated to full agreement, 23.3% were mediated without agreement, 6.3% achieved partial agreement and 3% of parties failed to attend or refused to mediate. In a state-wide study of 58 mediated cases conducted in Nevada, 62% of mediated cases were resolved completely, and 7% partially (Siegel et al. 2017).¹

Some research has been conducted to understand the types of cases that are likely to reach settlement. It appears that child protection mediation may be more suitable for less complex issues such as contact or childcare arrangements, and less suitable for more complex issues such as agreement on child abuse or neglect and termination of parental rights. In a formative evaluation of 124 cases settlement rates varied significantly by county ranging from 61.2% to 88.9% (Bryan et al. 2011). Mediation cases addressing TPR were most likely to remain unsettled whereas cases addressing service planning (77.8% were fully settled), communication (100% were fully settled), and contact (66.7% were fully settled) were more likely to settle (Bryan et al. 2011).

In a study in New York, the highest agreement rate for each individual site was in respect of contact (Thoennes and Kaunelis 2011). Approximately 46% of the cases involved a referral regarding contact issues, while 69% involved discussion of these. Agreement rates for contact were among the highest topics at 73%, with service plan issues following at 63%. Furthermore, the mediation group was almost twice as likely as the comparison group to have contact provided. However, parents diagnosed with a mental illness and teen parents were less likely to reach a full settlement, but these groups often reached a partial settlement. When chronic abuse was present, approximately half of cases failed to reach any kind of settlement, although the cohort was small. Shack et al. (2010) found that settlement of neglect cases was more likely than abuse cases, with cases involving both neglect and abuse even less likely to settle.

¹ Note that percentages used in this review are as cited in the reviewed studies—the use of rounding may vary.

Settlement rates may be influenced by the arrangements and dynamics of the mediation. Where children attend a mediation session, this may help focus discussion on their needs and best interests of the child. As Colman and Ruppel (2007) identified, in cases where children attended at least one mediation session, the likelihood of achieving formal agreement was higher. When the father attended the meeting, cases were more likely to reach partial than full agreement (Thoennes and Kaunelis 2011). Furthermore, Gatowski et al. (2005) found that cases with a co-mediator were more likely to reach a full agreement than those with a single mediator, and where there were additional professionals and family members, cases were more likely to result in a partial agreement.

Permanency

Permanency is cited as the primary goal of many child protection mediation programmes. Permanency refers to a form of permanent home for the child and includes reunification with parents, adoption, guardianship (kinship care) and foster care. Studies have explored whether child protection mediation has a positive effect on reaching any form of permanency. Kierkus and Johnson (2019) found that permanency was achieved faster and more frequently in jurisdictions that used child protection mediation than those that did not. However, Aguiniga, Madden and Hawley (2015) conducted a study that found that 33.1% (103) of 311 mediated cases failed to achieve permanency within the 18-month study period. Of the 208 children who did achieve some form of permanency, 107 were reunified with parents or caregivers, 78 were permanently placed with a relative and 23 were adopted. No comparison group was used in the study.

Reunification is frequently cited as the most common permanency goal for families in mediation. The goal that is cited is often different to what is actually achieved. For Thoennes and Kaunelis (2011), family reunification was the permanency goal in 55% of child protection mediation cases while adoption was the second, with an average of 20.8%. In both mediated and comparison group cases, kinship care and non-kin foster care were the most common types of placement.

Gatowski et al. (2005) found that 46% of mediated cases had closed as a result of reunification with children and parents compared with 42% of non-mediated cases, 14% received legal guardianship compared with 11% in non-mediated cases, in 18% of cases the state was granted legal custody compared with 16% of non-mediated cases, 9% of cases received another planned permanent living arrangement compared with 7% in non-mediated cases, and in 2% of cases children were adopted compared with 3% in non-mediated cases. The case outcomes for mediated and non-mediated matters in this evaluation were, therefore, not that different.

Kierkus and Johnson (2019) found that the most common type of permanency was reunification with parents with 54.8% of children returning home, followed by 35.9% of children being placed in long-term foster care. However, not all studies attribute permanency to child protection mediation. An earlier study by Madden and Aguiniga (2013) found in a large (unspecified) state, that child protection mediation did not have a distinguishable effect on permanency. They found that almost half (48.8%) of the 630 sample of families who achieved permanency had used mediation, concluding there was little difference between those who had used mediation and those who had not.

A combination of factors such as the agency, family, child, court, and community may be important determinants of permanency. Madden and Aguiniga (2013) found the following likely to adversely affect permanency: a child being older; being Hispanic; parental/caregiver substance abuse; mental health concerns; inadequate housing; and incarceration of one or more parents.

Long-term outcomes

Few studies measure the long-term tracking of children and family re-entry into the social care system, and even when they do it is difficult to attribute any changes to the child protection mediation intervention. The research did not consider a wider set of longitudinal indicators, such as the significance of child protection mediation on a child and family's continued access to appropriate services and support to address identified problems or prevent problems from escalating or resurfacing.

When Colman and Ruppel (2007) conducted a 12-month follow up of the 343 children in the study, they found that 96% had an active child welfare case at the mediation intake and by follow-up this had reduced to 84%, while 16% of children's cases had been closed. They further found that the longer a child was in foster care, so their exiting rates decreased, and that mediation did not improve this. Gatowski et al. (2005) tracked cases for 24 months following the end of the mediation process to see which cases returned to court within the period. Mediated cases were less likely than the control group to return to court within 12 months of case closure. Seven percent of the mediated cases returned to court while 21% of non-mediated cases returned to court.

What are the key enablers of child protection mediation that support positive outcomes for children and their families?

Key findings

- Mediators are pivotal in bringing parties together and giving each participant a voice.
 - Professionals and mediators should receive regular training.
 - Tensions can arise as a result of the different approaches used by professionals in traditional court proceedings (more adversarial) as opposed to child protection mediation (more inclusive).
 - Programme sustainability is dependent on stakeholder buy-in, visibility and funding.
-

The evidence indicates that many of the barriers to the effective use and implementation of child protection mediation can also be enablers when utilised in a positive way. For example, mediators can be powerful enablers of successful child protection mediation but can also hinder the process if inexperienced and ineffective. Certain barriers can prevent professionals from being actively involved in mediations, such as a lack of training, not having enough time to prepare for each session, tension between practitioners and the lack of clear protocols about operation and confidentiality. The studies included in this section used mixed methods and qualitative approaches, such as observation and interviews with professionals and participants to gain their perceptions of the process. Shack and Sitko (2018), Howieson and Legal Aid WA (2011), and Shack et al. (2010) made extensive use of observations, focus groups and

interviews with child protection mediators, professionals and family members to understand the barriers and enablers to quality mediation.

Mediators

Mediators facilitate open and focused dialogue between parties and manage the session in a collaborative and inclusive way so that each participant has a voice (Morgan et al. 2012). As such, it is the mediator's role to explain how the mediation will be conducted, its purpose and how parties should conduct themselves (Morgan et al. 2012). Studies found that mediators were generally effective facilitators of discussion and ensuring that participants worked together (Kierkus and Johnson 2019; Morgan et al. 2012). Shack and Sitko (2018) found that in 17 of 18 observations, the guidance given by the mediator during the discussion was instrumental in giving parents a voice and helping them understand. The study found that mediators further supported the exchange of information between parties in 10 mediations.

There are four basic mediation models, which Howieson and Legal Aid WA concisely define as follows (2011, p. 21–22).

- Facilitative: '...the mediator encourages the parties to reveal their needs and interests and to acknowledge the dispute from the other party's perspective. Facilitative mediators neither advise the parties on the problem, that is the merits of the dispute, nor provide them with legal information.'
- Evaluative: '...the mediator, as well as facilitating negotiations between the participants, also evaluates the merits of the dispute and provides suggestions as to its resolution. The primary goal of this form of mediation is the efficient delivery of speedy, legally orientated settlements.'
- Settlement: 'The mediator in settlement mediation is responsible for establishing and encouraging environment for settlement negotiations to occur between the parties.'
- Therapeutic: '...is focused on transforming how the parties relate to each other and is the least interventionist of all the mediation models. In therapeutic mediation, the mediator's role is to create an environment in which the parties feel 'empowered' and 'recognise' their own feelings, needs and interests, and recognise and acknowledge those of the other'.

Most of the programmes use a facilitative or evaluative mediation method (Howieson and Legal Aid WA 2011; Summers, Wood and Russel 2011; Shack et al. 2010). Mediators are viewed as independent and separate from the child welfare system—but not all services had such mediators. For Colman and Ruppel (2007) the programme used a mixture of in-house professional staff, consultants, and community-based mediators, whilst for Shack et al. (2010) three mediators were lawyers and one was a social worker. The appearance of independence can be an important factor in gaining the positive participation of families. Morgan et al. (2012) indicate mediation processes provided by child protection agencies are perceived with suspicion by families, particularly when a case has a high level of conflict or there is perceived institutional bias. Cunningham and van Leeuwen (2005) noted the important role mediators play in managing power imbalances and ensuring parties participate as equals. The study found that power imbalance was more common in the relationship between parents and child protection workers and could have detrimental effects on meaningful engagement—a view echoed by Morgan et al. (2012).

Mediators draw from their own experiences and their own initiative and, therefore, many studies express the need for mediators to be experienced in the child welfare system, to possess a knowledge of child maltreatment, abuse and neglect, and to have clear insight into the types of needs families have (Kierkus and Johnson 2019; Shack and Sitko 2018; Morgan et al. 2012; Cunningham and van Leeuwen 2005). The programme provided across four New York boroughs, evaluated by Thoennes and Kaunelis (2011), employed mediators skilled in family mediation rather than experts in the field of child welfare. Nonetheless, training for mediators and professionals is viewed as a critical element of effective child protection mediation, particularly training on relevant child welfare legislation (Shack and Sitko 2018; Kierkus and Johnson 2019; Morgan et al. 2012; Colman and Ruppel 2007). For Kierkus and Johnson (2019) mediators in Michigan received a minimum of 40 hours of training in addition to 16–20 hours of specialised training in child protection mediation.

Effective mediators can support family understanding, feelings of calm, communication and a culture of shared thinking and collaborative decision-making (Shack and Sitko 2018; Howieson and Legal Aid WA 2011). Mediators can support families to think about the issues from an alternative perspective, especially the parties on the other side of the table through asking questions, summarising what has been said, and acknowledging emotions (Shack and Sitko 2018). However, failure to employ experienced and skilled mediators can be a barrier to successful child protection mediation. Those who are not skilled in working with families may be susceptible to overlooking family needs and fully exploring how those needs can be addressed (Howieson and Legal Aid WA 2011). Shack and Sitko (2018) found that mediation was received negatively when the mediator was passive about the family situation, did not intervene when discussions got heated, or failed to summarise key points and guide families through the process. Furthermore, not only can mediators support families but Shack and Sitko (2018) found that they supported professionals to work with families in six mediations and enabled professionals to understand the family situation in 12 mediations.

Many studies identified tension between legal professionals and mediators due to the opposing approaches taken by both, with legal professionals often appearing more adversarial and dominating (Shack and Sitko 2018; Kierkus and Johnson 2019; Howieson and Legal Aid WA 2011). Morgan et al. (2012) found that some mediators felt that other professionals perceived they lacked expertise in care and protection matters with one mediator questioning whether they would be stepping outside of their role by challenging the conduct of a legal representative.

Stakeholder barriers

There are numerous stakeholders involved in the delivery and management of child protection mediation, from judges and magistrates to the mediators themselves, and various administrative services. The evidence demonstrates that for child protection mediation programmes to be successful, they require a high level of support from all of these stakeholders, as well as a high level of participation (Bryan et al. 2011; Trosch et al. 2002). Studies identified stakeholder resistance towards programmes as a significant issue, which often resulted in declining referral rates.

The perceptions of child protection mediation programmes by court officials and judicial stakeholders can affect whether it is used in an area (Bryan et al. 2011). Results from qualitative interviews with judges suggest those who were more familiar and experienced in using and

referring cases to child protection mediation tended to hold more positive perceptions of it and were therefore more likely to endorse it (Kierkus and Johnson 2019). Thus, identifying these key partners and stakeholders and gaining their support can be critical to the life of the programme. When stakeholders who were responsible for referring cases to child protection mediation opposed it, referral rates were more likely to be low, making the programme vulnerable to failure (Howieson and Legal Aid WA 2011). Nevertheless Morgan et al. (2012) found that the presence of an alternative method to traditional court processes can change the mindset of resistant stakeholders over time. Negative perceptions to programmes can gradually ease and studies credited the use of steering groups as a method of engaging and facilitating communication and good working relationships between stakeholders (Kierkus and Johnson 2019; Morgan et al. 2012). Another method for mitigating resistance and improving support can be through integrating and streamlining child protection mediation with the court system (Colman and Ruppel 2007).

The different approach taken by child protection mediation can be a barrier for many legal professionals. Child protection mediation is concerned with working with the family and bringing the child's views to the forefront of the issues discussed. Studies by both Howieson and Legal Aid WA (2011) and Morgan et al. (2012) found that this required a change in mindset. Professionals are required to step outside of their comfort zone and many struggle to integrate the child's voice and views. This can lead to professionals becoming defensive and returning to their expertise as representatives in an adversarial court setting, which can be frustrating for families (Howieson and Legal Aid WA 2011). Regular and ongoing training, including in working with mediators, could encourage support for the use of mediation services (Kierkus and Johnson 2019; Morgan et al. 2012; Cunningham and van Leeuwen 2005; Dobbin, Gatowski and Litchfield 2001).

Visibility and buy-in

Visibility and buy-in are inextricably linked to stakeholder endorsement. Many families and stakeholders may not be aware that child protection mediation is available. Bryan et al. (2011) found that caseworkers and judges did not know that child protection mediation was available in their area three years after a programme had been established. In order to raise the visibility of the child protection mediation programme in Kings County, New York, a child protection mediation coordinator sat in the courtroom during hearings to encourage and educate the judges as to when child protection mediation referrals might be beneficial for a case (Thoennes and Kaunelis 2011).

Furthermore, the actual visibility and accessibility of the meetings themselves can pose a barrier. Shack and Sitko (2018) found that many families and professionals were frustrated that the programme was physically difficult to find or was not signposted. For Colman and Ruppel (2007) a barrier to effective child protection mediation was the lack of space for mediation at the courthouse, although other studies advocate for the programme to take place outside of the court environment. Furthermore, it was noted that employed families could struggle to take time off during the working day to attend sessions. Shack and Sitko (2018) recommend one to two Saturday mediations per month so as not to infringe on work time.

Clear child protection mediation guidelines, protocols and confidentiality

Some programmes used communication protocols to describe the relationship between courts and mediation facilitators (Cunningham and van Leeuwen 2005; Dobbin, Gatowski and Litchfield 2001). Such protocols may be beneficial as failures in communication were noted as a barrier to cases proceeding in a timely fashion. Shack and Sitko (2018) noted that failure by attorneys to let the programme facilitators know about a family's special circumstances could inhibit access to the programme, as did cancellations, which resulted in an underuse of services.

Programmes developed screening and referral protocols and procedural guides but there is a lack of reference in the literature to guidance regarding confidentiality. Failure to put in place clear confidentiality guidelines was identified as a barrier to case progression. Cases that reach agreement are reported back to the court for endorsement (consent orders) and so clarity about how this occurs, and what is included in the court documents, can reassure families and encourage them to be open about the issues they are facing (Morgan et al. 2012). Without this clarity disagreements can arise between professionals about whether what is discussed at mediation can be disclosed to the court, which can cause legal representatives to advise their clients not to engage fully in the mediation (Kierkus and Johnson 2019).

Furthermore, the research suggests that it is important that confidentiality agreements are made explicitly clear to children and families—a role that mediators or legal representatives should play (Siegel et al. 2017; Cunningham and van Leeuwen 2005). A survey of parents who participated in a child mediation programme in New Jersey found that 75% of respondents reported that they understood the confidentiality protocols after their legal representatives had explained them, while 25% remained unsure (Dobbin, Gatowski and Litchfield 2001).

Preparation and time

Evaluations by Shack and Sitko (2018) and Howieson and Legal Aid WA (2011) found that a lack of preparation by professionals significantly hindered child protection mediation proceedings. Shack and Sitko (2018) recommended extending deadlines, especially in complex cases. Howieson and Legal Aid WA (2011) found that lack of preparedness resulted in unnecessary repetition of issues, delays, and could be detrimental to the relationships between professionals and families who were already distrusting of the process.

Funding and costs

Funding is viewed as a challenge to the success and sustainability of child protection mediation programmes. Budget cuts to the court led to the programme evaluated by Thoennes and Kaunelis (2011) being indefinitely suspended. Funding for many of the programmes came from government funding and grants. The programme was provided through legal aid for low-income households in some studies (Cunningham and van Leeuwen 2005; Gatowski et al. 2005; Dobbin, Gatowski, and Litchfield 2001).

Whether child protection mediation can save money is an area that requires further research and is dependent on the context of a programme. Cunningham and van Leeuwen (2005) found that successful mediations (7) saved approximately CA\$2,370 against cases in the comparison group (18), but unsuccessful mediations (13) saved only CA\$500. On the other hand, Kierkus

and Johnson (2019) conducted a cost-saving analysis and found that there were no direct fiscal savings from using child protection mediation but total fees paid for court time were lower. Howieson and Legal Aid WA (2011) analysed court time data and found that while the pilot (with mediation) cases cost more than non-pilot cases, in the context of the whole evaluation, the benefits to the partners and the family outweighed the higher cost though improved case management, fewer court events and strengthened working relationships.

What can be considered best practice for setting up child protection mediation services?

Key findings

- In the areas reviewed, referrals to mediation are made by the court.
 - Screening for characteristics that are inappropriate for mediation are undertaken by a judge or a mediator.
 - A referral can be made at any point in the proceedings—but most commonly occurs either at the start of proceedings or after a fact-finding hearing.
 - Sufficient time needs to be allocated—child protection mediation can be time-consuming and often extends over two hours.
-

To demonstrate the process of child protection mediation in practice, an example drawing on Shack and Sitko's 2018 evaluation of the District of Columbia Child Protection Mediation Program is provided as a case study (see Box 1). The evaluation by Shack and Sitko (2018) was chosen because it was recent and used a mixed methods approach. The authors gathered findings of the procedure and logistics of child protection mediation using quantitative data from 88 post-mediation surveys with professionals and the mediator timesheets from each of the 124 mediation sessions. Qualitative data came from five focus groups with 37 professionals and nine mediators, as well as 18 child protection mediation observations. Furthermore, 84 of 139 (60%) of parents completed post-mediation surveys and two families took part in post-mediation interviews.

Box 1: District of Columbia Child Protection Mediation Program

The first step in the child protection mediation process is a **referral**. Referrals to the programme are mandatory and families are referred by a judge at the initial hearing. Parents of the child will meet their legal representative at this first court hearing. Mediation should take place within 30 days of the referral being made and the professionals are ordered to submit a report to the mediator and other professionals who will attend mediation.

The mediation takes place in an **independent venue**. When parents arrive at child protection mediation, the mediator undertakes a **screening process**. If the mediator has concerns regarding domestic abuse at the pre-mediation screening discussion, the perpetrator is asked to leave the room with their legal representative. They will then attend the mediation by telephone from a different room in the building.

In most mediations the attendees include:

- parents
- parents' legal representatives
- social workers
- social workers' legal representatives
- childrens' guardians.²

Other participants could include:

- education attorneys
- support for mother and/or father
- other social workers.

Once the mediation is ready to proceed, the mediator outlines the structure and process. The introduction should state that:

'Everything said in mediation is confidential, with certain exceptions. Mediation is voluntary, and the participants are free to leave at any time. The mediator is to remain neutral' (p. 47).

The **agenda** is created by asking each participant what they would like to discuss at the meeting. Once the agenda is set, the mediator begins the discussion, often asking for an update from the social worker and then moving on to the agenda, usually beginning with the mother's discussion point.

Admissions and agreements in relation to the facts were discussed in 83% of mediations. Where admissions were not discussed it was because legal representatives for the parents made it clear at the beginning of the session that this topic was excluded.

Mediators have the option of calling for a **caucus** during the session. This is a 'time out' and can be held for numerous reasons such as 'addressing a parent's emotions, brainstorming with some of the professionals about how to proceed with the case, and giving the mother's attorney the opportunity to confront her client about the reality of her situation' (p. 54).

Once the mediation is finished, if there has been an **agreement** or 'stipulation', this will be read and signed by each party. The representative for the social worker will telephone the judge's clerk to see if the judge can list a hearing or ask for another judge to do so. The participants attend court to have the agreement approved by the court.

If an agreement is not reached, the court will be updated on the attendance and outcomes of the mediation in the form: 'Full Agreement, Partial Agreement, No Agreement or Not Held' (p. 33).

Mediation in the District of Columbia Child Protection Mediation Program was scheduled for two hours but a third of mediation meetings went over this timeframe.

Source: Shack and Sitko (2018).

² The guardian ad litem (GaL) is the child's legal representative in the United States.

The approach taken in the case study is not identical to child protection mediation programmes elsewhere. The key differences between this study and the other evaluations in this review are considered below.

Referral

An unusual aspect of the District of Columbia Child Protection Mediation Program is that referrals to the programme are mandatory, with families referred by a judge at the first hearing. Compared with the other evaluations reviewed, mandatory referral is uncommon—referrals are often at the discretion of a judge. In all studies, participation in mediation appears to be voluntary.

A referral to child protection mediation can take place at any point in care proceedings. However, it appears common for the referral to be made early, or after a fact-finding hearing has concluded. Several studies indicated that as mediation became more embedded and trusted by judges and the courts, the timing of referrals became less rigid and occurred at different points in the proceedings (Byrant 2010; Colman and Ruppel 2007; Dobbin, Gatowski and Litchfield 2001).

Screening

Unlike the case study, where screening took place immediately before the meeting with the parents in attendance, other child protection mediation services screened for certain characteristics once they had received a completed referral form and did not offer mediation to parents where they felt it was not appropriate. If certain concerns were apparent on the court file, judges also had discretion not to refer the case to child protection mediation and could screen out cases they considered inappropriate for mediation (Bryan et al. 2011; Colman and Ruppel 2007; Cunningham and van Leeuwen 2005; Dobbin, Gatowski and Litchfield 2001; Morgan et al. 2012; Shack et al. 2010).

Common characteristics identified for exclusion from mediation by Colman and Ruppel (2007), Cunningham and van Leeuwen (2005), Dobbin, Gatowski and Litchfield (2001), Morgan et al. (2012) and Shack et al. (2010) include:

- domestic abuse
- concerns around mental health
- concerns around mental capacity
- sexual abuse of the child
- new abuse allegations/ongoing criminal investigations.

Location

The location of mediation is important to ensure that there are no feelings of bias towards one party, particularly children's services. As with Shack and Sitko's (2018) evaluation, ideally mediation takes place at an independent venue such as the mediators' offices. Bryan (2010) gives examples of where child protection mediation should not take place and includes the offices of children's services or the police station. The court is not seen as an ideal venue by Bryan (2010) but is a neutral location and the evaluations by Colman and Ruppel (2007),

Morgan et al. (2012), and Shack et al. (2010) all review child protection mediation that takes place in a court building.

Attendance

The following participants are invited to the majority of child protection mediation meetings and were considered a core part of child protection mediation in the reviewed literature:

- parents
- parents' legal representative
- social worker
- social worker's legal representative
- children's guardian (children's legal representative).

Other commonly invited participants are:

- children's legal representative
- social worker's supervisor
- other family members
- foster carer
- foster carer's legal representative
- child (if of the appropriate age and understanding)
- interpreter.

Mediation

Throughout the mediation, mediators ensure that parents and professionals are fully aware of the issues discussed using questions and repetition, and look to change or rephrase statements, so they become more neutral and agreeable for all parties involved. The parties often learn new information about the family, child, or services available through this facilitated conversation, which is then explored further in the mediation.

Issues commonly discussed at child protection mediation include:

- placement of the child (interim and permanent)
- contact with the child
- services for the parents
- communication between social services and parents
- wording of the court documents
- care plans.

The issues discussed in child protection mediation were similar whether mediation took place early or towards the end of proceedings. The relinquishment of parent's rights over the child is discussed in child protection mediation where permanency is a key issue (Colman and Ruppel 2007; Shack et al. 2010).

Length of mediation

The time and number of mediation sessions varied across and within the mediation programmes reviewed. The most common session length was between two and three hours (Howieson and Legal Aid WA 2011; Morgan et al. 2012; Shack et al. 2010; Shack and Sitko 2018). Three evaluations noted the average length as longer than three hours (Bryant 2010; Dobbin, Gatowski and Litchfield 2001; Thoennes and Kaunelis 2011) and one evaluation noted that the average mediation session was between one and two hours long (Colman and Ruppel 2007).

The majority of families that entered child protection mediation programmes only had one mediation session but there were families who attended more than one meeting (Colman and Ruppel 2007; Dobbin, Gatowski and Litchfield 2001; Shack et al. 2010). On average, families in the Thoennes and Kaunelis evaluation had two mediation sessions (2011).

Use of caucus

Once mediation is under way, if at any point it is felt that the session needs to break into smaller groups, a participant needs some time emotionally, or a participant needs to speak to their legal representative, a pause takes place to allow time. Bryant (2010) found that all 27 child protection mediation programmes in the study in Texas used caucusing during mediation for a variety of reasons and Morgan et al. (2012) described using a break in mediation to manage parents' 'disruptive behaviour' when the mediation becomes emotional.

Close

In the majority of evaluations, the outcomes of child protection mediation were sent to the court for information and to be approved by the judge (Howieson and Legal Aid WA 2011; Kierkus and Johnson 2019; Morgan et al. 2012; Shack et al. 2010; Siegel et al. 2017).

5. Conclusion and recommendations

Child protection is complex, as are care proceedings. The lives of the children who are thought to need protection are complex, as often are those of their families. It follows that child protection mediation services have to navigate and work with multiple complexities. Although details of the cases successfully mediated were generally lacking in the studies included, the evidence suggests that child protection mediation is more effective in cases in where the issues presented are less complex, such as contact issues, as opposed to establishing child abuse and neglect. Further research is needed to understand the types of case where child protection mediation might be appropriate, and whether the shorter time frame is appropriate for managing more complex issues.

Based on the reviewed evidence, this chapter considers the following:

- potentially resourcing a pilot and establishing a national service in England and Wales
- service sustainability
- competing with other services to engage and empower families.

Resourcing a pilot and establishing a national service

The reviewed evidence highlights the importance of experienced mediators with a good understanding of child protection and the operation of the child protection system. Such mediators can be successful at facilitating open and focused dialogue, whilst poor mediators can hinder participation and constructive discussion between parties.

Prior to setting up a pilot, an assessment would be necessary to understand the number of cases and the needs of families who might be directed to child protection mediation. Service parameters need to be set, identifying the organisation or organisations that will have the responsibility for delivery and development, and securing funding. Additionally, an agreement would have to be put in place about the types of cases referred. Service protocols and information for professionals and families would have to be written and agreed—this is important but much less demanding than establishing a service with suitable mediators and adequate funding. Those preparing protocols and other materials would be able to draw on the plethora of good practice materials developed for, and endorsed by, the National Council of Juvenile and Family Court Judges in the United States. A multi-disciplinary team with experience of care proceedings should rewrite materials for a service operating in England and Wales, with advice from the Family Mediation Council.

Support from stakeholders was identified as crucial in this review. Setting up any child protection services, even only as a pilot, must involve engagement with stakeholder organisations—in this instance the judiciary, ADCS, Cafcass and Cafcass Cymru, and the Association of Lawyers for Children—and reaching agreement on key aspects of the service, including the selection and training of mediators. Unless stakeholders are confident that mediators have the required knowledge and experience, they are unlikely to support the system and make referrals.

The resourcing of any pilot should include adequate funds for research, not limited to a process evaluation, immediate post-mediation surveys of parents, and surveys of mediators. The

research should: include comparison of experiences, process and outcomes in cases where mediation was and was not used; involve sufficient numbers of cases; and be designed to fill some of the gaps in research evidence such as children's experiences of involvement in mediation. Additionally, research would be required to establish the types of cases that are most suitable for mediation as well as the timing of referrals during proceedings. Sufficient time should be allowed for the research and discussion of findings with stakeholders. Any subsequent service roll out should be informed by the research findings.

Ensuring service sustainability

It was clear from the review of the evidence that some child protection mediation services had not been sustained after their initial funding. Sustainability has also been an issue in maintaining and developing services originally established as pilots or innovations in England and Wales—despite their apparent effectiveness. A wide range of positive initiatives in children's services have closed or been curtailed because of reductions in funding to local authorities from central government. Family drug and alcohol services, early intervention and family support services have been particularly vulnerable to funding cuts. Before resources are committed to a pilot, there needs to be a realistic assessment of the cost of a child protection mediation service with a clear plan for future funding. Service cost projections should not be based on savings elsewhere in the system; the studies in the review provided limited or no evidence of cost savings from child protection mediation. Also, the complexity of the child protection system in England and Wales, and the existing funding arrangements, mean that cost savings are most unlikely to be felt equally by all sectors—local authorities, the courts, the Legal Aid Agency and Cafcass. Indeed, some organisations may face additional costs due to their involvement in mediation. It will not be possible to identify the size of demand without a pilot, and demand is likely to change over time. Any plan for a sustainable service will need to consider a range of figures about usage.

Child protection mediation services will only be sustained if they continue to attract referrals, and the mediations themselves are both effective and viewed positively by stakeholder organisations and the individuals involved. Policies to promote services are unlikely to be effective unless parents and children, the professionals working with them, and those responsible for protecting children and/or making decisions relating to care proceedings, believe that child protection mediation services offer something better.

Competing with other services to engage and empower families

The review was not able to compare the effectiveness of child protection mediation with other approaches to engage families, reduce conflict and make decisions in child protection cases. None of the included studies were RCTs, which would have allowed comparison with 'business as usual', nor was it clear what alternative or additional services existed alongside child protection mediation in the areas covered by the studies. As indicated in Chapter 2, the child protection system in England and Wales includes processes and services designed to engage parents and/or families and reduce conflict—the pre-proceedings process, FGCs and IRHs, which can also contribute to timely decision-making. While none of these systems is directly comparable with mediation for child protection cases, all include elements of agreement seeking, and the pre-proceedings process and FGCs are intended to engage parents directly. FGCs also involve the wider family in planning for a child's future.

The introduction of a new type of service would have an impact on existing services and the child protection system as a whole. Consideration would need to be given to how best to rationalise services so that all their advantages are maximised and repeated demands to engage are not placed on parents, families, local authorities and professionals. Consideration should also be given as to whether some benefits of mediation could be achieved by developing existing services—for example by having neutral chairs for pre-proceeding meetings and placing more emphasis on developing written agreements *with* parents.

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Appendix A: Study characteristics

Table A.1. Study characteristics

Study	Author(s) and year	Location	Method(s)	No. mediation cases	No. control cases
Mediation in child protection cases: An evaluation of the Washington D.C Family Court Child Protection Mediation Program.	Gatowski, S., Dobbin, S., Litchfield, M., and Oetjen, J. (2005).	Washington D.C., United States.	Quantitative Randomly selected participants.	200	200
Assessing efficiency and workload implications of the King County Mediation Pilot.	Summers, A., Wood, S. and Russel, J. (2011).	King County, Washington, United States.	Quasi-experimental pilot study.	22	28
Finding a third option: the experience of the London Child Protection Mediation Project.	Cunningham, A. and van Leeuwen, J. (2005).	London, Ontario, Canada.	Mixed methods.	20	20 (comparison, not control)
Child permanency mediation pilot project: Multi-site process and outcome evaluation study.	Colman, R., and Ruppel, J. (2007).	New York, United States.	Quantitative-descriptive analysis.	403	None
The Essex County child welfare mediation program: Evaluation results and recommendations.	Dobbin, S., Gatowski, S., and Litchfield, M. (2001).	Essex County, New Jersey, United States.	Mixed methods.	129	None
Pilot of signs of safety lawyer-assisted conferences and meetings: Final evaluation report June 2011.	Howieson, J. and Legal Aid WA. (2011).	Western Australia, Australia.	Mixed methods.	100	100
Child protection mediation: An evaluation of services provided by Cook County Juvenile Court.	Shack, J., Yates, M. Spagnolo, J., and McCaughey, M. (2010).	Cook County, Chicago, United States.	Mixed methods.	165	None
Making the case for evaluation partnerships in child protection mediation programs: Insights from a case study.	Bryan.V., Collins-Camargo, C., Anderson, N., and Kantar, C. (2011).	United States.	Mixed methods.	124	None

Child protection mediation evaluation in Michigan.	Kierkus, C. A. and Johnson, B. R. (2019).	Michigan, United States.	Quantitative-descriptive survey analysis.	270	None
Evaluation of alternative dispute resolution initiatives in the care and protection jurisdiction of the NSW Children's Court.	Morgan, A., Boxall, H., Terer, K., and Harris, N. (2012).	New South Wales, Australia.	Mixed methods.	21	None
Outcome evaluation of the second judicial district court's dependency mediation program.	Siegel, G., Ganasarajah, S., Gatowski, S., Sickmund, M., and Devault, A. (2017).	Washoe County, Nevada, United States.	Quantitative-quasi-experimental.	40	40
An evaluation of permanency outcomes of child protection mediation.	Madden, E. and Aguiniga, D. M. (2013).	United States.	Quantitative-descriptive design.	315	315
Exploratory analysis of child protection mediation permanency placement outcomes.	Aguiniga, D. M., Madden, E., and Hawley, A. (2015).	United States.	Quantitative-descriptive design.	311	None
New York City Child Permanency Program evaluation.	Thoennes, N. and Kaunelis, R. (2011).	New York, United States.	Qualitative.	244	None
Child abuse, neglect, and dependency mediation pilot project.	Trosch, J. L. A., Sanders, L. T., and Kugelmass, S. (2002).	Charlotte, North Carolina, United States.	Quantitative.	-	-
Improving an effective program: A comprehensive evaluation of the Superior Court of the District of Columbia Child Protection Mediation Program.	Shack, J. and Sitko, R. (2018).	Washington D.C, United States.	Mixed methods.	301	None
Child protection mediation in Texas: past, present, and future.	Bryant, C. (2010)	Texas, United States.	Mixed methods.	-	-

Appendix B: Review methodology

Review questions

The following review questions were developed:

1. What are the experiences of child protection mediation for children and their families?
2. What are the outcomes for children and families who use child protection mediation?
3. What are the key enablers of child protection mediation which support positive outcomes for children and their families?
4. What can be considered best practice for setting up child protection mediation services?

Review method

This is a rapid review of the international evidence on child protection mediation. The review was conducted over a two-month period between April and June 2020. The search comprised five databases and one online resource. The following databases were searched:

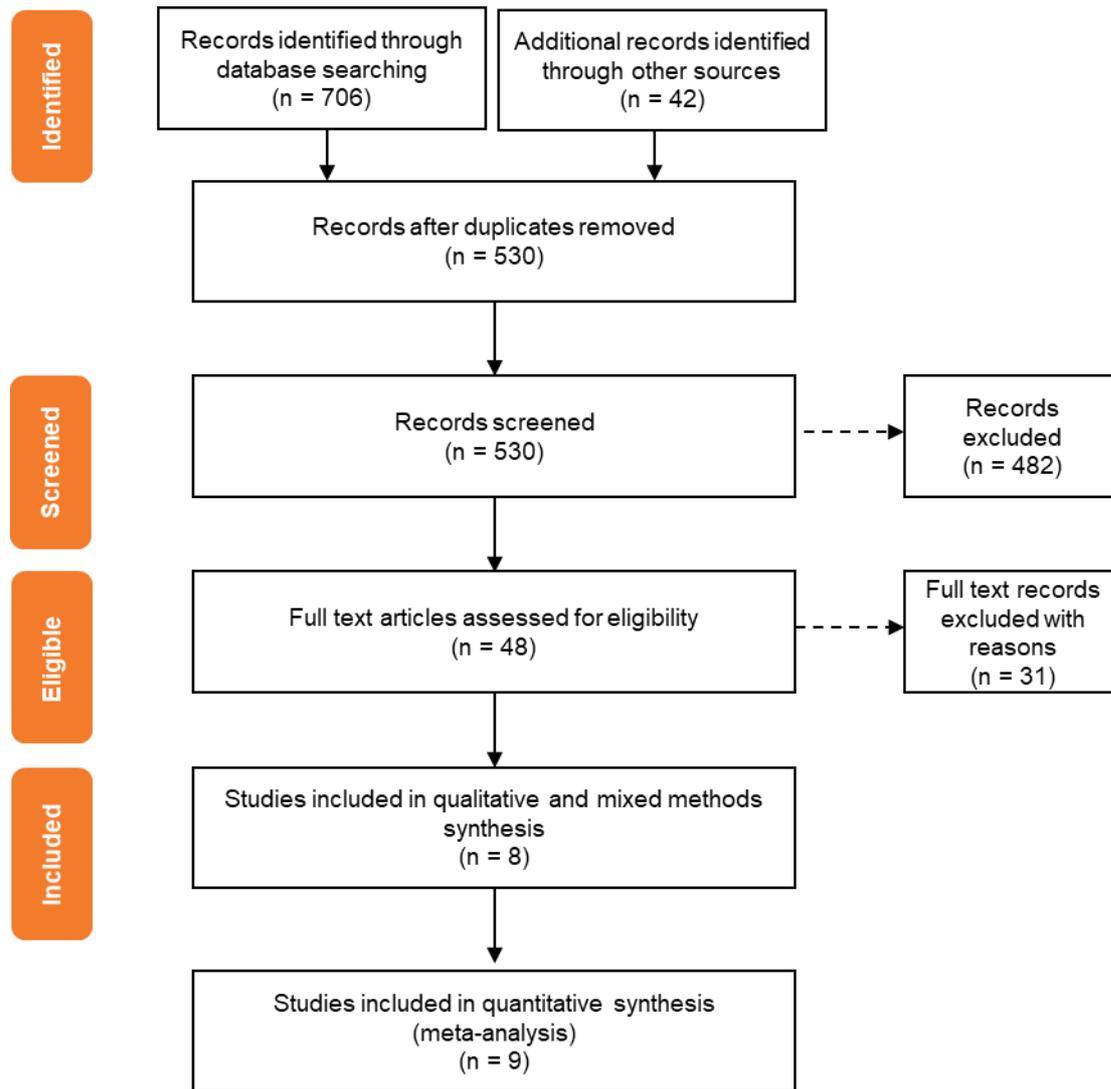
- HeinOnline
- LexisNexis
- Westlaw
- JSTOR
- Wiley.

A search for grey literature, using key terms, was conducted of the following online resource:

- ResearchGate.

All records were imported into an Excel spreadsheet, which was used to record the title, type of literature, database, publication date and reason for inclusion or exclusion. A PRISMA diagram was used to track the flow of literature and data through each stage of the review (see Figure B.1).

Figure B.1: Study identification (PRISMA flow diagram)



Selection process

Database searches were conducted in April 2020. A PICO table was developed for the purposes of searching the databases. Due to the rapid nature of the review we limited the search to the following synonyms of child protection mediation: dependency mediation(s) and mediation or ADR in child protection proceedings. (Limitation: child protection mediation has a number of alternative names that are used internationally and across the United States, e.g. permanency planning. There was insufficient time to search the databases for all such terms). Title and/or abstract screening was used initially to extract titles that appeared relevant to the inclusion criteria. Full text studies were retrieved for selected papers and divided between two researchers who evaluated whether the record met the inclusion/exclusion criteria. To test the reliability of the screening, both researchers screened four of the same studies. Disagreements between researchers were resolved through discussion or arbitration involving the third author where necessary.

Inclusion and exclusion criteria

The review covers all relevant research published in the English language. Searches were limited by year to post-2000 (20 years) and focused specifically on studies on the impact of child protection mediation on children and families, rather than the impact on the family justice system. Studies conducted before 2000 but published after were also excluded.

The review includes both qualitative (8) and quantitative (9) studies. Quantitative methods, such as randomised controlled trials (RCTs), which have commonly been used for establishing the effectiveness of an intervention, focus on outcomes and how an intervention operates externally (Porter and O'Halloran 2011; Campbell et al. 2000). Quantitative studies were included in this review because they are valuable for making decisions about processes and procedures and provide a resolute yes or no answer to the question of whether the intervention is effective or not (Berwick 2008). However, by only considering quantitative studies the review would be unable to consider intervention experiences, behaviours or community and group characteristics and would risk overlooking the richer details about how child protection mediation functions and the consequences for people's lives (Patton 2015; Marchal et al. 2012; Blaikie 2007). Therefore, qualitative studies were included equally to quantitative studies in this review because they can provide this richer and detailed insight into how an intervention works or does not work.

Data extraction and analysis

The researchers followed the thematic analysis approach described by Guest, MacQueen and Namey (2012). Thematic analysis software, such as NVivo, was not used due to logistical issues. Therefore, the data was coded electronically, by hand, through PDF and Microsoft Word. A coding framework, or codebook, was developed (see Appendix C) through which themes were identified. Themes were developed iteratively by reading the text in batches and modifying the codebook as new information and new insights were gained. Each theme was then assigned a colour and papers were colour coded to match the themes.

Characteristics of studies

A total of 19 studies were initially identified for the review. However, as two of these could not be found, only 17 studies were eventually included (see Annex A for details). Of these studies, 14 relate to the United States, two to Australia and one to Canada.

Five of the included studies were published prior to 2010, nine were conducted between 2010 and 2015, and three were conducted after 2015. Four studies that were published after 2000 were excluded on the basis that they started prior to 2000.

Many studies are descriptive and only a small number employ experimental or quasi-experimental designs. One study had the judge randomly refer every fifth case to mediation until they reached a sample size of 200 (Gatowski et al. 2005). The outcomes of this group were compared to the outcomes of 200 families in a control group that continued proceedings in the traditional form.

A total of six studies used matched comparison groups, four used quantitative methods focused on outcome evaluation and four used descriptive analysis, whilst seven used mixed methods approaches to answer their research questions, one of which was a formative case study. These factors make the generalisation of findings difficult.

Appendix C: Codebook and themes

1. Mediators
 - 1.1 Who are they?
 - 1.1.2 Court employees
 - 1.1.3 Independent contractors
 - 1.1.4 Mediation agencies
 - 1.1.5 Volunteers
 - 1.1.6 Other
 - 1.2 What training or qualifications do they need (if any?)
 - 1.2.1 Is training ongoing/topped up?
 - 1.2.2 Mediators familiar with child welfare or trained specifically for this/knowledge added
 - 1.3 Characteristics
 - 1.3.1 Respected by professionals
 - 1.3.2 Particular skills around participants and multiple participants
 - 1.3.3 Cultural and ethnic sensitivity—how does child protection mediation reflect representation in child welfare system and is this reported?
 - 1.3.4 Interpreting and understanding
 - 1.3.5 Empowerment of participants
 - 1.3.6 Diverse backgrounds
 - 1.4 Co-mediation
 - 1.4.1 Promotion of supportive environment
 - 1.4.2 Contribution
2. Cases
 - 2.1 Case volume
 - 2.1.1 Increase in use of child protection mediation over time/community awareness/visibility/credibility?

2.2 Case referral

2.2.1 Judicial referral

2.2.2. Referral by other parties

2.2.3 Random referral

2.3 Case characteristics

2.3.1 Families with drug and alcohol misuse

2.3.2 Families with prior child abuse reports

2.3.3 Families with mental health issues

2.3.4 Families with criminal convictions

2.3.5 Families with domestic abuse

2.3.6 Are any characteristics excluded from mediation (particularly in relation to the above)

3. Implementation

3.1 Structured planning

3.2 Early partnership with experienced court-based evaluators to develop marketing and recruitment strategies to encourage stakeholder endorsement and foster sustainability

Barriers

3.3. Lack of professional support—resistance from attorneys, caseworkers, and other professionals

3.4. Funding cuts – local government/state funded

3.5. Lead to losses in staff, lower visibility and fewer referrals

3.6. Visibility – without a programme coordinator present in court to remind professionals of the benefits of mediation there is less visibility of the programme

3.7 Lack of strong judicial support – new judge can equal setbacks

3.8. Lack of atmosphere of support in which referrals from judges are expected or required

3.9. Unclear procedural rules = uncertainty and lack of support

Enablers

3.10 Programme coordinator present in court to remind professionals of the benefits of mediation

- 3.11. Increasing visibility and community buy-in
- 3.12. Raising stakeholder awareness and endorsement across the life of the programme
- 4. Participant experience
 - 4.1 Positive experiences
 - 4.1.1 Inclusive of parents and children
 - 4.1.2 Less punitive and intense
 - 4.1.3 Clearer understanding of what participants (family and professional) do
 - 4.1.4 Treated with respect
 - 4.1.5 Feel listened to
 - 4.1.6 Meeting/talking to foster parents/adoptive parents
 - 4.2 Negative experiences
 - 4.2.1. Feeling ignored
 - 4.2.2. Feeling left out of decision-making
 - 4.2.3. Concerns about confidentiality
 - 4.3. Professional impact and experiences
 - 4.3.1 Changes in family perceptions of caseworkers
 - 4.3.2. Relationship changes (or not) in professional/family relationships
- 5. Child protection structure and logistics
 - 5.1 Size
 - 5.2 Duration
 - 5.3 Quantity
 - 5.4 Participants
 - 5.5 Case screening (links to case characteristics)
 - 5.6 Involvement of extended family and friends
 - 5.7 Case-by-case decision about who should attend mediation

6. Funding and sustainability
 - 6.1 State/federal grants
 - 6.2 Private funding
 - 6.3 Court funding
 - 6.4 Child welfare system funding
7. Outcomes
 - 7.1 Agreements – types of agreements
 - 7.2 Partial agreements
 - 7.3. System efficiency
 - 7.4 Contact agreements
 - 7.5 Compliance
 - 7.6 Settlement rates
 - 7.7 Permanency
 - 7.7.1. Follow-up – long term outcomes
 - 7.8 Estimates of time/cost savings/reducing burden on court
8. Procedure
 - 8.1 Stage mediation begins
 - 8.1.1 Pre-adjudication
 - 8.1.2 During proceedings
 - 8.1.3 At termination
 - 8.2 Atmosphere/environment/location
 - 8.3 Issues commonly addressed at child protection mediation
 - 8.3.1. Child placement
 - 8.3.2. Contact
 - 8.3.3. Family services
 - 8.3.4. Underlying concerns preventing resolution

8.3.5. Voluntary relinquishment of parental rights (and whether this is appropriate at mediation)

8.3.6. Kinship care

8.3.7 Adoption

8.3.8 Issues that are not discussed?

9. Law, policy and guidelines

9.1 Laws implemented (e.g. Adoption and Safe Families Act 1997)

9.2 National guidance (e.g. National Council of Juvenile and Family Court Judges (NCJFCJ), 1995)

9.3 Model courts

9.4 Any policy/guidance used by child protection mediation