Reflections of a Mediator on Inheritance Mediation: Are Family Inheritance Mediators Receiving Appropriate Training and Adequate Practice Support?

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Abstract

Mediating family inheritance disputes is challenging. It places considerable technical demands on the mediator, combined with the additional emotional and psychological strain of mediating with grieving families. Often mediators are addressing the dispute itself and the underlying family conflict. Practitioners in this specialist field need appropriate training and adequate support to enable them to mediate effectively and safely. Drawing upon their own experience as mediator, the author reflects on what this should encompass.

[A] INTRODUCTION

The act of inheritance—how one generation passes on to another whatever it leaves behind, be it possessions, property, or wealth—affects all families to some degree. It has the potential to bring them together or drive them apart. Too often, it is the latter.

There is something profoundly tragic about a dispute over an inheritance. For family members who are having to cope with a bereavement, it can be a traumatic experience. They are often at their most vulnerable and communication within the family is at its lowest ebb. Families can find themselves unwittingly swept along in an endless cycle of escalation, seemingly unable to exert any control. What were once strong family bonds are weakened leading to the demonization and even estrangement of a family member.

Sadly, there has been a sharp rise in the number of these disputes going to court.[1] Since most settle before trial, these latest figures represent the tip of the iceberg. This trend is set to continue over the coming decades as the Great Wealth Transfer takes place, the historic shift of trillions of pounds in assets from older generations, mostly "baby boomers", to

[1] *Financial Times* (2026: 3) reported that 1200 probate claims were filed at the High Court in 2025.

younger generations, including “millennials” and “gen Z”. This shift is being driven by demographic changes, longer life expectancy and the significant wealth accumulated by older generations.

The family inheritance process is a hazardous one, with many pitfalls. It involves juggling priorities and making difficult decisions. These are well-meaning acts that can easily have unwanted consequences and far too many family members have their own harrowing stories to tell of family division or destruction arising from an inheritance.

This note draws upon the author’s experience as mediator and is the first step of a longer, ongoing, project on inheritance mediation that the author is undertaking.

[B] FAMILY INHERITANCE MEDIATION

Family inheritance mediation is an emerging specialist field, and it is growing. It overlaps with other areas, including elder, succession and intergenerational mediation, but has many distinctive characteristics that set it apart. For such an important field, it is largely unrecognized across the mediation community, let alone the wider public.

Practitioners who mediate regularly in this field will know how well-suited mediation is for these seemingly intractable cases. They will also be acutely aware of how demanding these cases are. Notwithstanding complex legal, commercial and tax considerations, what makes these disputes so corrosive are the years of suppressed emotion that often come to the surface, combined with the powerful and unpredictable impact of grief on family members and on the dispute itself. When an agreement on a way forward is reached through mediation, this can be transformative for the family and immensely rewarding for the mediator. But to what extent are mediators giving the participants—mostly family members—the best chance to help resolve and prevent these disputes and, where appropriate, to help them address the underlying conflict.

The practice of family inheritance mediation in England and Wales is fragmented. Anecdotal evidence suggests there are only a handful of mediators in full-time practice. Most come from a commercial or a family mediation background. A few are dual trained. Many differing mediation approaches and models are currently being used. It has, so far, suffered from a lack of coordination as it has fallen between two regulatory bodies, the Civil Mediation Council and the Family Mediation Council. To date, there has been a notable lack of research in this area and there is little sense of what constitutes best practice. Currently, there are no specialist

training courses available to mediators practising, or wishing to practise, in this field. This raises the question of the extent to which mediators are fully equipped to take on these cases, and what additional support and guidance might be needed.

[C] SPECIALIST TRAINING

Specialist training could be structured around four modules: ensuring an appreciation of the legal framework; acquiring a contextual knowledge of the various kinds of family inheritance disputes that can be mediated; gaining a working knowledge of family dynamics, high emotion and the psychology of grief; and providing a clear understanding of how to take full advantage of mediation's inherent flexibility by configuring the process to best meet the needs of the participants.

A specialist training programme should be available to experienced mediators who have completed their accredited foundation training. As the field develops, this training could be linked to a specific code of practice, or set of professional standards for family inheritance mediation.

The legal framework

The Inheritance (Provision for Family and Dependants) Act 1975 is arguably the most common basis for inheritance claims and mediators practising in this field will need to be familiar with eligibility and the concept of reasonable financial provision.

Family members often disagree on whether a will is valid, and mediators should be aware of concepts such as testamentary capacity, undue influence, ensuring the testator understood and approved the contents of the will, and basic legal requirements under the Wills Act 1837, such as proper witnessing and signing.

Since many disputes arise during the process of handling the estate, mediators would benefit from a working knowledge of probate and trust administration, including executor/trustee duties and intestacy rules, and have an appreciation of how disagreements over the value of a property or business interests and any inheritance tax and capital gains tax implications can impact any settlement options.

Finally, practitioners mediating in this field should be expected to have a practical understanding of the court's approach to mediation, including the Civil Procedure Rules.

Contextual knowledge of family inheritance disputes

A contextual knowledge of these kinds of disputes would be beneficial. This module could start with an exploration of the scope of family inheritance mediation. In addition to disputes relating to probate, wills, trusts, and the division of family possessions, there has been a sharp increase in disputes in other areas such as "gifting". This is a form of early inheritance, where the person making the gift is still living. Examples could include a deposit for a first mortgage, or money towards a new business.

This module could also explore some common examples of dilemmas and conundrums facing families during the family inheritance process, including difficult situations that can arise, and what triggers them. Examples could include scenarios where one sibling is the primary carer and how this can be best acknowledged; money or heirlooms that have been lent or gifted to a child through a verbal assurance, where nothing was ever formalized; and situations where there may be intergenerational differences. Some elderly parents assume that others think about money or possessions in the same way as they do and yet the reality is that there are likely to be different perspectives between family members. For example, where more children are living at home for longer, or receiving support with further education from parents.

Mediators practising in this field should have an awareness of the changes in family structures in the England and Wales over the last decade. The rate of divorce and remarriage has consistently risen, and more people are entering a new marriage or living with children from previous relationships. Many families in this jurisdiction have become more fractured and dispersed. Family units are less cohesive and, consequently, family members are less understanding and supportive of each other. Families are communicating remotely and spending less time together in person. When conflicts do arise, families do not necessarily have the communication channels in place to deal with issues, which can swiftly escalate.[2]

Mediators in this field would benefit from a basic understanding of dementia, age-related issues and how to assess, manage and accommodate capacity. This should include a familiarity with elder abuse and financial abuse, both little known about, but widely reported to be on the increase.

Being able to represent the voice, views and presence of the deceased in the mediation room, or around the screen, is essential. Training should

[2] According to Holly Mieville-Hawkins of Anthony Gold Solicitors in the Society of Trust and Estate Practitioners' STEP Barometer 2026 (at 9).

include various techniques to achieve this, such as a vacant chair, a photograph, or a symbolic possession. Mediators should also consider asking other family members about their knowledge and experience of the deceased, to gain a rounded impression of them. If negotiations are stuck during the mediation, it can sometimes be helpful for the mediator to consider asking the family members what, in their view, the deceased would have wanted, or was trying to achieve.

A defining characteristic of family inheritance disputes is the need for fairness and "justice" when it comes to the division of the estate. There is often a tension between distributing assets based on need versus equality. Specialist training should focus on how best to explore with family members their own individual views of what seems fair. Mediation can be used to facilitate discussions within the family regarding different perceptions of equality, entitlement and favouritism so that these are aired, acknowledged, explored and understood by other family members.

Training could also encompass an exploration of the various referral routes which exist to bring a case to mediation. Currently, referrals tend to come from the courts, solicitors or through mediation panels and only occasionally direct from families because, when people first get into dispute, many are not aware that mediation is available. Other possible referral routes include general practitioner services, bereavement services, accountants, and Citizens Advice.

Death and money are taboo subjects within many families but avoiding discussions on these subjects can create uncertainty, misunderstandings and disagreements later. The training should have a significant focus on the vital role mediators have to play in helping family members to have open and honest conversations about intentions, timing, and the reasons behind their decisions, as this can allow any concerns from family members to be explored and can help manage expectations.

Currently, mediators tend to be brought in too late in the process, often after a period of litigation, and spend time trying to de-escalate the conflict. The training should help mediators to explore new avenues for offering help to families at early stages of planning for the future, to ensure rifts do not appear later, for example, in highly complex, high-value cases: developing a "project mediation" model over a longer period, where appropriate; engaging a mediator to help siblings determine how best to approach family inheritance discussions; or working with a testator to reality test any potentially difficult decisions they may have in mind.

Family dynamics, high emotion and the psychology of grief

Inheritance disputes rarely stem purely from the money. They are often fuelled by historic family roles, long-standing resentments and grief. Mediators will need to engage with these personal and emotional aspects that offer the opportunity to address not merely the dispute, but the conflict that underlies it.

These are essentially family disputes, in which family relations are fundamental. Their impact reverberates across the wider family and can create further rifts which can persist for decades. To mediate in this area, a knowledge of conflict dynamics within the family is essential, as these disputes often originate from sibling rivalries, blended family dynamics or intergenerational and cultural tensions.

Most families will have some perception of rivalry, unkindness or pecking order. Mediators will need to be able to take time to understand the huge back-story and the long family history extending many years and identify and manage power imbalances within the family, for example involving an eldest sibling, or an estranged family member. Mediators working in this field would also benefit from a familiarity with family life cycles and family systems theory.

For those who have not mediated in this area, family inheritance disputes are unlike any other. They are deeply personal in nature and the responses they elicit are visceral. They can easily become all-consuming for family members. One of the distinctive characteristics of these disputes is the presence of high emotion: betrayal, suspicion, demonization and revenge. Specialist training should explore ways to allow space in the mediation process for emotional expression, without letting this derail the mediation process. This could include how to safely discuss events that happened in the past, should the need arise.

Mediators should have a working knowledge of the nature and impact of bereavement, and training should also cover grief psychology and how it can affect decision making and risk tolerance. It is difficult to overestimate the profound and unpredictable impact of grief on family members. Every family member will express grief differently, through anger, aggression, denial or being withdrawn, and will be at different stages of the loss and grief cycle. Also, anticipatory grief over the imminent loss of a loved family member has all the emotions of grief but may not be legitimized. Being able to acknowledge and validate loss and grief and

to recognize that family members grieve in different ways is vital for all mediators practising in this field.

Mediation practice and the conduct of cases

A detailed knowledge of how to structure the mediation and how to use its flexibility to good advantage is essential. Family inheritance mediation demands a bespoke approach. Mediation models can accommodate complexity, nuance, entrenchment and strong emotion (all features of family inheritance disputes) provided they are configured appropriately. A training programme should equip mediators with the necessary process design skills to ensure that the planning and organization of a mediation is tailored to the specific needs of the participants involved, the conflict at hand, and the desired outcomes, rather than following a one-size-fits-all formula.

There is a necessity in these cases to spend much more time on the preparatory phase of the mediation process. Building early rapport with family members is essential, as is ensuring that all the participants feel listened to, heard and understood.

Mediators working in this field should be familiar with techniques to consider when assessing the "emotional readiness to engage" amongst family members (Barlow & Ors 2017). They should be familiar with signposting participants in need of additional support, for example bereavement counselling or conflict coaching, before the mediation, if necessary, or in parallel with the mediation.

In terms of the mediation process, a training programme could underline the importance of careful planning of the physical, or online setting (or a combination of both) to ensure parties feel safe, maintain agency, and have a private space to retreat to and consult. It could also help with determining who needs to be at the table, or around the screen, including the option of a family member bringing in a partner or spouse to the mediation if they have decision-making influence, or bringing a friend or colleague for emotional support. These mediations will typically involve multiple parties, in addition to family members and partners, including lawyers, accountants, tax and property specialists.

The mediator will need to carefully plan the use of joint sessions, private caucuses, or "multi-track" meetings, with just the family being present, or including legal advisers. They will also need to consider the pacing of meetings (including one-day, or multiple shorter meetings) and allow time for reflection in between meetings. Mediators need to be mindful

of what is in the family's best interests, at all times. Training should consider the costs and benefits of using position statements at the start of a mediation.

A training programme should explore different models of mediation. Some form of hybrid or integrated mediation may be necessary to bring outside professionals into the mediation process. The training should explore what options are available and clarify the key differences between them. Different theoretical frameworks should be considered, for example Gary Friedman's 'Mediation through understanding' approach. Training could also explore when to consider using co-mediation.

Specialist training should help mediators to examine ways to tailor the outcome and shape solutions that address underlying needs, for example protecting long-term family relationships from further damage, or a re-integration of a family member into the family, following a period of estrangement. It could, for example, consider using a follow-up session after the mediation, to check the agreement is working and sustainable. This also provides an opportunity to help to restore communication, rebuild trust and, where reconciliation is not possible, help family members to co-exist without constant friction.

Regarding ongoing support for mediators, consideration should be given to adopting a professional practice consultant (PPC) model of supervision, as currently used by family mediators. Using this approach, the supervisor or PPC will act as a mentor and confidential sounding board, provide emotional support (where necessary), help to discuss and resolve any safeguarding or ethical dilemmas, and encourage mediators to engage in reflective practice.

[D] CONCLUSION

Family inheritance disputes are on the rise and continue to have a devastating impact on families. Valuable contributions to this distinctive and increasingly important area of practice are being made, but mediators and the mediation community have much more to contribute.

The complexity and intensity of these disputes mean that a more flexible approach is needed. To meet this challenge, further specialist training and other forms of support are recommended. It is hoped that this will provide mediators with the confidence they need to enrich their practice and to design and structure the mediation process in more creative and responsive ways, more attuned to the needs of family members and the

dispute at hand. This would undoubtedly encourage new mediators, who may previously have been hesitant, or felt unprepared, to enter this field.

Mediators are uniquely placed to become involved much earlier in the dispute life cycle. There are numerous opportunities to do so, through new referral routes, or direct referrals from family members.

This represents an opportunity to unite the mediation community. Mediators from different backgrounds and regulatory bodies should come together and work together. Practitioners should embrace their differences and see them as learning opportunities. Best practice can then be jointly developed by sharing expertise, pooling knowledge and resources and by conducting further research. With all the above in place, family inheritance mediators can feel emboldened to take on these demanding cases. In doing so, they will take further steps towards realizing mediation's full potential.

About the author

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Legislation, Regulations and Rules

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