

DIVORCE MEDIATION IN THE BRITISH JEWISH COMMUNITY

A Case Study of a Failed Good Idea

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Although the value of divorce mediation had been supported by research and the service was welcomed by the professional community, the Jewish Family Mediation Service on London closed its doors after only 3 years because of underutilization. One of the major reasons for its failure may have been that mediation requires its users to be in an emotive state conducive to its process, which occurs rarely. In addition, the concept of divorce mediation was an unfamiliar one in Great Britain.

Divorce has been acceptable to Judaism since talmudic times, and it is considered an appropriate way to end a marriage that is proving unsatisfactory to both parties. However, despite religious and theoretical acceptance of divorce, the prevailing attitude in both the wider and Jewish communities in the Western world has often been to avoid considering the far-reaching social effects of the present high rates of divorce on family relationships.

Divorce mediation helps separating couples make necessary and important decisions for themselves regarding their marriage breakup, rather than having them passed over to a third party, usually the courts, for resolution. It is a positive and cheaper alternative to litigation and is practiced in both the United Kingdom and the United States. A major aim of divorce mediation is that family breakup should create the least possible bitterness and conflict. Mediation is conducive to enabling a smoother divorce process and post-divorce adjustment for all family members, as control stays with the parties themselves. Children seem to benefit from the use of mediation in divorce as it is in their best interests when their parents can continue to communicate satisfactorily.

Nevertheless, even though members of the legal, social work, and psychotherapy

professions are becoming increasingly aware of the value and advantages of this process, the implementation of divorce mediation services overall remains low. In the United Kingdom, legislation prevents divorce mediators from offering as complete a service as that provided by their counterparts in the United States. The British legal system allows mediators to only be involved in particular child-focused issues, such as custody and access. Such areas as property and maintenance (although often very pertinent to the well-being of the child or children) must be dealt with by lawyers and the courts. However, despite these restraints, the mediation process can still be of great value to the future and continual well-being of children who are affected by family breakup. This in itself is sufficient reason to encourage the increased use of mediation in divorce, especially as recent figures show only minimal changes in the divorce rate — a leveling off in the United States and a slight drop in the United Kingdom ("Lone parenthood," 1992).

A research report presented at the 1983 Conference on Divorce in Anglo-Jewry (Kosmin, 1984) suggested that the establishment of a community-based divorce mediation service could be of value to the British Jewish community in helping ameliorate some of those consequences of divorce that

are proving to be detrimental to Jewish continuity, such as reduced participation in religious education and reduced community involvement. A working party was set up in response to the paper; it was supplemented by qualitative research through a Specialist Group Discussion program (Cohen, 1985) for professionals working with children in the Jewish community. Teachers, psychotherapists, and youth workers endorsed the establishment of a mediation service not only in the interest of the couples concerned and their children but also for the Jewish community as a whole. They reported that the religious, community, and social life of the community of 300,000 British Jews were clearly being adversely affected by divorce. The majority of the Jewish population is affiliated to the United Synagogue, which is Modern Orthodox in orientation. The United Synagogue provides centrally managed services for communities all over the United Kingdom, including education, burial, and a *Bet Din* (a Jewish court). Although the majority of people are affiliated to this branch of Judaism, this adherence is not reflected in the lifestyle of most members.

Judaism often became a weapon among divorced couples. In many divorces, a new religious stance is presented as a barrier to ease of access. Where once a couple had been comfortable eating at non-Kosher restaurants and to have outings on Shabbat, after divorce there might be a change of religious stance. Most often, the custodial parent would become more religious, thereby complicating access arrangements for the other parent — no meetings on Friday night or Saturday, no visits to non-Kosher restaurants, etc. This new stance often alienated the former partner from Judaism as a consequence. It is sometimes difficult to know whether there had been a real spiritual change on one side or if it was merely a tactic to make access to children more difficult. Perhaps the parents did not know themselves. The reality was that Christian judges were often reluctantly involved in

bitter disputes over Jewish education and observance.

Particular issues of Jewish concern were revealed by the research (Cohen, 1985). Both religious and secular schools reported problems with children of divorce. Children who were experiencing stress due to family breakup were disruptive in class, creating a ripple effect on their peers. Hebrew or supplementary education was most adversely affected. Sunday morning, the most common time for religious school classes, is also a popular time for noncustodial parents to have access to their children. The "handover" from one parent to another often happens after religious school, which can cause a great deal of uneasiness in the child. Unfortunately, this important arena of learning is often relinquished when the noncustodial parent resides in a different area or has a different religious attitude than the ex-spouse.

In the United Kingdom, a civil divorce is usually obtained before a Jewish divorce (*Get*) can be granted. This releases the religious authorities (Bet Din) from the responsibilities of becoming involved in issues that affect children. It also results in many Jewish couples opting out of the religious divorce ceremony as they do not see it to be of consequence unless they are practicing Orthodox or are considering remarriage in a synagogue ceremony. Also, because education on divorce (*gittin*) is not usually included in the curriculum of religious schools, many Jews today do not understand the ritual involved and consider it to be archaic and demeaning. They are also often unaware of how the personal status of future children may be affected in Jewish law if they do not obtain a *Get*. Without a *Get*, parties are unable to remarry according to halacha in an Orthodox synagogue.

The Jewish Family Mediation Service (JFMS) opened its doors to the community in Central London in April 1986. Those doors closed in 1989 despite the fact that JFMS had been welcomed by the community's professional workers and sup-

ported by both qualitative and quantitative research findings (Kosmin, 1984). It was designed to provide special services related to divorce, to help not only divorcees and their families but also the Jewish community as a whole. However, those most able to benefit from JFMS and its specialist services rejected it and presumably those who thought it could help the community failed to refer clients to it.

JFMS offered a model of mediation based on a nondirective approach that aimed to leave the parties in control of their own decisions. It attempted to help parents maintain good parenting based on the precept that most parents are concerned with the best interests of the children and usually want to do what is best for them. It did not aim to sort out what went wrong in the marriage, but to reach practical solutions for the management of the children in the future. Mediators did not offer legal advice or counseling, but would suggest use of such services if necessary. The mediators also used a specially developed checklist based on an American model developed in Baltimore that ensured that particular Jewish concerns were considered. Attention was always paid to the maintenance of relationships within the extended family, which often suffer a great deal when members separate. Grandparents are often deprived of the company of their grandchildren, and it is difficult for divorcing parents to maintain these relationships. These relationships are particularly relevant at the time of family-oriented festivals, such as Pesach, and at life-cycle events, such as Bar Mitzvahs, weddings, and sitting shiva.

It was also decided to build into JFMS some additional support programs for both children and parents. For the children, a unique program was designed by the service coordinator and a child psychoanalyst. It offered any child between 3 and 18 the opportunity to meet with an experienced child psychoanalyst to discuss and examine the differences in their lives caused by the family breakup. It was not to be an in-depth

analysis, but a chance for the child to express his or her personal concerns. Both parents were also able to meet with the psychoanalyst either together or separately at the beginning and end of the program. This service was offered free, as were the services of the psychoanalysts who were delighted to be able to be involved in an innovative program.

Also available to the community were a wide range of support programs for both adults and children. Adult programs included specialist discussion evenings with a relevant consultant, personal discussions, a full information and advice service, and programs for divorced fathers, an area often neglected. Education programs were offered to schools and community groups and were in fact taken up by court welfare services and trainee mediators in the wider community.

The wider role of the JFMS as compared to other British mediation services was reflected in its awareness of and provision for the needs of the extended family and community. (Other National Family Mediation Council agencies included extended family in sessions on request. The JFMS policy was for its staff to positively alert parties to such areas.)

It is hard to understand why the child personal support program was not used by the community. Like the mediation service, it received good media coverage in both the Anglo-Jewish and general press. To publicize the service, JFMS staff went out to Jewish schools and nurseries, as well as to schools with high numbers of Jewish children. Court welfare services, lawyers, and appropriate services were all provided with information on all available services. When it was discovered that parents preferred not to take their children out of school in order to participate in the children's program, the work was relocated to suburban areas, but the usage was still disappointing. This highlights a major difference between British and American families; the British are extremely resistant to any kind of therapy

and tend to view such a program as branding them as having failed in dealing with their children's needs, rather than seeing such participation as offering positive support. Perhaps such a program would have succeeded in the United States. The usage of adult programs was adequate.

From our experience of living and working in the United States, however, we believe that there would have been no differences in the usage of mediation if it had been offered in this country. One of the major hurdles with mediation is that it needs its users to be in an emotive state conducive to the process. This is a rare occurrence as there seem to be few divorces where both parties are equally happy about the decision to separate. Part of the increase in reported possible child sexual abuse may indeed be related to the unhappiness of one partner over the decision to formally separate. Certainly, in JFMS, there was the occasional experience of one party inferring that there may have been some problems in this area, thus causing the mediation process to be compulsorily halted until social work agencies carried out appropriate inquiries.

If it had been used, JFMS could have provided a valuable service to the Jewish community. Was it underutilized simply because the Jewish community did not want or need it? The research established the need, so perhaps the solution offered was wrong. Perhaps the problem lies in the process of mediation itself. Such an ideal process may need more than competent staffing. It may need ideal users too, a rare commodity in today's contentious and gen-

erally unpleasant divorce scene. Perhaps therefore the mediation service was doomed before it got off the ground. Divorce mediation in the United Kingdom has not gained very much ground over the last few years either, even though the British courts are now referring couples more often. Also, there has been little research presented yet on the long-term effectiveness of the process. It may well be that those couples who opt for mediation may not need mediation at all in order to reach mutually satisfactory decisions, whereas those who use the services compulsorily may never intend to keep the agreements made. The choice of mediation must be made from an informed position. Education and information on this subject should be widespread so that the concept of divorce mediation should be familiar before couples might be in need of it. Ideally, the decision to use it would stem only from self-knowledge but might be encouraged by other family members, the family doctor, synagogue, or even school. Unfortunately for the British Jewish community, it now has to be hoped that non-Jewish mediators and the judiciary will be sensitive to particular Jewish concerns.

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