

**SCREENING FOR DOMESTIC VIOLENCE IN FAMILY MEDIATION  
AN INVESTIGATION INTO HOW MEDIATORS MANAGE DISCLOSURES  
OF DOMESTIC ABUSE AND ASSOCIATED EMOTIONS**

**A thesis submitted for the degree of  
Doctor of Philosophy**

**By  
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## **Abstract**

This thesis explores the practice of family mediators when screening for domestic violence during mediation. Mediation Information and Assessment Meetings (MIAMs) and Joint Mediation Meetings (JMs) were recorded between April 2010 and January 2011, by four mediators who mediate for National Family Mediation (NFM) affiliated services in the South of England. These meetings were analysed from the mother's perspective, using qualitative and quantitative analysis. The themes for analysis were taken from the Duluth Domestic Abuse Intervention Programme (DDAIP). It was found that mediators did initially screen for domestic violence during the MIAM, using the guidelines published by NFM; that screening was focused on the clients perception of the abuse and not the mediators interpretation of the abuse.

The published expectation for screening to be ongoing throughout mediation was explored during the analysis of the joint meetings. There was evidence that abusive behaviours were alleged or inferred during those meetings and there was also evidence that the abusive behaviours and the emotions expressed by the mothers were managed by the mediators. There was no clear evidence that the mediators were proactively screening for domestic violence during the joint meetings save for reacting to and managing the impact and effect of the negative behaviours.

This study concludes that mediators do not routinely screen for domestic violence during joint meetings, therefore guidance and training for ongoing screening during joint mediation meetings is needed. The current guidance and policy for screening needs to be reviewed.

**Key words:** family mediation, screening, domestic violence, MIAM, joint meeting, child contact, co-parenting, NFM, dispute resolution.

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Finally, I'd like to express my gratitude to my daughter Patricia, who has wisdom beyond her years and was by my side throughout this journey.

## **Dedication**

**To my brother Colin (15-8-1960 to 11-3-2009)  
"I finally floated my boat!"**

## Author Declaration

I **Paulette Elaine Morris** declare that this thesis is my original work and has not been presented for the award of a degree (or any other award) in any other university or academic body.

Signature 

Date 

## List of abbreviations

|          |  |
|----------|--|
| ADR      | Alternative Dispute Resolution                         |
| ATJ      | Access to Justice Act 1999                             |
| AIM      | All Issues Mediation                                   |
| BCFMS    | Bristol (Courts) Family Mediation Service              |
| CA       | Children Act 1989                                      |
| Cafcass  | Children and Family Court Advisory and Support Service |
| CAQDAS   | Computer Assisted Qualitative Data Analysis Software   |
| CBT      | Cognitive Behaviour Therapy                            |
| CFA      | Children and Families Act 2014                         |
| CFCS     | Cleveland Family Conciliation Service                  |
| COM      | College of Mediators (Formerly UKCFM see below)        |
| CPD      | Continuing Professional Development                    |
| CWO      | Court Welfare Officer                                  |
| DAIP     | Domestic Abuse Intervention Programme                  |
| DDAIP    | Duluth Domestic Abuse Intervention Programme           |
| DCC      | Direct Consultation with Children                      |
| DRA      | Divorce Reform Act 1969                                |
| ESRC     | Economic and Social Research Council                   |
| FDR      | Family Dispute Resolution                              |
| FCA      | Family Court Adviser                                   |
| FLA      | Family Law Act 1996                                    |
| FGM      | Female Genital Mutilation                              |
| FMC      | Family Mediation Council                               |
| FPR      | Family Procedures Rules 2010                           |
| HHFCS    | Hull and Humberside Family Conciliation Service        |
| JIM      | Joint Intake Meeting/MIAM                              |
| JM       | Joint Meeting  |
| JRF      | Joseph Rowntree Foundation                             |
| LAA      | Legal Aid Agency                                       |
| LAB      | Legal Aid Board  |
| LAAct    | Legal Aid Act 1988                                     |
| LASPO    | Legal Aid, Sentencing and Punishment of Offenders      |
| LCD      | Lord Chancellors Department                            |
| LIPs     | Litigants In Person                                    |
| LSC      | Legal Services Commission                              |
| MCA 1963 | Matrimonial Causes Act 1963                            |
| MCA 1973 | Matrimonial Causes Act 1973                            |
| MIAM     | Mediation Information Assessment Meeting               |
| MO       | Member Organisation                                    |
| MOU      | Memorandum of Understanding                            |

|       |  |
|-------|--|
| MoJ   | Ministry of Justice                                |
| MPFJ  | Mapping Paths to Family Justice                    |
| MQMS  | Mediation Quality Mark Standard                    |
| NFCC  | National Family Conciliation Council               |
| NFMCC | National Family Mediation and Conciliation Council |
| NFM   | National Family Mediation                          |
| OSFI  | Open Statement of Financial Information            |
| PD3a  | Practice Direction 3a                              |
| PPC   | Professional Practice Consultant                   |
| QMSM  | Quality Mark Standard for Mediation                |
| SIM   | Single Intake Meeting/MIAM                         |
| s29   | Section 29   |
| SPIP  | Separated Parents Information Programme            |
| SWW   | Second World War World War 2 (WW2)                 |
| UKCFM | UK College of Family Mediators                     |
| WAFE  | Women's Aid Federation of England                  |

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Legal Aid Sentencing and Punishment of Offenders Act 2013

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# Chapter 1 Introduction

*"Faith is taking the first step even when you can't see the whole staircase."  
Martin Luther King Jnr.*

## 1.1 The Thesis

This thesis aims to provide answers to the following research question:

*"Do mediators screen for domestic abuse, and if and when they do, how do they manage the process and client responses?"*

This thesis is, therefore, concerned with both the identification of domestic abuse within the mediation process and mediator responses to allegations or evidence that domestic abuse was an element of the relationship between the two clients attending mediation. To provide data to answer the research question, a predominantly empirical project was constructed, focusing on the whole mediation process but with a particular emphasis on the initial 'screening' stage. In addition, a documentary study was designed to identify the extant literature relating to domestic violence and mediation for two main reasons. First, the significance of mediator interventions requires an understanding of mediator training and the processes of mediation as currently practised. Secondly, the history of responses to domestic violence by mediation bodies reveals changes in thinking over time and some remaining issues provide an important context for evaluating the empirical data.

The empirical research component was originally planned to include follow-up interviews with the parents after their mediation session/s and to focus more on the outcome of the mediation. This proved impossible because of developments at the mediation service (See chapter 4 for further details). The empirical focus therefore moved to a forensic analysis of the mediation process itself.

As a result, the empirical element has focused on the practice of a convenience sample of four National Family Mediation (NFM) mediators (from an original sample of

seven<sup>1</sup>), based in the South East of England who recorded at least one 'element'<sup>2</sup> of a mediation case. A total of 115 meetings were recorded<sup>3</sup> and those recordings reflected 58 cases. The analysis of these recordings was broken down into five studies as detailed in 1.6 below.

This thesis has three main aims with the first being to contribute to the field of family mediation research in England and Wales by increasing awareness of the practice of family mediators in general, but with a very specific focus on screening for abuse.

Practice will be investigated during the pre-mediation 'intake' session, [hereafter referred to where appropriate as Mediation Information Assessment Meeting (MIAM)], and the subsequent mediation sessions, [hereafter referred to as joint meetings (JMs)], to determine how mediators screen for domestic violence during these meetings.

The second aim is to explore and understand how mediators respond to any issues and concerns raised by clients during mediation, either by 'client specific' statements or 'inferred' comment that may be an attempt to flag up a concern relating to the presence and/or impact of abuse in their intimate relationship. Intrinsic to this aim is the need to select a tool with which to analyse client comments, such that abusive elements in their relationship might be identified. The eight themes used in the Duluth Domestic Abuse Intervention Programme (DDAIP) were selected for two reasons. The first is that the Integrated Domestic Abuse Programme (IDAP), one of three domestic violence perpetrator programmes accredited by the Correctional Services Accreditation Panel in 2003, is based on this model. It is widely used by the Probation and Prison services throughout England and Wales.<sup>4</sup> The themes denote abusive behaviours of male perpetrators of domestic violence to their intimate partners that

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<sup>1</sup> One mediator was unable to participate because of family problems; the other two were unable to recruit secondary participants

<sup>2</sup> An element is a Mediation Information Assessment Meeting (MIAM) or a Joint Meeting (JM)

<sup>3</sup> Between April 2010 and January 2011

<sup>4</sup> Further detail of these programmes can be found in Bullock K, Tarling R, Sarre S, et al. (2010) The delivery of domestic abuse programmes. An implementation study of the delivery of domestic abuse programmes in probation areas and Her Majesty's Prison Service *Ministry of Justice Research Series* London: Ministry of Justice.

the programme seeks to change. The second reason is that the researcher has a working knowledge of this programme.

The third aim is to explore whether the data suggests that any abuse indicated by analysis affects the process and potential outcome of mediation.

The context out which these aims were formulated was a complex mixture of personal experience in industry and academia, and professional involvement in mediation practice as a Legal Aid Agency (LAA) recognised professional family mediator, as well as political and legal issues. Therefore, this thesis also needs to be contextualised within what is known about the effects of partner abuse.

The rest of this chapter will therefore look at factors that influenced the development of the secondary research questions and the structure of the thesis; the kernel of this research is the empirical element of the project.

The secondary questions to be answered are:

- i. What types of abusive behaviours are alleged or inferred during mediation sessions?*
- ii. How do mediators manage disclosure of abuse and any client responses to such management during mediation?*
- iii. How do mediators manage expressions of emotions by clients?*
- iv. Where a parent expressed concern about the welfare of a child, how was this managed?*

However as indicated in the quote by Martin Luther King Jnr., and as will become clear, this journey comprised of many upward steps, which I detail in the sections and chapters that follow.

## **1.2 Political and legal influences on the development of the research question**

Mediation operates in the shadow of the law in that a mediator seeks to work with couples who are separating/divorcing (hereafter referred to as separating), by facilitating conversations that relate to finance, property and arrangements for

children (Maclean and Stalford, 2013 p 1). This section will cover the political landscape by way of changes to policy and legislation as well as changes in the scope of eligibility for legal aid.

On 1st April 2013, Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) was enacted. It specified which categories of cases are *included* in legal aid provision, whereas the now repealed Access to Justice Act 1999 specified the categories of cases that were *excluded*. Until LASPO came into force, legal aid was available for private family law cases such as divorce and disputes over contact and residence; it was also available for family mediation. As is still the case, clients had to be means-assessed by the solicitor or mediator to establish eligibility.

Family mediation remains in scope for legal aid and parents are being encouraged to consider mediation to resolve their disputes, by attending a Mediation Information Assessment Meeting (MIAM) as a minimum, rather than immediately resorting to litigation.

Legal aid is no longer available for private family law cases, such as some debt, housing and benefit issues, immigration where the person is not detained, and many other civil areas. Key family law commentators expressed concerns that the vulnerable in our society will be the ones that suffer under this change. Indeed in the period following the publication of the White Paper, *Reform of Legal Aid in England and Wales The Government Response* (June 2011), Hunter expressed concern about the narrow constraints for access to legal aid, citing it as 'domestic violence or nothing'. She goes on to criticise the limited list of objective evidence and the requirement that the length of time since the last incident could be no more than 12 months (Hunter, 2011).<sup>5</sup>

Miles and colleagues identified the fact that no provision for legal aid has been made for those unable to reach agreement in mediation, as well as noting the expected increase in self-represented litigants<sup>6</sup> (Miles *et al.*, 2012). Maclean and Eekleaar pointed out that litigants in person (LIPs) might be dissuaded from pursuing a case but, if not, the only alternative scenario would be an increase in the amount of court time

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<sup>5</sup> This is now 24 months

<sup>6</sup> Now litigants in person

required for that case to proceed, as LIPs would be working in an unfamiliar context (Eekelaar and Maclean, 2012).

Pre-mediation information meetings are not a new phenomenon, as mediators have been conducting these sessions for many decades and until the introduction of the term MIAM, these pre-mediation meetings were known within mediation services as 'the intake/assessment' meeting and colloquially referred to as 'intake'. To place the MIAM in context, the term was introduced in February 2011 when Practice Direction 3A (PD3a), was introduced by the Ministry of Justice and the Family Mediation Council as a joint practice direction. It was introduced to support part 3 of the Family Procedure Rules 2010.

PD3a was a Pre-Application Protocol for Mediation Information and Assessment and required that those seeking to make an application to court on matters relating to divorce, residence and contact should attend a MIAM before making their application and provide documentary evidence signed by a mediator that they had attended the meeting; however attendance at a MIAM was not mandatory.

These requirements continued under LASPO and attendance is now compulsory under section 10 of the Children and Families Act 2014 which received royal assent on March 13<sup>th</sup> and came into force on April 22<sup>nd</sup> 2014.<sup>7</sup> The removal of access to legal aid for family disputes and the focus on using mediation means that the MIAM is an important meeting for parents deciding how to resolve disputes regarding children, property and finance.

The introduction of PD3a, the enactment of Part 1 of LASPO and the provisions in the Children and Families Act 2014, which evidence the increasing importance of the MIAM, coupled with media interest in family mediation and academic interest in screening for abuse in family mediation, resulted in the decision to fine tune the focus of this research thesis. Abuse will be analysed and discussed from each of three perspectives. The first is *what protocol and legislation expect from the family*

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<sup>7</sup> For powers and procedure for subordinate legislation under this Act see s.135.

*mediator*. The second is *the practice of the mediator in terms of how screening is conducted* and the third is *the client experience by way of contribution and response*.

I argue that each of these perspectives will make a much needed contribution to the paucity of research on family mediation in England and Wales.

### **1.3 Personal and professional influences on research aims**

The plethora of influences resulting from my own experiences led to my focusing particularly on issues of power and control and their gender implications and abuse within families. My experience also led to a broader understanding of mediation in a context wider than family issues and also knowledge of technical communication issues. I will briefly explain the reason for these influences below.

#### **1.3.1 Power and control**

Prior to training as a mediator in 2003, I spent the majority of my working life in the male dominated environments of information technology and telecommunications. I experienced the now well documented problems of maintaining status as a woman and combating stereotypes and techniques for the maintenance of male power and control in that environment. I came to understand that information was being denied to me either as a form of control to hinder my career development, or as a result of the paternalistic notion that I did not need to ‘worry my pretty little head’ about the detail (McBride, 2011; Wilson, 2002). The feminist in me fought back and I learnt much about the dynamics of power, control, and rewards.

#### **1.3.2 Mediation and abuse**

When my position was made redundant in 2001, I decided to leave the technology sector and so began a period of self-analysis during which I researched, considered and rejected many career and retraining options. By chance, a small advertisement in the local paper caught my attention; the local community mediation service sought volunteer mediators and offered free approved training (Crawley, 1995), with recognised accreditation to the successful applicants. My application for this course, which took place on a part-time basis over a period of three months, was successful and the resulting learning and development portfolio submitted to the National Open

College Network led to certification as a community mediator followed by recognition as a competent mediator by Mediation UK.<sup>8</sup>

I subsequently trained and worked in a number of mediation areas, including workplace, commercial and, in particular, a community mediation service funded by the Office of the Deputy Prime Minister to develop the 'Kingston' model of family mediation. This has an emphasis on mediation between teenagers and their parents, the purpose being to try and avoid a total breakdown in their relationship with their parents. The work in this project was disseminated, *inter alia*, at a Knowledge Exchange event (Morris, 2010).

Crucially, this experience led me to realise that abuse was often a factor in the relationship breakdown with parent to child, child to parent and sibling to sibling abuse. This led to my choosing to train as a facilitator for a Domestic Violence Intervention Programme (DVIP) for male perpetrators of domestic violence (Pence and Paymar, 1993), which gave me an immense insight into abuse in intimate relationships and changed my screening practice as a mediator.

### **1.3.3 Academic inputs**

The next major influence on this thesis arose from my subsequent decision to undertake a Master of Science Degree in Conflict Resolution and Mediation Studies. My professional focus for this study was family mediation and my dissertation in 2008 was based on a small scale study of parents who attended an 'intake' session (MIAM) and did not proceed to mediation.<sup>9</sup>

One of the main findings of this study was that there was evidence of abuse in 75% of the relationships (Morris, 2008), which was not what I had expected to find. The data collected was limited, as it was not gathered in a way that enabled me to examine whether abuse was the main reason for those participants who experienced it not entering mediation. This study led to an even greater concern with domestic abuse

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<sup>8</sup> Mediation UK was the umbrella body for community mediation in the England and Wales until October 2009, when it went into liquidation

<sup>9</sup> This was an empirical study (n=4) and was analysed from a psychological perspective using Interpretative Phenomenological Analysis

and an understanding of the fact that this is a complex and problematic area particularly as statistics suggest that the prevalence of abuse in intimate relationships is high (72% according to Walker et al., 2009) and that violence in such relationships increases at the time of separation (Humphreys and Thiara, 2003 p 4; Diduck and Kaganas, 2012 p 382; Thiara and Gill, 2012 p 79; WAFE, 2009 p 5). It was clear from these findings that more research was needed to establish the prevalence of abuse in mediation.

#### **1.4 The influence of concerns raised by previous mediation research**

The aims of this research also arose out of the concerns identified in reported academic research about mediation. That research can be categorised into several areas of interest as outlined below. Some of these areas relate to the effectiveness and cost of mediation and so can be contextualised as political but others refer to the concerns of participants and to general issues about the process.

The first area relates to the effectiveness of mediation from various perspectives.

These are:

- i. The cost of mediation in terms of value for money (Ogus et al., 1989; Ogus et al., 1990; Bevan and Davis, 1999; NAO, 2007)
- ii. How well or whether mediation works (Walker et al., 1994; McCarthy and Walker, 1996; Davis and Roberts, 1988; Dingwall, 2010)
- iii. In court conciliation (Trinder et al., 2006; Trinder et al., 2007; Trinder and Kellett, 2007a; Trinder and Kellett, 2007b; Trinder et al., 2009; Jenks et al., 2012). Conciliation is another word used for mediation and was widely used in the 1980's. Its use is now limited to the court environment when referring to mediation.

The second theme relates to mediation practice and the effectiveness of the process including power issues, (see for example Roberts, 1990; Haynes and Charlesworth, 1996<sup>10</sup>; Parkinson, 1986<sup>11</sup>; Roberts, 2008)<sup>12</sup>. These refer to books researched and published for practice guidance. Three unpublished research projects focus on mediation practice from the client's perspective (Nunnerly, 2003; Tilley, 2007; Watterson 2007).

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<sup>10</sup> Further detail of this can be found in chapter three

<sup>11</sup> ditto

<sup>12</sup> ditto



A third and closely related theme focuses on the mediator's perspective of their practice i.e. what do mediators believe they do when working with clients (see for example, Roberts, 2007; Day Sclater and Piper, 1999.<sup>13</sup>)

The fourth theme is focused on interaction during the mediation process (see for example Dingwall and Greatbatch, 1991, Dingwall et al, 1988; and Dingwall and Miller, 2002).

The fifth and final theme refers to commentary concerned with screening for domestic abuse which is pertinent to this research study. Many academic commentators have expressed concern about mediation and abuse in terms of recognising domestic abuse, screening for domestic abuse and the four key principles of mediation<sup>14</sup> being incompatible with protecting victims of abuse. (Kaganas and Piper, 1994; Raitt, 1996; Piper and Kaganas, 1997; Dingwall and Greatbatch, 1995; Roberts, 1994; Greatbatch and Dingwall, 1999; Hester et al., 1997)<sup>15</sup>. More detail on the key values and principles of mediation is to be found in section 2.2 below.

The significant reason for this final concern was that sections 7(a) and 7(b) of the Family Law Act 1996 proposed that *all clients attending an information meeting with a mediator should be screened for abuse*. Earlier research suggested that mediators did not systematically screen for domestic abuse. The research report by Hester and colleagues (Hester et al., 1997) did acknowledge the fact that during the lifetime of the project, NFM had published Guidelines for Screening for Domestic Violence (NFM, 1996a), as well as a Policy on Domestic Violence (NFM, 1996b).

Given my personal and professional experience (see 1.3 above), my concern was that there is no evidence of either academic or practitioner research that considers the effects of abuse on the continuation of mediation, although Dingwall and Greatbatch conducted research which specifically excluded psychological and emotional abuse

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<sup>13</sup> ditto

<sup>14</sup> Piper and Kaganas suggest that these are *voluntary participation, confidentiality, neutrality* on the part of the mediator and *equality* or rough parity of bargaining power. Kaganas F and Piper C. (1994) Domestic Violence and Divorce Mediation. *Journal of Social Welfare and Family Law* 16: 265-278

<sup>15</sup> Further detail is to be found in chapter three

(Greatbatch and Dingwall, 1999). Since 1997, no research has been conducted on mediators screening for domestic abuse. I therefore argue that the requirement for effective screening as noted in the Family Justice Review (Norgrove, 2011 p 23) and the paucity of research on this subject indicate an urgent need for the present study.

## **1.5 Defining and identifying domestic violence and its effects**

Because of the focus of my thesis, it was essential to consider definitions of domestic violence. It was also essential that a method that enabled the analysis of the data was identified that could be used to make judgements that there was likely to have been domestic violence in the parent's relationships.

### **1.5.1 A struggle with terminology**

There are many definitions of domestic violence, which in its simplest form refers to abuse between partners in an intimate relationship. It is now seen as a social problem which demands remedial action from the state and its agents.<sup>16</sup> Women became seen as individuals instead of adjuncts to their husbands, so that their need for protection from spousal abuse could be recognised (Diduck and Kaganas, 2012 p 547).

Until the 31<sup>st</sup> March 2013, the UK Government defined Domestic Violence as

*'Any incident of threatening behaviour, violence, or abuse (psychological, physical, sexual, financial, or emotional) between adults who are or have been intimate partners or family members, regardless of gender or sexuality. This includes issues of concern to black and minority ethnic (BME) communities such as so-called 'honour-based violence', female genital mutilation (FGM) and forced marriage.'*

From the 1<sup>st</sup> April 2013 the following new definition of domestic violence and abuse introduced *control and coercion* and is now:

*'Any incident or pattern of incidents of controlling, coercive or threatening behaviour, violence or abuse between those aged 16 or over who are or have been intimate partners or family members regardless of gender or sexuality. This can encompass, but is not limited to, the following types of abuse:*

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<sup>16</sup> A definition initiated originally by moral entrepreneurs and more recently adopted by feminists

*Psychological (mental and emotional)*  
*Physical (attack on the body)*  
*Sexual (intimate)*  
*Financial (money related)*  
*Emotional (actuated by emotion)*

*Controlling behaviour is: a range of acts designed to make a person subordinate and/or dependent by isolating them from sources of support, exploiting their resources and capacities for personal gain, depriving them of the means needed for independence, resistance and escape and regulating their everyday behaviour.*

*Coercive behaviour is: an act or a pattern of acts of assault, threats, humiliation and intimidation or other abuse that is used to harm, punish, or frighten their victim'*

This definition, which is not a legal definition, includes so-called 'honour-based' violence, female genital mutilation (FGM) and forced marriage, and is clear that victims are not confined to one gender or ethnic group. Additionally there is now a specific definition for controlling and coercive behaviours.

The recent change in the Government's definition brings it in line with other national organisation's definitions, such as the Women's Aid Federation of England (WAFE), who define domestic violence as physical, psychological, sexual, or financial violence that takes place within an intimate or family-type relationship and forms a pattern of coercive and controlling behaviour. This can include forced marriage and so-called 'honour' crimes (WAFE 2009 p 5). Interestingly, whilst they do not mention emotional abuse they make reference to it in the document under review. This is a serious omission on their part, as they appear to be downplaying the seriousness of emotional abuse. However, my experience as a facilitator of the Duluth Domestic Abuse Intervention Project (DDAIP) provides support for the argument that emotional abuse is more psychologically damaging than physical abuse because of its 'invisibility'.

This becomes more important when a couple is separating; if abuse is present in a relationship it tends to increase (Piper & Kaganas 1997; Morris, 2013). There is also a risk of violence starting after the decision to separate has been made (Piper & Kaganas

1997; Morris, 2013). I suggest that these potentially negative adjustments have an impact on all actions taken by the separating couple going forward.

### 1.5.2 Prevalence

Domestic violence is still a largely unreported crime and as a consequence it is difficult to assess the extent of the problem. These are some of the reported statistics:

- The Council of Europe (2002) notes that one in four women experience domestic violence over their lifetime and between six and ten percent of women experience domestic violence in a given year.
- Women that experience domestic violence are more likely to suffer repeat abuse; 73% of women interviewed for the British Crime Survey (2010/11) were victims of repeat violence (Chaplin et al., 2011 p 62).
- Nearly one million women experience at least one incident of domestic violence each year (ibid).
- At least 750,000 children witness domestic violence each year either through being in the same room where the violence is taking place or in another room in the same house.<sup>17</sup>
- In England and Wales, two women are killed each week by a partner or ex-partner (Homicide Statistics, 2002).<sup>18</sup>
- A woman experiences an average of 35 incidents of domestic violence before she makes her first report to the police (Jaffe, 1982).<sup>19</sup>
- The police receive a domestic assistance call every minute and yet only 35% of domestic violence incidents are reported officially to the police (Stanko, 2000; Home Office, 2002).<sup>20</sup>
- Over a third of domestic violence begins or escalates when a woman becomes pregnant (Department of Health, 2004).<sup>21</sup>
- Hirst, (2002) found that of the two half thousand families that entered mediation approximately 75% of parents indicated that there had been

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<sup>17</sup> Cited in [http://www.womensaid.org.uk/domestic\\_violence\\_topic.asp?section=0001000100220002](http://www.womensaid.org.uk/domestic_violence_topic.asp?section=0001000100220002) 14012014

<sup>18</sup> Cited in <http://www.refuge.org.uk/get-help-now/what-is-domestic-violence/domestic-violence-the-facts/> 14012014

<sup>19</sup> As in 13 above

<sup>20</sup> ditto

<sup>21</sup> ditto

domestic violence in their relationship.<sup>22</sup> This precise finding is supported by my own unpublished research (Morris, 2008), as detailed in 1.3.3 above.

- Once the decision to separate is made, women are at higher risk of violence and being killed after leaving violent partners. 79% of women leave a violent partner because the abuse is affecting their children or they fear for their children's lives and 76% of women suffer post-separation violence.<sup>23</sup>

### 1.5.3 The cycle of abuse

Psychology and Social Science commentators argue that there are three stages in a 'cycle of abuse' with, the first stage being *tension building*. They suggest that many abusers have common characteristics, such as low self-esteem - and their sense of self and identity is tied to their partner. Their fear of loss of that identity, whether through separation, pregnancy, friends, or employment, creates a tension in the relationship. The victim, recognising the signs, tries to calm the abuser down and walks on eggshells in the hope that the tension will decrease.

In the second stage, the tension increases, the abuser gets more and more angry and the incident takes place. During this stage the abuser blames their partner for making them abusive abuse them, In the case of emotional abuse such as humiliation, they abused partner is left in a position whereby he or she minimises the abuse and/or makes excuses for her partner's behaviour.

The third stage of the cycle is known as the honeymoon stage, which is a period of making up. The assault could have been extremely vicious, yet within a short space of time controlling behaviours emerge, such as buying gifts, offering apologies, and blaming the partner for making them perpetrate the abuse. This leaves the abused in a state of confusion, in which they look to blame themselves, or blame external influences such as stress at work, the misuse of substances, e.g. alcohol, and they may formulate excuses for the abuser. Thus the incident is forgiven by the abused and the cycle starts again. This cycle is difficult to break, since threatening to leave the abuser

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<sup>22</sup> Hirst, 2002 - cited in Jaffe, Zewer and Poisson (2003) 'Access Denied. The Barriers of Violence and Poverty for Abused Women and their Children After Separation'

<sup>23</sup> <http://www.womensaid.org.uk/domestic-violence-articles.asp?section=00010001002200020001&itemid=1126> 14102014

can escalate the violence and if an abuser suspects that their partner may leave, the partners risk of injury or death is increased (WAFE, 2007).<sup>24</sup>

#### **1.5.4 Effects on women**

The preceding factors have many effects on the abused woman who may experience some or all of the following (WAFE 2009):

- Isolation from family and friends
- Loss of income or loss of employment
- Impact on time off from work or study, leading to a longer term impact on financial stability and career development
- Loss of confidence
- Loss of self esteem
- Anxiety attacks
- Depression
- Short or long term physical injury
- Poor health
- Post-traumatic stress (includes depression, anxiety and nightmares)
- If the woman is pregnant at the time of the abuse she may either miscarry or the baby may be stillborn
- Referring back to the statistics quoted earlier in 1.5.2 above, untimely death.

#### **1.5.5 Effects on children**

All children experiencing domestic abuse are affected by that abuse and this has been recognised as 'significant harm' in legislation.<sup>25</sup> Children are dependent on the adults around them to make them feel safe and secure, and domestic abuse may mean that children do not feel safe in their own homes. Each child is affected differently and often the level of effect depends on the severity of the abuse. Thus children will react in different ways (WAFE, 2009).

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<sup>24</sup> WAFE. (2007) Cycle of violence - <http://www.womensaid.org.uk/domestic-violence-articles.asp?section=00010001002200410001&itemid=1279> Bristol: Womens Aid Federation of England. 14012014

<sup>25</sup> Section 120 of the Adoption and Children Act 2002, which came into effect on January 31st 2005

These are some of the effects of domestic violence on children.

They may:

- Have problems at school, or may start to play truant
- Have nightmares and flashbacks
- Start to wet the bed
- Become aggressive
- Have a low sense of self-worth
- Develop an eating disorder
- Have temper tantrums
- Complain of physical symptoms, such as stomach ache
- Become anxious or depressed
- Regress developmentally
- Have difficulty sleeping

### **1.5.6 Identifying domestic violence in the data samples**

The purpose of this section was to give some depth to the usefulness of the Duluth<sup>26</sup> identifiers that will be used as initial themes during data analysis. Detail of these themes is to be found in 4.6.7 below, and the programme that they relate to was developed as an Integrated Domestic Abuse Programme (IDAP) that targeted male perpetrators of domestic abuse. It is widely used in England and Wales<sup>27</sup> and as a facilitator of that programme I have an in-depth knowledge of the identifiers. The power and control wheel that is linked to this programme is in Appendix B; the wheel that focuses on the effects on children is in Appendix C.

## **1.6 The Structure of the Thesis**

### **1.6.1 Chapter 2: Mediation: Principles, Process and Practice**

This chapter deals with the development of the principles and process of mediation, which is an important context that enables the data analysis. There are indications in the data that elements of mediations principles and process can silence disclosure of domestic violence. It is presented in four sections and firstly focuses on the eight principles that guide mediation. These are:

- i. Impartiality and conflicts-of-interest
- ii. Voluntary participation
- iii. Neutrality

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<sup>26</sup> Please see Appendices B and C for detail of the identifiers

<sup>27</sup> By the Probation and Prison services

- iv. Impartiality (per se)
- v. Confidentiality
- vi. Privilege and legal proceedings
- vii. Welfare of children
- viii. Abuse and power-imbalances within the family

The second section looks at the changing concepts of family mediation, process and practice.

Section three discusses the process and practice of family mediation and includes the five stages of mediation and articulates the purpose and structure of the MIAM which is stage one of the mediation process and has three key areas. These are:

- i. Information: gathering and giving
- ii. Assessing suitability (separate meeting)
- iii. Making a decision

It focuses specifically on the training that mediators receive for screening clients for abuse, the screening process and the determination of whether mediation is suitable to resolve the issues of the individual client being assessed. This is particularly important because data analysis confirms that the MIAM is the only stage of mediation that has a process for screening for domestic violence. The final part of this section delineates stages two to five of the mediation process, which are the Joint Meetings (JMs) that clients attend following the MIAM.

Section four, focuses on the mediator and looks at the mediator profile, qualifications and training, the code of practice relating to the conduct of mediation and the 17 tools in the NFM mediators tool bag, some of which appear to be used to silence domestic violence in family mediation<sup>28</sup>.

### **1.6.2 Chapter 3: Mediation: Policy, Legislation, Research and Commentary**

This chapter reviews the development of family mediation in England and Wales and is presented in three sections relating to key phases in the development of family mediation. These are aligned with legislation (enacted or proposed) and practice direction.

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<sup>28</sup> These include normalising, mutualising and reframing



The first phase focuses on the inception of mediation in England and Wales, prior to the Matrimonial Causes Act 1973 (MCA), The Legal Aid Act 1988 (LAACT), the Children Act 1989 (CA) and the partial enactment of the Family Law Act 1996 (FLA).

The second phase gathers together the fragmented attempts at legislation following the introduction of parts of the FLA and includes the Access to Justice Act 1999, and the period leading up to the Family Procedure Rules 2010.

The third and final phase deals with policy and legislation that occurred after the data for this study was collected, the introduction of Practice Direction 3A (PD3A) in 2011, the enactment of Part 1 of the Legal Aid Sentencing and Punishment of Offenders (LASPO) Act 2012, and the Children and Families Act 2014.

Each of these developments is reviewed and information is given on the development of the following areas:

- i. Policy and legislation
- ii. Domestic violence and mediation
- iii. Key research, books and other relevant commentary

### **1.6.3 Chapter 4: Methods and Methodology**

This chapter gives substance and definition to the research methods and methodology applied in this study. It discusses the data collection tools and methods of analysis that were considered and provides a detailed explanation as to how the final collection tool and method of analysis were determined.

With the data collection tool determined, the recruitment of participants is discussed and the mediator sample summarised. Ethical considerations, privacy, confidentiality, anonymity, participant wellbeing, safety, consent and data protection is dealt with. The chapter goes on to describe the selection of primary participants (mediators) and the methods used to engage separating couples' participation in the research process.

With the decision made to record mediation sessions, the identification and selection of recording and transcription equipment is described as well as the briefing given to

each mediator prior to the collection of data. This section discusses in detail the actual data collected and the difficulties associated with that data. These difficulties include the location of each recording as related to each case and the difficulties in ‘clustering’ cases together to enable purposive sampling within that data.

The chapter explains in detail data sampling within the corpus of data by way of clustering, and gives a full explanation as to how the decision was reached to determine which samples would be analysed and how they were to be finally analysed. It then specifically delineates each stage of the data analysis process, relating each stage to the primary and secondary research questions.

#### **1.6.4 Chapters 5 and 6: Data Analysis and Findings: MIAMs**

These chapters present the research findings of the MIAMs in three studies and are based initially on a homogenous dataset of 24 mediation cases, where both clients attended a MIAM session, either jointly or individually. Each session was digitally recorded.

The results are presented as three studies with ***the first study – (study one) - Content of the three stages of the MIAM***, presented in chapter five, comprising a small mixed-method analysis focusing on the structure of the three stages of the MIAM. From a quantitative perspective it analyses and discusses the amount of time each key stage of the meeting takes and presents evidence of mediator practice and client response throughout the meeting.

Designed to place screening for domestic violence in the context of the MIAM, this first study presents and discusses the findings of the three stages of the MIAM using thematic and content analysis study, examining the way the mediator conducts the meeting. It concludes by identifying the 15 cases where domestic violence is alleged or inferred.

Using thematic analysis with the themes being guided by the eight tactics of power and control taken from the DDAIP, the second study (**study two**) – ***‘The 15 MIAMs***

*where domestic violence was alleged or inferred*' and third study (*study three*) '*The 4 MIAMs where domestic abuse was alleged or inferred that did not proceed to mediation,*' are presented in chapter six. The studies investigate the 15 cases identified in *study one*,<sup>29</sup> wherein domestic violence is alleged or inferred and presents the findings by way of 'emerging themes' that relate to the primary and secondary research question. *Study two* focuses on the 11 cases that proceeded to mediation, and *study three* concentrates on the 4 cases where domestic violence was alleged/inferred and the case did not proceed to mediation.

### **1.6.5 Chapter 7: Data Analysis and Findings: Joint Meetings**

Using the eight themes from the Duluth Domestic Abuse Intervention Programme (DDAIP), this chapter presents the findings from 11 cases taken from the dataset in chapter six, where abuse was identified in the MIAM, and is presented as two studies. The first JM study – (*study 4*) '*The 4 cases where domestic abuse was not 'identified' in the joint meetings,*' focuses on the 4 cases where no domestic violence was evident in the JMs. The second JM study – (*study 5*) '*The 7 cases where domestic abuse was 'identified' in the joint meetings,*' presents the findings from the 7 cases, where domestic violence was further alleged or inferred during the JM. All relevant data was extracted in context using verbatim quotations, recorded in Microsoft Word and analysed using thematic analysis; NVIVO™ was used as the data management tool for the JMs.

### **1.6.6 Chapter 8: Discussion**

This chapter is a discussion of the findings based on the DDAIP themes applied in chapters six and seven. It seeks to locate the findings from the MIAMs and JMs within the context of previous research and existing knowledge. It provides detail to answer the secondary research questions outlined in sections 1.1 and 1.3 above. This chapter concludes by providing the answers to the secondary research questions which are:

- i. Is there initial screening for abuse and, if so, how is it done?*

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<sup>29</sup> Content of the three stages of the MIAM

Mediators do screen for domestic abuse and the screening follows the NFM guidelines. However the screening guidelines are not robust enough to identify DA in all relationships.

***ii. What types of abusive behaviours are alleged or inferred during mediation sessions?***

A broad range of abusive behaviours are alleged or inferred in mediation, all as defined within the UK government's definition of domestic abuse.

***iii. How do mediators manage disclosure of abuse and any client responses to such management during mediation?***

Mediators do manage disclosures of abuse, and the core mediation skills used in that management were *listening, summarising and empathy*.

***iv. How do mediators manage expressions of emotions by clients?***

Where the expressions of emotions were linked to the disclosure of abuse, they were managed in the same way that the disclosure was managed. Other expressions of emotions used the same strategies and in addition to those strategies, questions were posed to the client for clarification and understanding.

***v. Where a parent expressed concern about the welfare of a child, how was this managed?***

The mediators handled these concerns sensitively and allowed the parents as much time as they needed to share those concerns, whilst exploring potential solutions with the parent.

### **1.6.7 Chapter 9: Conclusion**

This chapter concludes the thesis, summarising the content of the thesis and restating the research aims. Relating to the research questions it then summarises the major findings and offers contributions to existing knowledge. The limitations of the study are discussed and critical reflections shared. The implications of the findings from this study are identified and recommendations for further research are proposed.

## **1.7 Summary**

The aim of Chapter 1 was to introduce the thesis, set the scene with the primary research question and describe the current political and legal context. Previous research in this area was outlined by theme, and personal and professional aims for the research study were identified. Secondary research questions were detailed. Finally the structure of the thesis was presented by chapter.

Chapter 2 will concentrate on the principles, process and practice of mediation, including the 17 tools of the NFM mediator tool bag and will give an insight into how the 'application' of each of these can be a hindrance when mediators are screening for domestic violence.

## 1.8 References – chapter one

- Bevan G and Davis G. (1999) Research: A preliminary exploration of the impact of family mediation on legal aid costs. *Child and Family Law Quarterly* 11: 411-421.
- Bullock K, Tarling R, Sarre S, et al. (2010) The delivery of domestic abuse programmes. An Implementation study of the delivery of domestic abuse programmes in probation areas and Her Majesty's Prison Service *Ministry of Justice Research Series* London: Ministry of Justice.
- Chaplin R, Flatley J and Smith K. (2011) Crime in England and Wales 2010/11. Findings from the British Crime Survey and police recorded crime (2nd edition). London: Home Office.
- Crawley J. (1995) *Training Manual in Community Mediation Skills*, Bristol: Mediation UK.
- Davis G and Bevan G. (1999) Davis G and Roberts M. (1988) *Access to Agreement: A Consumer Study of Mediation in Family Disputes*, Milton Keynes: Oxford University Press.
- Day Sclater S and Piper C. (1999) *Undercurrents of Divorce*. Aldershot: Dartmouth Publishing Company Limited.
- Diduck A and Kaganas F. (2006) *Family Law, Gender and the State*, Oxford: Hart Publishing.
- Diduck A and Kaganas F. (2012) *Family Law, Gender and the State*, Oxford: Hart Publishing.
- Dingwall R. (2010) Divorce mediation: should we change our mind? *Journal of Social Welfare and Family Law* 32: 107-117.
- Dingwall R and Greatbatch D. (1991) Behind closed doors: A preliminary report on mediator/client Interaction in England. *Family and Conciliation Courts Review* 29: 291-303.
- Dingwall R and Greatbatch D. (1995) Family mediation researchers and practitioners in the shadow of the green paper: (Dingwall and Greatbatch, 1991; Dingwall et al., 1988; Dingwall and Miller, 2002) rejoinder to Marian Roberts. *Journal of Social Welfare and Family Law* 17: 199-206.
- Dingwall R, Greatbatch D and Ruggerone L. (1988) Gender and interaction in divorce mediation. *Mediation Quarterly* 15: 277-287.
- Dingwall R and Miller G. (2002) Lessons from brief therapy? Some interactional suggestions for family mediators. *Conflict Resolution Quarterly* 19: 269-287.
- Dobash RE and Dobash R. (1979) *Violence against wives: A case against the patriarchy*: Free Press New York.
- Eekelaar J and Maclean M. (2012) Legal representation in family matters and the reform of legal aid: a research note on current practice. *Child and Family Law Quarterly*: 223-231.
- Greatbatch D and Dingwall R. (1999) The marginalization of domestic violence in divorce mediation. *International Journal of Law Policy and the Family* 13: 174-190.
- Haynes JM and Charlesworth S. (1996) *The Fundamentals of Family Mediation*, Sydney: The Federation Press.
- Herring J. (2009) *Family Law*, Harlow: Pearson Education Ltd.
- Hester M, Pearson C and Radford L. (1997) *Domestic Violence - A National Survey of Court Welfare Officers and Voluntary Sector Mediation Practice*, Bristol: Policy Press.
- HMSO. (1895) Matrimonial Causes Act, 1878 (separation orders). Return showing, for each town in England and Wales with a population by the last census of more than 150,000, and in the case of the metropolis for each police court division, the number of separation orders granted under the Matrimonial Causes Act, 1878, in the years 1888, 1889, 1890, and in the years 1892, 1893, 1894; with a summary for each year. *HOUSE OF COMMONS PAPERS; ACCOUNTS AND PAPERS*: LXXXI.463.
- HMSO. (1913) Divorce. A bill to amend the law relating to the grounds on which a husband or wife can petition for dissolution of marriage, and for other purposes connected therewith. *Document type: BILLS*: II.27.
- Humphreys C and Thiara RK. (2003) Neither justice nor protection: women's experiences of post-separation violence. *Journal of Social Welfare and Family Law* 25: 195-214.

- Hunter R. (2011) Doing violence to family law. *Journal of Social Welfare and Family Law* 33: 343-359.
- Jenks C, Firth A and Trinder L. (2012) When disputants dispute: interactional aspects of arguments in family mediation sessions. *Text & Talk - Interdisciplinary Journal for the Study of Discourse* 32: 307-327.
- Kaganas F and Piper C. (1994) The divorce consultation paper and domestic violence. *Family Law* 26: 143-145.
- Kaganas F and Piper C. (1994) Domestic violence and divorce mediation. *Journal of Social Welfare and Family Law* 16: 265-278.
- Masson J, Bailey-Harris R and Probert R. (2008) *Cretney Principles of Family Law*, London: Sweet and Maxwell.
- McBride A. (2011) Lifting the barriers? Workplace education and training, women and job progression. *Gender, Work & Organization* 18: 528-547.
- McCarthy P and Walker J. (1996) The Longer-term Impact of Family Mediation. *Social Policy Research*.
- Maclean M and Stalford H. (2013) Editorial: Late modern justice for the family. *Journal of Social Welfare and Family Law* 35: 1-2.
- Masson J, Bailey-Harris R and Probert R. (2008) *Cretney Principles of Family Law*, London: Sweet and Maxwell.
- Miles J, Balmer N and Smith M. (2012) When exceptional is the rule: mental health, family problems and the reform of legal aid in England and Wales. *Child and Family Law Quarterly* 24: 320-332.
- MoJ and HMCS. (2011) Practice Direction 3a: Pre-Application Protocol for Mediation Information and Assessment. Ministry of Justice and Her Majesty's Court Service.
- Morris P. (2008) *Adult Non-Participation in Mediation* Unpublished Dissertation: Birkbeck, University of London.
- Morris P. (2010) They're unreasonable and I don't want to! *Knowledge Exchange - Helpline Workshop*. University of Edinburgh.
- Morris P. (2013) Mediation, the legal aid, sentencing and punishment of offenders act (2012) and the mediation information assessment meeting. *Journal of Social Welfare and Family Law* 35: 445-457.
- Mullender A. (1996) *Rethinking Domestic Violence: The Social Work and Probation Response*, London: Routledge.
- NAO. (2007) *Legal aid and mediation for people involved in family breakdown*, London: National Audit Office.
- NFM. (1996a) *NFM Guidelines for Screening for Domestic Violence in Mediation*, London: National Family Mediation.
- NFM. (1996b) *NFM Policy on Domestic Violence*, London: National Family Mediation.
- Norgrove D. (2011) *Family Justice Review: Final Report*, London: The Stationery Office.
- Nunnerley ML. (2003) *A study of family mediation during divorce in the Pakistani Muslim Community in Bradford: Some observations on the implications for the theory and practice of conflict resolution* University of Bradford: Thesis.
- Ogus A, Jones-Lee M, Cole W, et al. (1990) Evaluating alternative dispute resolution: Measuring the impact of family conciliation on costs. *The Modern Law Review* 53: 57-74.
- Ogus A, Walker J and Jones-Lee M. (1989) *Report to the Lord Chancellor on the Costs and Effectiveness of Conciliation in England and Wales*, Newcastle upon Tyne: The University of Newcastle upon Tyne Conciliation Project Unit.
- Parkinson L. (1986) *Conciliation in Separation and Divorce*, London: Croom Helm.
- Pence E and Paymar M. (1993) *The Duluth Domestic Abuse Intervention Project*, Duluth: Springer Publishing Company Inc.
- Piper C and Kaganas F. (1997) Family Law Act 1996, section 1(D) - How would they know there is a risk of violence? *Child and Family Law Quarterly* 9: 269-280.

- Probert R and Barton C. (2012) *Fifty Years in Family Law, Essays in Honour of Stephen Cretney*. Cambridge: Intersentia Ltd
- Radford LMT. (1988) *The law and domestic violence against women: The history of law reforms in relation to domestic violence against women from the 18th to the 20th century and an analysis of women victims' needs in contemporary socio-legal discourse.*, Thesis: University of Bradford.
- Raitt F. (1996) Domestic violence and divorce mediation: A rejoinder to Kaganas and Piper and a proposal that the mediation process should always serve the best interests of the child. *Journal of Social Welfare and Family Law* 18: 11-20.
- Roberts M. (1994) Who is in charge? Effecting a productive exchange between researchers and practitioners in the field of family mediation. *Journal of Social Welfare and Family Law* 16: 439-454.
- Roberts M. (2007) *Developing the Craft of Mediation - Reflections on Theory and Practice*, London: Jessica Kingsley Publishers.
- Roberts M. (2008) *Mediation in Family Disputes*, Aldershot: Ashgate Publishing Ltd.
- Roberts S. (1990) A blueprint for family conciliation. *The Modern Law Review* 53: 88-90.
- Standley K. (2010) *Family Law*, Basingstoke: Palgrave Macmillan.
- Thiara RK and Gill AK. (2012) *Domestic violence, child contact and post-separation violence* London: NSPCC.
- Tilley S. (2007) *Recognising Gender Differences in All Issues Mediation* Unpublished Dissertation: Birkbeck, University of London.
- Tilley S. (2007) ADR Professional: Recognising gender differences in all issues mediation *Family Law* 37: 352-355.
- Trinder L, Connolly J, Kellett J, et al. (2006) Making Contact Happen or Making Contact Work? The Process and Outcomes of In-Court Conciliation. *DCA Research Series*.
- Trinder L, Firth A and Jenks C. (2007) Back to the Future: A Micro Analysis of English Family Court Dispute Resolution Meetings: *Economic & Social Research Council*.
- Trinder L, Jenks C and Firth A. (2009) *Opening Closed Doors: A Micro analytic Investigation of Dispute Resolution in Child Contact Cases*, Swindon: ESRC.
- Trinder L and Kellett J. (2007a) Fairness, efficiency and effectiveness in court-based dispute resolution schemes in England. *International Journal of Law Policy and the Family*: 323-340
- Trinder L and Kellett J. (2007b) The Longer-term Outcomes of In-court Conciliation. *Ministry of Justice Research Series*.
- Trinder L, Smith L, Bryson C, et al. (2011) The separated parent information programme: Current effectiveness and future potential. *Family Law* 41: 998-1002
- WAFE. (2009) *The Survivors Handbook*, Bristol: Womens Aid Federation of England.
- Walker A, Flatley J, Kershaw C, et al. (2009) Crime in England and Wales 2008/09. Volume 1 Findings from the British Crime Survey and Police Recorded Crime. London: Home Office.
- Walker J, McCarthy P and Timms N. (1994) *Mediation: The Making and Remaking of Co-operative Relationships. An Evaluation of the Effectiveness of Family Mediation*, University of Newcastle upon Tyne: Relate Centre for Family Studies.
- Watterson E. (2007) *"What Price Family Mediation"*, Unpublished Dissertation: Birkbeck, University of London.
- Wilson FM. (2002) Theme: Gender, the Professions and Public Management: Management and the Professions: How Cracked is That Glass Ceiling? *Public Money & Management* 22: 15-20.



## Chapter 2      Mediation: Principles, Process and Practice

### 2.1 Introduction

This chapter describes the mediation process, the core principles that guide that process and also specifies additional principles that guide mediator practice. It provides a conceptual history of the development of mediation process and practice, which includes a detailed exploration of screening for domestic violence; this will include an overview of the training provided for domestic violence by NFM. It finally gives an overview and evaluation of the 17 tools of the NFM Mediator tool bag, which contains strategies and techniques that mediators are trained to draw on when working with clients in mediation.

### 2.2 Principles

The Family Mediation Council's (FMC) code of practice, applies to all mediators who offer mediation services to the six member organisations of the FMC. NFM is one such member organisation and defines family mediation as:

*... 'a process in which those involved in family breakdown, whether or not they are a couple or other family members, appoint an impartial third person to assist them to communicate better with one another and reach their own agreed and informed decisions concerning some, or all, of the issues relating to separation, divorce, children, finance or property by negotiation. ... The main aim of mediation is to assist participants to reach the decisions they consider appropriate to their own particular circumstances.'*

The FMC identifies eight general principles of mediation, which are:

- i. Impartiality and conflicts of interest
- ii. Neutrality
- iii. Voluntary participation
- iv. Impartiality (*per se*)
- v. Confidentiality
- vi. Privilege and legal proceedings
- vii. Welfare of children
- viii. Abuse and power imbalances

## **2.2.1 Impartiality and conflicts-of-interest**

### **2.2.1.1 Impartiality**

Remaining impartial between participants is an imperative for mediators. Therefore, mediators need to conduct the mediation process in a balanced way. The mediator is responsible for ensuring that they conduct the mediation process in a way that redresses any power imbalance by way of intimidating, threatening or manipulative behaviour by any participant.

### **2.2.1.2 Conflict of interest**

Mediators should not have any personal interest in the outcome of mediation between two parties. Neither should they mediate in a case where they are in a position to acquire information pertinent to the process, in a personal, private capacity. Any information acquired by a mediator should not be used in any other professional capacity. An example of this could be being a McKenzie Friend. Finally, mediators must distinguish their role as a mediator from any other professional role that they execute, and focus solely on the mediation process when working with participants.

## **2.2.2 Voluntary participation**

Mediation is a voluntary process, and any participant in the process, including the mediator is free to withdraw from mediation at any time (Roberts, 2014 p 134).

## **2.2.3 Neutrality**

The mediator has responsibility for remaining neutral throughout the process, and specifically as to the outcome of mediation. He or she should not seek to predict the outcome of court proceedings; neither should they try to influence the outcome. Mediators can, however, draw on the experience of previous clients and provide examples of outcomes of other cases they have worked on (Roberts, 2014 pp 122-123).

## **2.2.4 Impartiality (per se sic)**

Mediators must remain impartial at all times between the participants, and conduct the mediation process in a fair and even-handed way. They must seek to prevent

manipulative, threatening or intimidating behaviour by any participant. They must conduct the process in such a way as to redress, as far as possible, any imbalance of power between the participants. If such behaviour or any other imbalance seems likely to render the mediation unfair or ineffective, mediators must take appropriate steps to seek to prevent this; prevention includes terminating the mediation if necessary (Roberts, 2014 pp 76-77).<sup>30</sup>

### **2.2.5 Confidentiality**

Mediators should not disclose any information obtained in the course of the mediation process to anyone, save for where they are concerned that the clients or their children may be at risk of harm. Neither should they discuss the proceedings with a legal adviser or any other agencies, without their express consent. Activities such as conversations with or letters to a legal adviser should take place with both clients' advisers (Roberts, 2014 pp 40-42).

### **2.2.6 Privilege and legal proceedings**

The mediator should ensure that all negotiations and discussions take place within mediation are conducted on a 'legally privileged' basis. Participants sign an agreement to mediate in which, they agree that any conversations in mediation, should not be cited in subsequent legal proceedings. The exception to this is the 'open statement of financial information,' which is exempt from 'legal privilege'. Additionally, neither client can request that a mediator provides notes or summaries produced during mediation, for court applications. The exceptions to this are if both parties waive legal privilege, or a court orders provision of that information (Roberts, 2014 p 135).

### **2.2.7 Welfare of children**

When mediation is about child issues, the focus of the process should always be on 'the needs the children.' The client should be encouraged to adopt the children's needs as central to the process and should consider the outcomes from the child's perspective. Mediators should encourage parents to consider the children's wishes and feelings and discuss whether the children should meet with the mediator to

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<sup>30</sup> <http://www.familymediationcouncil.org.uk/us/code-practice/general-principles/>

express their views. Where parents agree that the children should attend mediation, their consent should be sought before the mediator meets with them.

The mediator also has a 'duty of care' for the well-being of the child. Where it appears to the mediator that a child is suffering or is likely to suffer significant harm, the mediator must advise participants to seek help from the appropriate agency. They should also advise parents that whether or not they seek that help the mediator has an obligation to report the matter, as an exception to the confidentiality of mediation.

The final and significant responsibility applies to where parents appear to be acting or proposing to act in a manner, that is likely to be seriously detrimental to any child, and/or other members of the family. The mediator may withdraw from mediation. Should this occur, a summary outlining the reason for withdrawal should be written, which may be sent to the participant's legal advisors for consideration of further action, such as a court welfare or other agency report (Parkinson, 1997 p 20).

#### **2.2.8 Abuse and power imbalances within the family**

In all cases, screening for domestic abuse should be conducted to ascertain whether or not there is fear of domestic abuse or indeed allegations of abuse. Where domestic abuse is alleged or suspected, the mediator should discuss whether the client wants to proceed with mediation. Where mediation does proceed, mediators should apply the key principles of mediation, of voluntary participation, fairness and safety. Steps must be taken to ensure the safety of all participants on arrival and departure (Roberts, 2014 pp 131-133).

## **2.3 Changing concepts of family mediation, process, and practice**

The purpose of this section is to conceptualise the process and practice of family mediation. It will firstly discuss family mediation within the context of Alternative Dispute Resolution (ADR). It will provide a brief history of mediation as a discipline, which will include the limitations of mediation as practised at NFM services. These limitations relate to funding from the Legal Aid Agency which, coupled with the principles of mediation, sheds light on the data revealing a lack of time and skills necessary to effectively deal with incidents of domestic violence.

### **2.3.1 Alternative Dispute Resolution**

Mediation is a form of dispute resolution new to the 20<sup>th</sup> century. However the practice of dispute resolution that utilises the principles of mediation has been in existence for hundreds of years and has been practised informally to resolve disputes.

As an example, this practice is associated with Confucianism (Roberts, 2014 pp 44-45). The teachings of Confucius emphasise love for humanity; high value is given to learning and devotion to family (including ancestors) and peace and justice. They have profoundly influenced the traditional culture of China. Other examples include intervention by churches, and other religious bodies such as the Quakers, who have been promoting peace and resolving conflicts by applying mediation principles for over 300 years (Parkinson, 1997 p 2).

The practice of mediation takes place in many sectors in England and Wales. These include; *community*, which is principally involved in neighbourhood disputes (rubbish, smells, pets, noise etc.); *peer mediation*, which enables children in schools to resolve minor playground disputes such as friends falling out; *intergenerational*, which focuses on intra-family conflicts such as parent and child and sibling and sibling; *commercial*, which focuses on financial disputes between organisations; *workplace*, which focuses on relationship disputes in organisations and *victim offender*, which focuses on crime related disputes. Finally, there is *family mediation*, which deals with the practical issues relating to couples who are separating/divorcing and focuses on three clearly defined areas; *finance, property, and children*.

In the earlier stages of development, ADR referred to methods of resolving disputes that are alternative to litigation. These included negotiation, arbitration, and mediation. The table below places these in a simple order of formality from the perspective of decision making:

| Method      | What the disputants do  | What third parties do   | Who decides                                    |
|-------------|---|---|--|
| Negotiation | Seek agreement directly between themselves. They may seek a win/win or a win/lose agreement.  | No-one else involved.   | The parties themselves.                        |
| Mediation   | Seek agreement between himself or herself with the help of an impartial, independent, third party. Aims to be win/win.  | Help people communicate, negotiate, and work towards voluntary agreements. Provide structure and help manage conflict.  | The parties themselves.                        |
| Arbitration | Present information, evidence, and ideas about what is going on for them, so that someone else can work out an agreement for them. Between win/lose and win/win.  | Hear parties, provide structure, weigh up information, evidence, and ideas, and make a final decision, usually binding, which is thought to meet the interests of both parties. | The arbitrator - a higher authority            |
| Litigation  | Supply information to an advocate about their situation, what the other side has done wrong, what their own position is. They may also have to testify in support of their case. Other than this, disputants are not directly involved in the resolution. | Hear parties and their representative's present evidence and discredit opposite evidence. Provide structure, enforce rules of conduct, weigh up evidence, and pass judgement.   | The judge or a magistrate - a higher authority |

Table 1 (Crawley 1995)

Range of dispute resolution methods

Mediation is the least formal of the dispute resolution methods that involve a third party, but the intervention by that party is limited - the decision making remains with the parties themselves.

Mediation is not the sole form of dispute resolution relating to couples that are separating and currently, other options include solicitor negotiation, collaborative law, in-court conciliation and in-court mediation.

#### 2.3.1.1 Collaborative Law

Collaborative law is where each party has a lawyer who represents them. Negotiations are conducted face-to-face in four-way meetings between the parties and their solicitors, with all participants agreeing not to go to court from the outset of the process.

#### 2.3.1.2 Solicitor Negotiation

Solicitor negotiation is where both solicitors engage in a process of correspondence and discussion, to broker a solution on behalf of their clients, without going to court.

#### 2.3.1.3 In-court conciliation

In this instance, a conciliation meeting takes place in court on a previously scheduled day. The meeting is usually conducted by a family court advisor (FCA).

#### 2.3.1.4 In-court mediation

This is similar to in-court-conciliation in terms of timing and location, the meeting is conducted by a family mediator instead of an FCA.

## **2.4 Mediation before the Family Law Act 1996**

### **2.4.1 Early development and legislation**

Before World War Two (WW2), the term 'conciliation' was used and the context and primary aim at that time was to preserve the marital relationship (Norman, 1939). It has also been suggested that a secondary aim was to dissuade wives from pursuing a legal claim against their husbands.<sup>31</sup> After WW2, further suggestions were made relating to 'reconciliation', in terms of offering advice on reconciliation (Denning, 1946).

Although these proposals were not formally implemented, the Probation Service adopted some of the recommendations and established a civil work unit for reconciliation in the High Court in London. It is worthy of note here that the goal of reconciliation was reflected in legislative developments in the 1960's with one example being the Matrimonial Causes Act 1963 (MCA 1963). The development contained within this was that, if a couple tried reconciliation following adultery or cruelty their prospects for divorce would not be prejudiced (Stone, 1964).

The MCA 1963 was not the only legislation that required a couple to consider reconciliation. The Divorce Reform Act 1969 (DRA) required that the petitioner's solicitor should certify whether or not reconciliation was possible. If reconciliation was possible, then the court had powers within the act to adjourn divorce proceeding to allow time for the option of reconciliation to be explored. At that time this work was carried out by a court welfare officer (CWO) who worked for the probation service. Guidance at the time suggested that the CWO should also consider conciliation with couples if reconciliation was not an option.<sup>32</sup>

### **2.4.2 Development of mediation practice**

The presenting dichotomy of conciliation and reconciliation being performed by the same individual led to a degree of confusion. In a bid to clarify and understand the

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<sup>31</sup> See Manchester and Whitton, 1974 for further detail

<sup>32</sup> See Parkinson, 1986b for further detail



actual work performed by the CWO, the scope and role of the CWO was investigated and findings were published in The Report on the Committee on One Parent Families (Finer, 1974). This found that the court welfare services focused on *reconciliation* rather than *conciliation*. Armed with this knowledge, the committee sought to provide a distinction between each term:

*'By 'reconciliation', we mean the reuniting of spouses. By 'conciliation' we mean assisting the parties to deal with the consequences of the established breakdown of their marriage, whether resulting in divorce or separation, by reaching agreements or giving consents or reducing the area of conflict upon custody, support, access to and education of the children, financial provision, the disposition of the matrimonial home, lawyer's fees and every other matter which calls for decisions on future arrangements (ibid: para 4.288).'*

The report also identified the fact that conciliation had substantial success in making the consequences of marriage breakdown civil (ibid: para 4.311). The recommendation was that 'dead marriages' should be buried decently. Decency was described as diagnosing the practical needs of the family by using other agencies to work with both the parties, (the person being left is described as the victim), to resolve the breakdown by reducing blame accusations, and to make rational and efficient arrangements for their children (ibid: para 4.313).

The report referred to 'agencies' and it was envisaged that those would be in addition to the court welfare service and would include social services and specialist organisations involved with marriage guidance (ibid: para 4.315).

Suggestions were made in the context of the committee's proposals for a unified family court, following which, initiatives were taken locally by different groups, each with their own aims along with their own individual interpretation of and approach to conciliation. One key commentator of that time later observed that:

*'Partly as a result of the ambiguity of the Finer Committee's definition 'conciliation' has become a fashionable portmanteau word carrying whatever bundle of meanings and values its user chooses to pack into it (Parkinson, 1986b p 65).'*

This marked the beginning of the tensions relating to conceptualising what conciliation actually was by way of principles, process, and practice and was extremely worrying. Parkinson identified a number of concerns that needed to be addressed:

The concerns were:

- i. The need to provide an alternative to the adversarial system in the divorce courts,*
- ii. To protect children involved in their parents' divorce,*
- iii. To give people more control over their own affairs and reduce their reliance on formal institutions,*
- iv. To achieve greater administrative efficiency by processing contested cases more quickly,*
- v. To reduce public expenditure, particularly on legal aid and to stem the rising tide of divorce (ibid: p 67).*

From Parkinson's perspective, these concerns encouraged the escalated growth of conciliation in England and Wales following the Finer Committee report.

### **2.4.3 Development of provision**

The first 'in-court' conciliation service opened in 1976 and was followed by the first independent service in 1977. Both of these services were based in Bristol. Other services subsequently opened in sporadic locations in England and Wales, each with their own unique approach to conciliation. One example of this being South East London Mediation Bureau, who adopted the Coogler (1978) model of mediation.

With conciliation services emerging that employed practitioners from various professions e.g. the in-court conciliators (being welfare officers from the probation service) and independent conciliators (being qualified social workers or marriage guidance counsellors), there was a need to monitor the development and progress of these services.

Growth in the number of services in the not for profit sector led to the establishing of the National Family Conciliation Council (NFCC), which was set up with a remit to provide some guidelines on the objectives and function of conciliation in matrimonial disputes, and on communication between conciliators and solicitors. It also developed the first family mediation training programme for the not for profit sector (NFCC

1984). This was an important milestone in the profession, which was supported by government interest.

The government interest in conciliation services continued and in 1983, the Report of the Inter-departmental Committee (Robinson, 1983) was published. This research had investigated out of court conciliation services from a value for money perspective and focused on conciliation for parents with issues relating to children. While it acknowledged that out of court conciliation services were valuable resources, they concluded that these services should operate with local support and volunteer effort. Thus, no funding for the provision of family mediation was made available at this stage.

Despite the continued lack of funding from the government, in 1986, the Committee on Matrimonial Causes Procedure recognised conciliation as part of the separation process. As a result of this recommendation the Lord Chancellor's Department (LCD) commissioned research into the cost effectiveness of mediation (Ogus, Walker, and Jones-Lee, 1989). This research produced a report that suggested that a National Conciliation Service could reduce the ever increasing costs of separation.

Conciliation continued to focus on the resolution of child issues. However, NFCC continued to develop the scope of family mediation and in 1990, they established a pilot scheme that focused on comprehensive mediation<sup>33</sup>. This was seen as positive progress by the mediation fraternity and possibly the start of tension between lawyers and mediators. It was potentially seen as a threat to the lawyers livelihood, as discussed by Roberts (1992).

The comprehensive mediation pilot continued and in 1993 the government published the consultation paper *Looking to the Future* (HMSO, 1993), which fully investigated marriage, marriage breakdown and divorce - and focused specifically on mediation. This document led to the publishing of a white paper which set out the government's proposals for divorce reform and included mediation as part of the divorce process. It also established the principle of public funding for mediation services (HMSO, 1994).

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<sup>33</sup> This was to become the All Issues Mediation as it is known today

As a direct result of this white paper, the UK College of Family Mediators (UKCFM) was set up as a single body to which, along with NFM, many other mediation bodies became affiliated. , The contention was to have a single point of contact for family mediation services. Many of the proposals in the 1994 report were included in the FLA 1996. Specifically in this act was the provision of public funds for the costs of mediation for couples who were separating.<sup>34</sup>

Meanwhile, in 1996 the Legal Aid Board (LAB)<sup>35</sup> set up the Family Mediation Project that was a pilot scheme for the provision of legal aid for mediation. This was followed by the development of competence assessment and continuing professional development guidelines through the collaboration of UKCFM and LSC. Thus over a period of two decades there were many changes and developments in the mediation profession.

There were now two clear options for dispute resolution for parents who were separating. The not-for-profit (out-of-court) sector felt the need to differentiate the services that they offered, from those delivered by the in-court conciliation service. The NFCC became the National Family Mediation and Conciliation Council (NFMCC), thus including mediation in its remit. After the partial enactment of the FLA 1996, NFMCC removed all reference to conciliation from its name and became National Family Mediation (NFM).

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<sup>34</sup> The availability of funding was subject to a means assessment

<sup>35</sup> The LAB was subsequently renamed and was known as the Legal Services Commission (LSC) during the data collection period. The LSC subsequently became the Legal Aid Agency (LAA) in April 2014

## **2.5 Mediation after the Family Law Act 1996**

The proposals in the FLA 1996 gave the not-for-profit sector the impetus it needed to develop family mediation in the UK. As previously mentioned, the LSC and UKCFM started to work on development of public funded mediation services.

### **2.5.1 The mediation pilot project**

Some entities that operated in the not-for-profit sector were given the opportunity to take part in the pilot project, conducted between 1996 and 2000 (Lloyd, 1997), and consisted of four phases. Following the successful completion of the pilot project, legal aid by way of public funding was made available to couples who were separating. This funding was only available to them through mediation services who had been awarded a franchise<sup>36</sup> by the LSC.

### **2.5.2 Mediation quality mark**

Following the introduction of legal aid for family mediation, the matter of 'quality of provision' was addressed by the introduction of the Quality Mark Standard for Mediation (QMSM), in 2002. This meant that public funded family mediation in England and Wales was only provided by mediation services that worked within this prescribed framework and access to this provision was by application to and award by the LSC. The purpose of this framework was (and still is) to ensure that those on a lower income are given help with the cost of mediation through public funding. Eligibility is determined by means tested assessment, and those that are assessed as eligible not pay for the service.

There are some restrictions within this framework, the main one being financial and related to monies paid to the mediation service by the LSC. The payments are per stage of the mediation process and not linked to the amount of time that a case might take. This can, in some cases restrict the amount of time spent with clients at each session and as a consequence the amount of overall time each mediation case is allowed. Reflecting these restraints, the main focus of mediation is on the practical issues associated with separation.

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<sup>36</sup> These franchises were later converted to contracts

At the time the data for this research was collected, separate payments were given for:

| Payment            | Purpose   |
|--------------------|---|
| Willingness test   | Are clients prepared to attend an assessment meeting? <sup>37</sup>   |
| Assessment meeting | Payment being dependent on whether clients attend the MIAM separately or together                             |
| Mediation sessions | Payments being dependent on the issues mediated on and whether solo or co-mediation takes place <sup>38</sup> |

**Table 2** Legal Services Commission payments (pre April 2013)

Mediators practising within this framework, have to be formally recognised by the LSC as ‘competent to practice’. To achieve this recognition they have to submit a portfolio for assessment of competence to practice as a family mediator. There is also a requirement for mediators to be members of a recognised professional umbrella body such as NFM. Training for new mediators (in England and Wales) is a facilitative mediation model delivered on courses that have been approved by UKCFM<sup>39</sup> and provided by NFM (2004) as an approved provider.

### 2.5.3 Mediation training

Until 2007, trainees had to secure a placement within an NFM member service to be accepted on the training course. This changed, and trainees are accepted on the course as long as they can observe mediation during the course. Where a trainee secures an ongoing placement with a mediation service, the approved training ensures that all practising and recognised mediators work within the same prescribed framework. Where a trainee does not secure an ongoing placement it is fair to suggest that this change in training, poses an ethical issue by potentially diminishing the

<sup>37</sup> This payment was discontinued in 2013

<sup>38</sup>

| Category of Work                    | Single Session | Multi Session | Agreed Proposal |
|-------------------------------------|----------------|---------------|-----------------|
| All Issues of Sole Mediation        | £168           | £756          | £252            |
| All Issues Co-Mediation             | £230           | £1,064        | £252            |
| Property and Finance Sole Mediation | £168           | £588          | £189            |
| Property and Finance Co-Mediation   | £230           | £834          | £189            |
| Child Sole Mediation                | £168           | £462          | £126            |
| Child Co-Mediation                  | £230           | £647          | £126            |

<sup>39</sup> This function is now carried out by the Family Mediation Council

profession; a certificate of completion of training is enough to allow the holder to secure fee paid work.<sup>40</sup>

The training consists of five core modules and covers:-

1. Mediation Process and Skills
2. Making Mediation Safe
3. Children and Diversity
4. Finance and Property
5. Skills Integration

The mediation process is discussed further in 2.6 below and skills by way of the mediator tool bag in 2.7.4 below. Making mediation safe is discussed in 2.7.2 below. This module relates directly to the primary and secondary research questions. Each of these modules is designed to enable the trained mediator to follow the mediation process, which comprises of five stages as described in 2.6.1 below.

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<sup>40</sup> The mediators in this study were all supported by a service, either by sponsorship or personal payment

## 2.6 The Mediation Process

### 2.6.1 NFM - five stages of Mediation

Follows, a conceptual model and a general outline of the mediation process which is adapted to the particular circumstances of each case:

|  |   |
|--|---|
| <b>Stage 1</b><br>Establish the arena (MIAM) | <b>LSC MQM 1.1 Establish the appropriateness of mediation</b><br><b>LSC MQM 1.2 Agree the conditions and boundaries of mediation</b> <ul style="list-style-type: none"> <li>• First contact and reception</li> <li>• Facilitating communication</li> <li>• Searching; Choosing</li> </ul> |
| <b>Stage 2</b><br>Clarifying the issues      | <b>LSC MQM 2.1 Establish the issues for the parties</b> <ul style="list-style-type: none"> <li>• Agreeing and defining the agenda</li> <li>• Facilitating communication</li> <li>• Fact-finding; Gathering data</li> </ul>  |
| <b>Stage 3</b><br>Exploring the issues       | <b>LSC MQM 2.2 Explore the issues with the parties</b> <ul style="list-style-type: none"> <li>• Managing differences in the early stages</li> <li>• Managing high conflict</li> <li>• Facilitating communication</li> <li>• Explore; Clarify</li> </ul>                                   |
| <b>Stage 4</b><br>Developing options         | <b>LSC MQM 2.3 Assist in the identification and evaluation of potential options</b> <ul style="list-style-type: none"> <li>• Facilitating communication</li> <li>• Furthering information exchange and learning</li> <li>• Narrowing differences</li> </ul>                               |
| <b>Stage 5</b><br>Securing agreement         | <b>LSC MQM 2.4 Build and secure agreement between the parties</b> <ul style="list-style-type: none"> <li>• Concluding Mediation</li> <li>• Bargaining; Ritualising the outcome</li> </ul>   |

Table 3

NFM five stages of mediation<sup>41</sup>

As you will see in the table above, with the exception of stage 5<sup>42</sup> of the NFM model, the prime role of the mediator is to facilitate communication, which is described by some mediators as ‘enabling a difficult conversation to happen.’<sup>43</sup>

<sup>41</sup> Adapted from the Five Stages of Mediation (Vanderkooi & Pearson, 1983)

<sup>42</sup> Whilst this is not discussed in this thesis, stage five is very much focused on facilitating communication that enables clients to reach an agreement

<sup>43</sup> See for example Parkinson, 1997 pp 97-124; Roberts, 2008 p 10



While the stages define the process, they are not necessarily conducted in a linear manner (Parkinson, 1997 pp 97-124), and as previously mentioned, they deal predominantly with the practical issues relating to separation.

### **2.6.2 Introducing the NFM MIAM**

Stage one is the introduction session (see for example Hopper, 2001 p 435; Moore, 2003 p 66). It is designed to deal specifically with gathering facts about the individual in terms of biography, a précis of the dispute and the issues that are to be discussed in mediation.

This session also assesses the client's ability to work in the same room as their former partner, screening for previous domestic abuse (DA)<sup>44</sup> and enabling discussion regarding the welfare of any children in the family. Finally, each client is assessed separately, to ascertain whether they are eligible for public funding to help with the cost of mediation.

The purpose of MIAMs meetings is for clients and mediators to meet one another and decide whether mediation appears suitable for the dispute, taking into account the people involved, and all the circumstances. It is as a three-way<sup>45</sup> process of information exchange and acquisition for couples who are separating/divorcing. It assists them in deciding if mediation will help them resolve the practical issues associated with their separation. It also allows the mediator to assess the suitability of the clients and their issues for mediation.

There are three clear parts to the MIAM session, which should be conducted within a time-frame (specified by the LSC) for that meeting. If clients attend a joint MIAM, mediators allow up to one and a half hours. If clients attend a single MIAM forty-five minutes is allowed.

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<sup>44</sup> This is dealt with during the clients separate session and is a softer way of approaching violence

<sup>45</sup> The mediator and the two clients

### 2.6.3 The structure of the NFM MIAM

By way of introducing the session, mediators summarise the stages detailed below at the beginning of the meeting, checking the client's expectations. They then explain the session as an assessment session that allows them to clarify the current situation. The mediator will also explain the mediation process and both mediator and client(s) discuss the next steps.

#### 2.6.3.1 Information – gathering and giving

During the first part of the session the following is explained:

- i. Purpose of the meeting and the amount of time it will take
- ii. The mediation process and the key principles of mediation, which include its voluntary nature, impartiality, and confidentiality
- iii. Issues that can be addressed in mediation
- iv. Gathering factual information and checking information already held.

#### 2.6.3.2 Assessing suitability (separate meeting)

- i. Giving information about the cost of mediation, the likely costs of legal representation, and assessment of financial eligibility for legal aid.
- ii. Receiving some explanation from each client about the current situation
- iii. Clarifying the issues that the client would like to bring to mediation and exploring the feasibility of these issues
- iv. Screening for *domestic abuse* (see 2.5 below)
- v. Exploring the client's ability to negotiate
- vi. Screening for child protection issues
- vii. Checking children's understanding of the current situation
- viii. Exploring other options for resolution and giving information about other local services available, explaining how they differ from mediation.

#### 2.6.3.3 Making a decision

- i. Discussing and deciding together whether to proceed further
- ii. If mediation is proceeding, giving information about the next steps
- iii. If mediation is not proceeding, giving information about who will be informed and how, paperwork that needs to be completed and next steps for that client.

## **2.6.4 Screening for domestic violence - MIAM**

### **2.6.4.1 Background**

Richards (1997) who is a family mediator, suggests that at least 50% of couples that attend mediation disclose some level of violence in their relationship. There is also some suggestion that violence occurs in nearly 50% of all couples in relationships. This percentage includes couples who are not considering separation. On the assumption that the above statistics are true, domestic violence screening is a critical part of the MIAM session.

Screening for domestic violence exists to establish whether clients can work together in a balanced way, without fear of intimidation, (see for example Roberts, 2008 pp 230-233; Taylor, 2002 pp 189-192). No further action is taken by the mediator regarding any abuse disclosed if the client confirms that they are happy to work with the 'abuser'. Clients may, however, be 'signposted' to another agency if the mediator deems it necessary. The mediator's responsibility is to assess risk in terms of the clients working together throughout the mediation process.

### **2.6.4.2. Methods of Screening**

There are three methods of screening suggested in mediation policy. These are by telephone, by questionnaire or by an individual meeting. Of the three screening methods suggested there is a preference for screening to be conducted face to face, as it enables the mediator to assess body language and look at non-verbal reactions. It also allows mediators to deal with any emotions that a client expresses.

Good practice guidelines recommend that mediators use a range of questions (such as indirect, impartial), during the screening process, although 'direct questions' are discouraged. The mediator should accept the client's 'perception' of the violence and not judge the client, or their situation. The practice guidelines also state that screening for domestic violence should take place throughout mediation and not just during MIAMs.

Should screening establish domestic violence, the mediator will assess the risk (in terms of physical safety) in relation to the issues. If the client wishes to proceed with mediation, further discussion will take place to determine safety strategies for both client and mediator. If a decision is taken not to proceed, mediation is terminated, and 'next steps' are discussed.

### **2.6.5 Joint Meetings (JMs)**

Stages two to five, as detailed in 2.6.1 above, deal with the joint mediation meetings. The process is future focused and designed to avoid reference to the past, leave out fault and blame, and encourage couples to make decisions for the future.

During each of these stages, couples are invited to deal with financial disclosure, agree contact arrangements for the children, make decisions on future accommodation and discuss and agree the division of any assets that may have accrued, (see for example Roberts, 2008 p 48).

With the process being the standard framework, mediation services do not differentiate between clients who receive public funding and those who pay their costs. The process followed for all cases accepted for mediation, is the same for all who participate.

## **2.7 The mediator**

### **2.7.1 Profile**

The minimum qualification for acceptance for training as a family mediator is either a first degree or five years' experience in an associated 'helping profession' such as social worker or court welfare officer. There is also a requirement that the prospective mediator demonstrates personal qualities that show an aptitude for mediation and a commitment to Continuing Professional Development (CPD). Until 2007, these qualities were determined by an interview process prescribed by NFM, where a panel of LSC recognised mediators determined (in their opinion) whether the applicant is suited to mediation practice. After 2007, few interviews took place and the 'suitability factor' became a self-certification process by the applicant.

### **2.7.2 NFM - Qualifications and training**

This section gives an overview of mediator qualifications and training and specifically highlights the inadequacy of the core training provided for screening for domestic violence.

#### **2.7.2.1 General**

Mediators must have completed a training course approved by the FMC. To mediate on cases where a client is funded by the legal aid agency, mediators must have completed the LSC competence portfolio.

Mediators should have regular supervision and the minimum requirements by the LSC<sup>46</sup> is one hour per quarter, even if the mediator has not conducted any mediation. There is an expectation that CPD is ongoing, with a minimum of ten CPD points per year gained by each mediator.

#### **2.7.2.2 Screening for domestic violence**

The training for screening is part of the Making Mediation Safe module and there is two hours allocated on the agenda for this part of the training course.

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<sup>46</sup> The LSC is now known as the Legal Aid Agency LAA

Trainees are initially given a hand-out with a grid that contains six statements. These are:

- a. sometimes women who get hit ask for it
- b. it is people's own business what goes on at home
- c. domestic violence normally happens in low-income families
- d. people who stay in violent relationships must enjoy it
- e. calling names is not abuse
- f. violence towards partners in some cultures is accepted

The trainees are asked to respond to these comments with yes or no answers.

They then watch a vignette that depicts the development of a violent episode within a relationship. The screening of this vignette is followed by a discussion of how each trainee feels after watching domestic abuse 'in action'.

The next stage of the training focuses on varying levels of violence that range from one-off incidents to more severe incidents. Details of these follow in tables 4-6 below. (These tables and their content are taken directly from the NFM training manual).

| <b>Partner a</b>       | <b>Mutuality</b>  | <b>Partner b</b>  |
|------------------------|---|---|
| No change in behaviour | No abuse<br>Cooperation<br>No dominant party<br>Equivalent power<br>Hurtful behaviour e.g. name-calling, withholding affection;<br>Arguments without violence | One off incident – pushing shoving. Remorse and no repetition |

**Table 4** NFM Screening for domestic violence – an isolated incident<sup>47</sup>

The suggested violence in table four of abuse focuses on physical abuse and does not take other abuses into account. It also suggests that impact of the behaviour on the client should be accepted, one example being name calling.

| <b>Partner a</b>  | <b>Mutuality</b>   | <b>Partner b</b>   |
|---|--|--|
| May change behaviour/remorse<br>Give way at times finds | Some abuse<br>some cooperation<br>hurtful behaviour e.g. | Rewards may change behaviour<br>Often the dominant party |

<sup>47</sup> NFM, (2001 revised in part 2004) *AICTP Training Manual*, Bristol: National Family Mediation

|  |  |   |
|--|--|---|
| challenge hard<br>Feels undermined<br>Worries<br>attempts to avoid, fearful,<br>submissive | name-calling, withholding,<br>affection, silences,<br>arguments with threats,<br>physical violence | minimises, and states<br>remorse, guilt<br>remorse, guilt, blames<br>Partner, substance abuse |
| <b>Extent? Duration? Frequency? Intent? Attribution? Context? Future?</b>                  |  |   |

**Table 5** NFM Screening for domestic violence – multiple incidents<sup>48</sup>

Table 5 suggests other abuses that may be present, but no guidance is provided as to how to elicit such information.

| <b>Partner a</b>  | <b>Mutuality</b> | <b>Partner b</b>   |
|---|------------------|--|
| Wary<br><br>Submissive<br>Restrictive options fearful,<br>Self-blaming<br><br>Lack of support systems<br>low self-esteem, hiding<br>abuse, denial<br><br>Prosecution<br><br>Degradation/humiliation<br><br>Fearful of social agencies | Some cooperation | Abusive<br><br>Dominant party<br>Withholding affection,<br>money<br>Threats<br>threats to kill – partner,<br>self, children, pets<br>destruction of property<br><br>isolated family/friends<br>violence<br>violence with a weapon<br>violence leading to injury<br><br>Previous convictions for<br>violence (family/other)<br><br>Rape/sexual assault<br><br>Child abuse |
| <b>Serious risk factors, alarm bells, risk increases with each factor</b>   |                  |  |

**Table 6** NFM Screening for domestic violence – serious abusive incidents<sup>49</sup>

Whilst the above tables give some guidance on the *range* of domestic abuse and in the case of table 5, some options to consider in terms of making mediation safe, there is no evidence of that mediators are trained to recognise abuse that is inferred by clients during mediation sessions.

<sup>48</sup> ditto

<sup>49</sup> NFM (2001 revised in part 2004) *AICTP Training Manual*, Bristol: National Family Mediation

The final part of the training is the introduction of extracts from a paper entitled *'Uncovering gender differences in the use of marital violence - the effect of methodology'* (Nazroo, 1995).

- i. Women equally or more likely to hit partners
- ii. Focus of debate is on research methods
- iii. Studies which only measure acts of aggression failed to demonstrate crucial differences between male and female DV
- iv. Studies must include context and meaning
- v. Male perpetrated violence is more likely to lead to serious injury and greatly increased anxiety in women
- vi. Female perpetrated violence has neither of these consequences for men
- vii. Central theme of the debate - is it an issue of male violence against women in a patriarchal society or about violent spouses?
- viii. E.g., study analysis couples (GP list gender-diff stress) found that 55% of women and 38% of men were violent in current relationship
- ix. However, it used the same study data on 'danger' violence
- x. 8% of women and 20% of men used danger levels
- xi. Excluding self-defence (from the same percentage) - perpetrators are 90% male 90% and 4%female (i.e. 4/96 women). Of these 19 females, eight worked her rise with frequent protracted severe beatings - serious injury. As for male victims only one beaten/kicked/punched (a psychotic episode)
- xii. Levels of injury data equal 1/96 men, 9/96 women SI (I assume this means serious injury)
- xiii. Women are significantly more likely to have anxiety symptoms than men after DA. Being female does not increase the risk of anxiety as female perpetrators are more likely to stop violence than men when they have the advantage.
- xiv. Similar differences between intimidation effects

This training material contains a wealth of pertinent information relating to the psychology of domestic violence, but the context in which it is presented (i.e. a two hour training session), coupled with the focus on research methodology, does not equip the trainee with the skills needed to effectively question, discuss and identify domestic violence.

### **2.7.3 The code of practice relating to the conduct of mediation**

Mediation is conducted under the premise that a mediator should consider the possibility of reconciliation throughout the process. At the outset of mediation clients must be advised, how mediation differs from other relationship interventions such as therapy, legal representation or marriage counselling. The key principles of mediation,



as detailed in 2.2 above, should be explained to them and should include the extent of disclosure required by them, particularly in financial cases.

The terms, upon which mediation is to be undertaken, is agreed with both clients at the beginning of the process. These should include payment of fees charged, the anticipated duration of mediation and the requirement for notification to their legal advisors that the mediator has been appointed. The mediator should then work with clients as detailed in the NFM five stages of mediation as previously described.

#### **2.7.4 The 17 tools in the NFM mediator tool bag**

Mediators have access to a large number of techniques and skills when they are working with clients during mediation. These are referred to as 'tools' during the mediation training programme, and this section gives an overview of each of the 17 core tools prescribed. In addition to these tools mediators use many other strategies and an extensive list is available in Appendix A. These strategies help the reader to understand what becomes apparent (related to domestic violence) in the analysis of the data and presentation of the findings in chapters six and seven, and specifically inform the research questions that relate to how mediators manage disclosure of abuse. Also, expressions of emotion by clients and expressions of concern about the welfare of children are supported.

The 17 tools listed below provide a summary of each tool, using the original headings cited in the NFM training manual (NFM, 2004).

##### **2.7.4.1 Acknowledging positions**

Involves the mediator 'listening to' and 'reflecting on', positions and feelings that individual clients may have about the situation. The purpose of this is to let clients know that their individual anger, distress or worries, have been heard and understood by the other client and the mediator.

##### **2.7.4.2 Appropriate language**

This involves being careful to ensure that the wording used is accessible to the clients, for example avoiding the use of technical or legal jargon. It is often helpful to pick up

on words and descriptions employed by the clients themselves. However, in joint sessions with both clients present, the use of positive reframing of destructive or negative comments may be more helpful to the negotiations.

#### 2.7.4.3 Co-mediating

This is one mediator's ability to work with another mediator by jointly managing the mediation session. To achieve this, there is a need to be clear about each mediator's role, as well as a need to monitor the meeting to ensure that the mediators are working together effectively, in terms of helping clients to identify a way forward.

#### 2.7.4.4 Child focus

Using this technique, the mediator refocuses discussions during the meetings, away from the current conflict between parents and toward shared concerns/interests as parents, about the needs of their children.

#### 2.7.4.5 Clarification

This involves asking questions or summarising to clarify a position or factual information. This can be of benefit to the mediator or can be used to ensure that the other client has fully understood what has been said by either the other party or the mediator.

#### 2.5.4.6 Engaging

This tool enables clients to feel involved and listened to in the mediation process. This needs to be included from the first contact with a client. Mediator impartiality maintains client engagement along with many skills outlined in this section (see also Appendix A).

#### 2.7.4.7 Future focus

Moving discussions forward from what has happened in the past to what clients want to happen from now onwards.

#### 2.7.4.8 Managing conflict

This is often achieved by using a combination of the other skills listed here. The aim is to use the energy of the conflict in a positive way, to move negotiations forward. It also derives from an awareness of when to take a break (from negotiations), or temporarily draw in angry exchanges towards the mediator, who can reframe them. An example of this might involve asking an angry client to direct their concerns to the mediator, as opposed to shouting or verbally abusing their former partner.

#### 2.7.4.9 Mutualising

This involves the redefining a problem that is viewed by one party as the sole responsibility of the other party, so that it becomes a shared problem that can be worked on and solved together. The purpose of this is to move clients away from individual and opposing positions, towards shared problems, goals and subsequently shared solutions.

#### 2.7.4.10 Normalising

Here, the mediator acknowledges concerns or experiences of clients and notes that they are common to many people in similar circumstances. The purpose of this is to reassure clients that the difficulties they are experiencing, are not unique or abnormal and are tackled and overcome on a regular basis by others.

#### 2.7.4.11 Open questions

These are a range of questions designed to encourage clients to expand on an area, giving information on the issues, concerns and goals behind the negotiating positions. These questions encourage a detailed response and start with the words 'who'; 'what'; 'where'; 'how'; 'why'; or 'when' (Hargie, 2011 p 124).

#### 2.7.4.12 Positive reframing

Reframing re-presents a negative, emotional, past-focused, or destructive viewpoint, in a positive future-focused and constructive way. An example of this might refer to something that a client did not like in the past, to that what they would like from now onwards.

The key objectives of reframing are:

- i. to advance the negotiation
- ii. defuse conflict
- iii. make the content of the communication more likely to be listened to by the other clients
- iv. and to facilitate the speaker in hearing the content in a different way.

Reframing, advances negotiation by creating strategic opportunities. It puts a different perspective on ideas expressed, helping clients get through apparent impasses thus depolarising the parties. Reframing requires that something is 'deconstructed' and then reframed.

Some examples of things that may need reframing are criticising, name-calling, diagnosing, ordering, threatening, moralising, excessive or inappropriate questioning, advising, and illogical argument.

#### 2.7.4.13 Power balancing

Here, the mediator takes steps to allow both clients to participate in mediation on an equal basis. Being impartial is not the same as being neutral where one person is in some way at a disadvantage in negotiations. The mediator will need to take active steps to enable that person to have an equal say in mediation so as to continue to an equitable agreement.

#### 2.7.4.14 Reality testing

This tool is often used during the 'option development' and 'securing agreement' stages of the mediation process and is designed to encourage clients to think through how their arrangements might work in practice. It is used in conjunction with other skills such as 'child focus'. Clarifying details such as pick-up and drop-off times can be helpful during this part of the process.

#### 2.7.4.15 Remaining impartial

This requires an ability to resist being drawn into taking sides with either party or making judgements about the situation being mediated. Just as importantly, it is a skill to be seen to be impartial by both clients and this is often achieved, through a blend of other tool bag skills. Examples of these are, acknowledging both positions, using appropriate language and mutualising.

#### 2.7.4.16 Solo-mediating

A single mediator manages the mediation session and prepares all of the necessary paperwork, on their own.

#### 2.7.4.17 Summarising

Refers to the mediators ability to 'sum up' what clients have just said, and check that the summary is accurate. The purpose of this, is to illustrate to the client, that their point of view has been heard and correctly understood by the mediator and the other party.

## **2.8 Evaluating the mediator tool bag**

The NFM tool bag can be evaluated in relation to other sets of published mediation tools. It can also be evaluated in terms of its usefulness in responding to allegations of inferences of domestic violence during mediation.

The NFM mediator tool bag comprises of 17 tools and was compiled in 2004 and notated in course handbook two (module one) as an NFM document. The tools are a combination of 'principles' of mediation, and some of the main skills used by a mediator; the tool bag also includes two models of mediation.

Comparing these tools with the three seminal texts available at the time the training course was developed, (Haynes, 1996, Parkinson, 1997 and Roberts, 1997), it is fair to say that only Parkinson's book (pp 362 to 363) contains a comprehensive list of mediation skills. This list includes the skill of (active) listening, which is absent from the NFM tool bag. This has to be considered as a serious omission, as without this skill, it is almost impossible for the mediator to bring other skills 'into play.'

Roberts makes some mention of various skills throughout her book, which are context related and do not stand alone as individual skills, while Haynes interweaves mediation skills with the 'process' of mediation.

In other types of mediation training, for example Community (Crawley, 1995) and Peer (Bowers and Rawlings, 1996), the trainees are provided with a comprehensive list of skills in their handbook. Both lists include (amongst other skills) listening. Additionally, there is evidence that makes it clear that a major focus is placed on exercises relating to listening in these training courses. No such evidence exists for NFM training. Another key skill absent from the NFM tool bag and mentioned in both community and peer mediation handouts is empathy, which is the ability to understand the thoughts and feelings of another person, by ostensibly 'walking in their shoes'.

When comparing the skills training for NFM family mediation and community mediation, it is worthy of note that NFM trainers spend less time on skills development than community mediation trainers do. These trainers cluster the skills development into a number of core areas, which include general skills (akin to the NFM tool bag), such as active listening, questioning, facilitation, co-mediation and balancing power.

The final comparison drawn is a combined taxonomy of mediator's skills strategies and techniques are in the appendices (A), which is compiled from Haynes, Parkinson and Roberts books detailed above. This list reflects a broad range of skills and strategies, some of which are referred to during data analysis. These are discussed in more detail as they occur in Chapters six and seven and will show how some tools (e.g. mutualising, reframing and normalising), can lead to the silencing of domestic violence, by being managed by mediators as bad behaviour.

## **2.9 Conclusion**

In this chapter, the key principles of mediation were discussed and it was noted that these principles outline the 'philosophy' of mediation. Additionally, and based on written commentary, this chapter considered the changing concepts of mediation process and practice and current process and practice of mediation was detailed with a general focus on the five stages of mediation, with a specific focus on screening for domestic violence. It was found that the process for screening for domestic violence changed significantly after 1997 when part of the FLA 1996 was enacted. However, it must be noted that this act was not implemented for divorce law (part 2 was not implemented and s29 of part 3 focused on Legal Aid in family matters; this was subsequently repealed).

Finally, the profile of the mediator, along with the required qualifications and training were outlined, and the 17 tools of the mediator tool bag were described. Much of this material is open to individual interpretation, and this interpretation presents problems in terms of consistency of practice. Chapter three will focus on mediation research, policy and legislation and focuses on commentary that relates to domestic violence and mediation.

## 2.10 References – chapter two

- Crawley J. (1995) *Training Manual in Community Mediation Skills*, Bristol: Mediation UK.
- Hargie O. (2011) *Skilled Interpersonal Communication - Research Theory and Practice*, East Sussex: Routledge.
- Haynes JM and Charlesworth S. (1996) *The Fundamentals of Family Mediation*, Sydney: The Federation Press.
- HMSO. (1979) *Marriage Matters*, London: HMSO.
- HMSO. (1993) Lord Chancellor's Department. Looking to the future. Mediation and the ground for divorce. A consultation paper. Cmnd 2424.
- HMSO. (1994) *Lord Chancellor's Department looking to the future mediation and the ground for divorce the government's proposals*, London: HMSO.
- Hopper J. (2001 ) The Symbolic Origins of Conflict in Divorce. *Journal of Marriage and the Family* 63.
- Lloyd H. (1997) Legal Update: Family mediation pilot - the Legal Aid Board is set to launch the first phase of its pilot of publicly funded mediation. *Law Society Gazette*.
- LSC. (2002) *Quality Mark Standard for Mediation*, London: Legal Services Commission.
- Moore CW. (2003) *The Mediation Process*, San Fransisco: Jossey-Bass.
- Nazroo J. (1995) Uncovering Gender Differences in the Use of Marital Violence: The Effect of Methodology. *Sociology* 29: 475-494.
- Parkinson L. (1986) *Conciliation in Separation and Divorce*, London: Croom Helm.
- Parkinson L. (1997) *Family Mediation*, Australia: Sweet and Maxwell.
- Roberts M. (1997) *Mediation in Family Disputes (Principles of Practice)*, Hampshire, England: Arena.
- Roberts M. (2014) *a-z of mediation (sic)*, Basingstoke, Hampshire: Palgrave Macmillan.
- Roberts S. (1992) Mediation in the lawyers' embrace. *The Modern Law Review* 55: 258-264.
- Robinson PD. (1983) Report on the Inter-departmental Committee on Conciliation.



## Chapter 3            Mediation: Policy, Legislation, Research, and Commentary

### 3.1 Introduction

Chapter two focused on the principles, process and practice of family mediation, giving an insight into the early development of the practice in England and Wales. This chapter focuses on policies and legislation that guided the development of mediation as well as research and commentary that relates to domestic violence and mediation.

The data is organised within three legislative timeframes that relate to the research timing and focus.

These are:-

- i. Before the Family Law Act 1996<sup>50</sup>
- ii. After the Family Law Act 1996 to January 2011.<sup>51</sup>
- iii. Post data collection 2011 to 2014.<sup>52</sup>

Within each of these legislative timeframes, the following will be reviewed and discussed as available:-

- iv. Policy and legislation
- v. Domestic violence and mediation
- vi. Key research, books and other relevant commentary.

#### 3.1.1 Methods deployed – the search strategy

To achieve the above, documentary and archival research was conducted, specifically limited to commentary authored in England and Wales; the purpose of this research is to focus on the jurisdiction where the data collection took place.

Sources of data included research reports, journal articles, books, House of Commons Green and White Papers and mediation-focused reports from government departments. The data was sorted chronologically and then discussed, by decade, content as detailed in 3.1.

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<sup>50</sup> 1970's to mid-1990's

<sup>51</sup> The date that the final data was collected

<sup>52</sup> The introduction of Practice Direction 3A (PD3a) February 2011 to the enactment of s10 of the Children and Families Act 2014

## **3.2 Before the Family Law Act 1996 - Legislation**

Mediation operates in the shadow of the law and specifically seeks to deal with the majority of issues detailed in the two Acts that follow:

### **3.2.1 Matrimonial Causes Act 1973**

The MCA 1963 was replaced by the Matrimonial Causes Act 1973 (MCA 1973), which required that a party petitioning for divorce had to satisfy a court that the marriage had irretrievably broken down. The evidence required, is proof of one or more of the five facts set out in s 1.2. Part two of this Act contains the orders and guidelines that relate to the redistribution of marital property or finances that a court can make before, upon, or after decree absolute, dependent on individual circumstances.

### **3.2.2 The Children Act 1989**

The aims of this Act were to have a single body of law relating to the care and upbringing of children and to provide a consistent set of legal remedies for all courts of law proceedings.

Section 1 of the Act contains three general principles:

- i. The welfare principle [s 1(1)], states that the welfare of the child is paramount in any discussions relating to their upbringing and/or administration of property or income,
- ii. The no order principle [s 1(5)] suggests that the court should not make an order(s) unless it feels that doing so is better for the child, than making no order at all.
- iii. Delays in court proceedings [s 1(2)], is likely to prejudice the welfare of the child. Where a court is considering a section 8 order, then a timetable should be drawn up that ensures that issues are determined without delay and gives directions that any timetable proposed should be adhered to.

Section 8 of the Act [s 8(1)] contains a range of orders that can be made in relation to the upbringing of a child where there is a dispute between individuals (usually, but not always parents):

- i. *Residence orders* determine who a child is to live with
- ii. *Contact orders* require that the person with whom the child lives to allow him/her to visit, stay or have contact with the person named in the order

- iii. *Prohibited steps order* prevents a parent doing something to the child without the consent of the court, one example being removing the child from the jurisdiction
- iv. *Specific issues order* - allows the court to determine issues relating to an aspect of parenting responsibilities such as schooling, health, and religion.

The *welfare checklist* provides seven criteria under s 1(3) of the Act:

- i. Physical or emotional and educational needs of children
- ii. The wishes and feelings of the child concerned
- iii. Likely effects on the child if their circumstances change because of a court decision
- iv. Age, gender, background and any other characteristics that will be relevant to the court decision
- v. Any harm which has been suffered or may be suffered by the children
- vi. The capability of his/her parents (or any other relevant person) to meet his/her needs
- vii. The range of powers available to the court in the given proceedings.

The process of family mediation is structured to explore all of the issues contained in both of the above Acts with two main differences in terms of outcome. The first is that the separating parties by working with a mediator reach an agreement that is acceptable to them both. The second is that the agreement is not legally binding immediately it is reached; an application for any agreement can be submitted to court, to be made legally binding, by way of consent order (subject to the no order principle).

### 3.3 Domestic violence and mediation

This section focuses specifically on research and commentary on domestic violence and mediation in England and Wales and is presented by decade. It does not include research and commentary relating to child contact or in court conciliation, which focus on children and are not within the scope of the thesis.

#### 3.3.1 Commentary in the 1970's

The majority of commentary in the 1970's focused on mediation as an emerging discipline (to the exclusion of domestic violence), with one notable exception. There was one key commentary on domestic violence and mediation, which related to the way the police dealt with cases of intimate violence. When a violent incident was reported there was a requirement for the police to consider other options for dealing with the dispute, which included advice and mediation (Maidment, 1977 p 411). These incidents were often referred to as 'just a domestic' (Eekelaar, 1975).

This indicates that the police view of violence at that time, coupled with a suggested reluctance to devote time to such cases, served to increase power imbalances in such relationships, by not suggesting strategies that might help the couple deal with their problems. In addition, the abused partner, usually the wife, would feel further isolation, as her complaint had not been taken seriously enough to warrant any support.

Other discourse from key commentators in the field at this time (Coogler, 1978; Coogler et al., 1979; Manchester and Whitton, 1974; Owens, 1975; Straker, 1979), focused on, domestic violence, mediation or conciliation<sup>53</sup> but not *domestic violence and mediation*.

For comparison, a single seminal mediation textbook from North America was published (Coogler, 1978), which again focused on the process and practice of mediation.<sup>54</sup> It made no mention of either domestic violence or power imbalance. In

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<sup>53</sup> At this time mediation was also referred to as conciliation both in-court and out-of-court

<sup>54</sup> It is worth of note that Roberts, 2014 p 22 draws on this model of mediation, citing the model as managing the 'procedure' of mediation as opposed to screening for domestic violence in joint meetings

sum, with one exception, the main discourse during this decade was on the development of the emerging profession in terms of practice and process.

### **3.3.2 Commentary in the 1980's**

#### **3.3.2.1 Research**

During this decade, domestic violence and mediation continued to be reported as separate issues, with the dominant discourse on mediation focusing on process and practice (Greatbatch and Dingwall, 1989; Dingwall et al., 1988; Dingwall, 1986). Included in this decade, was research that looked at client interaction during mediation sessions (Dingwall et al., 1988). Focusing on the manifestations of power in verbal behaviour, this study questioned whether women were advantaged or disadvantaged in the mediation process. This suggests that, at this time, domestic violence was still not fully recognised as a social problem and that the key commentators, whilst recognising an issue, related it (correctly) to power. Had this data been analysed today, the behaviours referred to would certainly have been identified as domestic violence.

Additionally, there have been seven research studies conducted on individual mediation services in the United Kingdom, one of which was in Scotland and is excluded from this review. Three of the remaining six studies focused on Bristol (Courts) Family Mediation Service (BFMS), which was the first family mediation service in England and Wales. Of those three studies, one focused on the influence that conciliators may have, on clients attending mediation.

This study of BFMS (Dingwall, 1988) considered the impact of the conciliators' behaviour on conciliation and examined 45 conciliation meetings from 15 cases handled by 3 conciliators. The main finding suggested that conciliators can influence the outcome of conciliation by bringing into play external standards and expectations, i.e. mediator skills and strategies.

### 3.3.2.2 Key commentators

Haynes (1984),<sup>55</sup> wrote about the 'intake' session outlining the process for this meeting. Within this article, no mention is made about screening for domestic violence, although issues of concerns in mediation such as threats made were considered to be positional bargaining as opposed to domestic violence.

In her first published book, Parkinson (1986b), wrote about how domestic violence could be managed during mediation (p 122), suggesting that cases in which fear of violence was present, could still be seen in mediation. She continued by stating that the focus for mediation at that time was to establish child access,<sup>56</sup> which suggested that any violence present, should not prevent a child from seeing or spending time with a potentially abusive father. To this end, it was felt that notwithstanding the fact that domestic violence was present in a relationship, the combination of the legal system working with a conciliator (mediator) allowed the participant to make appropriate arrangements for their children.

Whereas, another key commentator of the time (Roberts) had the first edition of her book that was published in 1988. This book was silent on the subject of domestic violence and consequently made no mention of screening for domestic violence.<sup>57</sup>

### 3.3.2.3 Book - Divorce Mediation and the Legal Process (1998)

This book arises from a seminar held at the Centre for Socio-Legal Studies in 1985, where researchers from around the world discussed the way their legal systems dealt with divorce cases through both conventional and 'alternative, channels. They found common ground in their dissatisfaction with the level of policy debate and the quality of the available research evidence. The first part of the book looks at current practice in the UK and the USA. The second and third parts examine alternative systems of

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<sup>55</sup> Commentary from Haynes is included in this review because although he became an American citizen, he was born in Isleworth, Middlesex. John passed away in March 2000

<sup>56</sup> At the time this research was conducted, access was known as contact

<sup>57</sup> Other mediation commentary during the decade focused on divorce (Murch, 1980), change and status (Wells, 1989; Wells, 1986), mediation or conciliation (Roberts, 1983; Parkinson, 1986a; Davis, 1988), and parenting (Guise, 1983; Davis and Roberts, 1989; Simpson and Roberts, 1989). None of these considered domestic violence or power imbalance

dispute resolution linked to and independent of the courts.<sup>58</sup> Specifically relating to domestic violence and mediation, serious concerns relating to violence and bitterness in matrimonial disputes were raised.<sup>59</sup> These related to the intensity of the mediation process. The view was that the (post separation) violence recognised by solicitors could be defused over a period of time (as opposed to potentially polarising positions during mediation).

### **3.3.3 Commentary in the 1990's**

#### **3.3.3.1 Research**

It was during this decade that commentary focused on domestic violence and mediation emerged, which led to the research under discussion. Two key pieces of research were conducted during this decade that focused specifically on domestic violence and mediation, one of which was conducted in the USA (Cobb, 1997).

During 1995 and 1996, research was carried out to determine in what ways and to what extent, family court welfare officers and NFM voluntary sector mediators, responded to a history of domestic violence in their practice (Hester et al., 1997).

It was conducted using questionnaires that were sent to family mediators and court welfare officers (Hester and Pearson, 1997). Concerned with the practice of voluntary sector mediation it was examined from the mediator's perspective. The findings of this research were quite disturbing in that it suggested that mediators 'don't do' domestic violence.

The findings were pivotal with regard to the development of practice and were considered prior to the intended implementation of the Family Law Act 1996. Relating to voluntary mediators it was found that:

- i. Only 11% of voluntary sector mediators taking part in this research used a primarily 'safety oriented approach' to their work – involving separate meetings with couples to identify domestic violence

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<sup>58</sup> <http://www.bookdepository.com/Divorce-Mediation-Legal-Process/9780198255765> 14012014

<sup>59</sup> Please see Ingleby, in Dingwall and Eekelaar, 1988, p 53

- ii. Few voluntary sector mediators attempted to identify the presence of domestic violence
- iii. 52% of voluntary sector mediators believed domestic violence to be potentially harmful to children
- iv. There was a general reluctance among voluntary mediators to take a more active role in identifying the presence of domestic violence

The appropriateness of joint meetings, as practiced by mediators, was of concern to the court welfare officers involved in the research project, as they felt that the 'victim' was likely to be at a psychological disadvantage in mediation. Domestic violence cases (where disclosed), were considered inappropriate for referral to voluntary mediation because of potential intimidation by the former partner.

A number of conclusions were drawn from this research:

- i. There was an urgent need for mediators to place more emphasis on implementing recent recommendations for identifying and working with victims of domestic violence and to continue to review these policies.
- ii. Specialist training was needed for mediators on issues surrounding domestic violence and how they might affect the mediation process.
- iii. Mention was also made of the issues of culture, race, disability, and ethnicity in terms of the effect that these may have on a relationship.

Because of this study, as well as other previous research, the Family Law Act 1996 (ss 7a and 7b), required mediators to comply with a code of practice under which arrangements designed to ensure early screening for domestic violence must be in place. This was important, because s27 (7) (b) of the Legal Aid Act 1996, required that mediators screened for domestic violence as part of their funding code.

The main finding of this research, focused on screening for domestic violence; NFM With the main force behind this research and the NFM policy being the Family Law Act 1996, it was found at that time that a large number of mediators did not 'do domestic



violence'. There is also evidence that the 'not doing' was linked with the focus on 'the interests of children during' mediation at that time.

In response to this requirement, NFM issued guidelines for screening (Unknown, 1996). These were about establishing a procedure for handling all referrals and dealing with cases in which domestic violence is established (Unknown, 1996 p 3). This included (sic):

- 1) *Information on the NFM and mediation service policy to be given to potential clients, referrers and the community at an early stage (A1)*
- 2) *All participants must be screened for domestic violence. This needed to be done prior to mediation during individual face to face meetings Screening to follow an agreed systematic procedure with gender neutral questioning. Participants to be assisted toward making a fully informed and voluntary decision, as to whether or not to proceed (A2.1).*  
  
*Individual pre-mediation screening meetings must not be seen as part of the mediation process. Best practice indicators in this policy suggested that the meetings should be arranged on different days, not made known to the other client, and arranged so that there was no reasonable possibility of an accidental meeting on or around the premises (A2.2c).*
- 3) *Pre-Mediation screening meetings are covered by the overall confidentiality of the mediation process. Should mediation take be identified and mediation takes place domestic violence is not negotiable as part of any agreement. Information about other relevant local services to be made available as necessary.*
- 4) *Should mediation not go ahead because of domestic violence no mention is to be made to either participant or to the identification of domestic violence.*
- 5) *If mediation takes place, voluntary participation; the capacity to mediate; safety issues and ground rules, structural protection, termination or outcome and child protection all to be established at each meeting.*
- 6) *Staff should never be on their own in a building with clients, separate waiting areas to be made available to clients, a resource directory should be made available to clients, and services should consider contributing to local multi-agency for on domestic violence.*

The guidelines detailed a screening procedure, which included different types of questions that were considered to be helpful and these included three different types of questions, normalising, impartial and indirect.

Examples of each type of question follow:

Normalising:

‘We know that it is hard to come somewhere like this and feel confident that you will be free to say what you want to say – how far is that likely to be a problem for you?’

Impartial:

‘How easy or hard will it be for you to take a full part in mediation?’

Indirect:

‘Would your partner feel comfortable working in the same room as you?’

In addition to ‘appropriate’ questions, guidance was given regarding ‘signals’ from a client that suggest domestic violence is present in a relationship.

What is of grave concern and as will be revealed in chapter 7, NFM did not introduce a specific policy or practice direction that dealt with the issue of screening for domestic violence in joint meetings at the time, and have not done so to date.

#### 3.3.3.2 Key commentators

Haynes and Charlesworth (1996) published a practical book, which was based on the Haynes mediation training programme. It was designed to give new entrants to the profession, a handbook that dealt with the ‘how to’ of mediation practice. The book contained a section relating to ‘recognising and responding to family violence (pp 62-67). There was no mention of active screening for domestic violence however, once domestic violence was disclosed by one participant, the handbook outlined steps to deal with the new information. Guidance was also given as to how to recognise abusive relationships. However, mediation could only continue if the violence was acknowledged by both parties. Some concern was raised regarding this, as it was perceived by some mediators that the power within this mode of decision making was handed to the abuser.

Comparisons were drawn with practice in Australia and New Zealand (p 64), where mediators had a duty to assess the suitability of mediation, through screening for domestic violence. Models of screening were described using a male and female mediator for the screening process (p 66). It was suggested that the female mediator posed the screening questions to the female participant, and the male asking only clarifying questions. This procedure was reversed when the male participant was screened. Following this publication, key research into family was conducted into family mediation and domestic violence, as detailed in the following section.

#### 3.3.3.3 Book – The Responsible Parent (1993)

Drawing on doctorate research investigating the parenting lives and mediation appointments of twenty-four sets of parents, (Piper, 1993), this book focuses on two aspects of the relationship between mediation and parental responsibility. First, it analyses the process of mediation in terms of the responsibility exercised by parents and mediators. Second, it deconstructs the concept of parental responsibility, which underpins mediation and is revealed as vital to the process itself. The book addresses current issues of power and control in mediation, particularly in relation to gender differences, and offers new insights regarding the influence of pre-separation parenting, the status of 'caretaking' and the increasingly important issue of 'advice-giving' in relation to separation and divorce.

#### 3.3.3.4 Other commentary

Prior to the publication of the UK research, concern about domestic violence and mediation was voiced by a number of academics (Kaganas and Piper, 1994b; Kaganas and Piper, 1994a; Day Sclater, 1995), which stemmed from the proposals under discussion in the consultation document *Looking to the future: Mediation and the Grounds for Divorce* (HMSO, 1993).

The concerns expressed were many, since mediation was being suggested in this consultation document as becoming a main part of the divorce process. All couples that were considering divorce would be expected to attend an information meeting to

find out the benefits of mediation. There had previously been suggestions that couples whose relationships were violent should be excluded from mediation.<sup>60</sup>

The arguments for exclusion were considered with reference to some of the core 'principles' of mediation, and stated as, voluntary, fairness, neutrality, non-judgemental, future focus, non-blaming and confidentiality, many of which caused concern. Concerns were expressed as incompatibility with protecting the best interests of the abused. There were concerns that the 'principles' of mediation might actually empower the abuser. The main question asked during these commentaries was 'how can mediation be safe?'

There was an alternative viewpoint, which responded to some of the concerns raised (Raitt, 1996). This response came after the FLA was enacted and contained the proposal that the mediation process should always serve the best interests of the child. It goes on to identify further concerns about the principles of mediation (previously mentioned) being at odds with the act of domestic violence<sup>61</sup>.

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<sup>60</sup> Ditto footnote 7 above

<sup>61</sup> Other UK commentary in this decade focused on debate relating to the process of mediation, (Dingwall and Greatbatch, 1993; Roberts, 1994; Dingwall and Greatbatch, 1995), legal focus on domestic violence (Fricker and Fricker, 1997b; Fricker and Fricker, 1997a), support for mediation (Roberts, 1990; Walker, 1996) and other research (Ogus et al., 1990; McCarthy and Walker, 1996; Walker et al., 1994, Dingwall and Greatbatch, 1991)

## 3.4 After the Family Law Act

### 3.4.1 Legislation - The Family Law Act 1996

The original key features of this Act were as follows:

1. Marriage breakdown would no longer depend on 'fault' proved by the passage of time
2. The process would involve an information meeting and a statement of marital breakdown
3. Practical matters relating to the divorce would need to be resolved before the divorce was granted
4. Mediation would be encouraged where it was considered suitable to the disputes, the parties' and all of the circumstances.
5. Legal aid would be available for those coming to mediation, subject to financial assessment for eligibility.

#### 3.4.1.1 Changes to the legislation

Much of the Family Law Act was not implemented. Specifically excluded were no-fault divorce, statement of marital breakdown, the information meeting and the fact that all issues had to be resolved before the decree absolute was issued. However, in practice there were other parts not implemented under the Act. One such example of exclusion was section 29 (s29)<sup>62</sup> of the FLA, which was transported to section 11 of the Access to Justice Act 1999. People in receipt of legal funding relating to a divorce application, still needed to attend a mediation information meeting before an application to court could be made.

Clients on low income were still able to use mediation without having to pay. 'Legal aid' became known as 'public funding' and referrals were made under the funding co-procedure outlined in section 11 of the Access to Justice Act 1999. The Legal Aid Board (LAB) became the Legal Services Commission (LSC). Preparations were made to

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<sup>62</sup> Section 29 was a key part of the act mediation services which stated that 'a person shall not be granted representation for the purposes of proceedings related to family matters unless she has attended a meeting with the mediator to determine:

- i whether mediation at a suitable to this dispute, the parties in all circumstances
- ii whether mediation could take place without either party being influenced by fear of violence or other harm

implement the Act including information meeting pilots and mediation franchise pilots, and these were subsequently implemented.

#### 3.4.1.2 Impact of legislation

For clients it meant that they needed to attend a meeting with a mediator before any application for public funding could be made. For mediators, it became necessary to be recognised as 'competent' by the LSC, as this was a minimum requirement for competence for mediators who met clients to assess the suitability of mediation. For services, it became necessary for them to hold a LSC franchise in order to conduct legal aid mediation. It also became necessary for solicitors to refer clients to a mediation 'intake' meeting before they could apply for public funding for representation.

### 3.4.2 Research

#### 3.4.2.1 Domestic violence and mediation

Dingwall and Greatbatch (1999) conducted research in the UK that specifically focused on domestic violence, although the original data was collected for a research project that focused on the practice of family mediation. An interim report on this data was published earlier in the decade (Dingwall and Greatbatch, 1991). Their final analysis of this data focused on domestic violence in family mediations and was concerned with the mediator's response to allegations of physical violence through the mediation process. One limitation of this research was the fact that they excluded all other forms of abuse in their analysis. This is important to note as evidence of other abuses existed in the extracts cited in their report

Dingwall and Greatbatch found that the construction of the mediation process served to marginalise allegations of violence. Mediators own the process, therefore I argue that by following the prescribed process, they marginalise domestic violence in mediation. I have previously mentioned the mediators tool bag and the technique of mutualising, which seeks to create a mutual interest out of an issue or concern that has been articulated. My interpretation of some the extracts of data in this research is that some marginalisation occurs when mediators mutualise a problem. There are a number of other techniques that mediators use that serve to marginalise violence in mediation. These include, reframing, normalising and summarising. Another point

that must be mentioned is that the data used for this research study was collected prior to any mandated requirement for mediators to screen for domestic violence.

#### 3.4.2.2 Monitoring publicly funded family mediation – report to the Legal Services Commission<sup>63</sup>

##### 3.4.2.2.1 *Background*

In 1997 the LAB (now the LSC) began to pilot franchises for family mediation services. This meant that where separating or divorcing people were eligible, the Legal Aid fund would pay for family mediation in disputes over children, finance, and property. The Family Law Act, passed in 1996 (but now repealed), also required that those eligible for Legal Aid should have a meeting with a mediator to explore whether mediation was suitable. At the same time, the LSC set up an extensive research project to look at cost-effectiveness, benefits, quality assurance and other issues related to publicly funded family mediation.

##### 3.4.2.2.2 *Methodology*

The research team had three main sources of information:

- i. They monitored and analysed all cases from 15 family mediation services in the pilot over an 18 month period.
- ii. They conducted telephone interviews with 1,055 individuals who used mediation and lawyers, and in 646 cases also interviewed their solicitor. Second interviews were conducted with 477 individuals, and 310 solicitors.
- iii. In order to analyse the process of mediation itself, 148 mediation sessions were tape recorded in 89 cases. These were supplied by 15 different mediation services.

##### 3.4.2.2.3 *The parties' attitudes*

- a. 57% said that their former partner was not keen to resolve matters, and 59% believed that their former partner was 'not at all willing to compromise'. (Only 11% said this of themselves).

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<sup>63</sup> <http://asauk.org.uk/alternative-dispute-resolution/adr-research/family-mediation-2000/>

- b. 41% of women and 22% of men said that fear of violence had made it more difficult to resolve issues in their case.
- c. Most people seemed to accept that mediation was a good idea in principle; they were less sure that it would work in their case.

#### 3.4.2.2.4 *The mediation process*

When considering mediator impartiality, the researchers found that although mediators refrained from directly expressing opinions, they indirectly imposed parameters of what was considered permissible, which varied between providers and within those providers between individual mediators.

The evidence of the taped mediation sessions was that allegations of violence during mediation tended to be marginalised, with a default assumption by the mediators that these events were trivial or no longer relevant.

Publicly funded mediation providers needed to meet the organisational requirements of the Mediation Quality Mark and the franchise contract. However, there was considerable difficulty in knowing whether mediators were offering quality work, other than through these very indirect measurements.

### **3.4.3 Key commentators**

#### 3.4.3.1 Mediation in Family Disputes (1997)

One of the mediators in the socio-demographic group previously mentioned, had the second edition of her book published during this decade (Roberts, 1997). This updated edition contained comprehensive coverage of domestic violence in mediation. Screening for mediation was discussed and the lack of training in domestic violence for mediators was acknowledged.

The second edition of Roberts book was published after parts of the Family Law Act 1996 (FLA 1996) were enacted, This edition cited NFM's policy for good practice, which included the requirement that all participants be in a position to make an informed decision to attempt mediation, after all safety issues, including screening for domestic violence, had been fully considered (Roberts, 1997 p 167; Unknown, 1996 p 2).



Within this section, the NFM definition of domestic violence is described thus:

*'The most important factor in domestic violence is the **impact** of the behaviour as experienced by each/any of the individuals involved. Domestic violence is behaviour that seeks to secure power and control for the abuser and to undermine the safety, security, self-esteem and autonomy of the abused person. Domestic violence contains elements of the use of any or all of physical, sexual, psychological, emotional, verbal or economic intimidation, oppression or coercion (Unknown, 1996 p 2).'*

This placed the focus on the individual perception of the violence as opposed to the mediator interpretation of the violence and that perception was used to decide whether to proceed with mediation. However, the ultimate decision as to whether to proceed or not lay with the mediator.

The policy also dealt with the FLA 1996 requirements for proceeding with mediation which were:

- 1. That any risk to one of the parties to a marriage and to any children, of violence from the other party should so far as reasonably practicable be removed or diminished [s1(d)].*
- 2. In publicly funded mediation the mediator complies with a code of practice that includes arrangements designed to ensure that the parties participate in mediation only if willing and not influenced by fear of violence or other harm; that cases where either party may be influenced by fear of violence or other harm identified as soon as possible [ss.27 (6) and 27 (7)].*

#### 3.4.3.2 Family Mediation (1997)

Similarly, the first edition of Parkinson (1997) 'Family Mediation' was published and contained similar content to Robert's book. The only difference between these two books was the target audience. Whilst both were written for mediators, Parkinson's book was targeted at 'lawyer' mediators

Parkinson (1997) discussed domestic violence and mediation in terms of the Legal Aid Act 1988, where a new section was inserted into the Act, [13 (b) (7)] that required mediators working under a contract with the Legal Aid Board to work to a code of practice designed to ensure:

- i. 'That clients participate in mediation only if willing and not influenced by fear of violence or other harm; and*
- ii. The cases where either party may be influenced by fear of violence or other harm are identified as soon as possible'.*

Technically these provisions only applied to mediation under the Legal Aid Board regulations, which is mediation where the client was assessed as eligible for the costs of mediation to be covered by legal aid. However this code of practice was seen as good practice for all family mediators. Included in this was a requirement for a certain level of information to be recorded. These were:

- i. Identification of cases involving domestic violence between clients*
- ii. Consideration of protective measures to be offered to clients and mediators e.g. shuttle/anchor mediation.*
- iii. Consideration of why mediation is nonetheless proceeding [para 3.86 (f)]*

Parkinson also discussed power imbalances in mediation, dealing specifically with domestic violence screening and gave guidelines for an 'intake' wherein violence was an issue (p 257). She also referred to the non-verbal signals that mediators should look out for and also suggested that 'mediator vibes' should not be ignored.

Finally she deals with the fact that mediators will need specific training to develop the skills necessary to screen for domestic violence effectively.

#### 3.4.3.3 Mediation in Family Disputes (2008)

In the third edition of her book Roberts (2008), dealt with screening for domestic abuse at 'intake' and referred to the College of Mediators domestic abuse policy. The policy for screening was not dissimilar to the NFM policy and states specifically that:

- i. Each participant must make a fully informed and voluntary decision to enter mediation. This requires that each participant is sufficiently informed and has sufficient time to make the decision to attempt mediation after all safety issues including screening for domestic abuse, have been fully considered.*
- ii. Safety issues include not only the participants in mediation but any other significant member of the family or either party*
- iii. Assessment for domestic abuse and/or child protection is a continuing requirement that lasts throughout the whole of the mediation process*

- iv. *Implementation of this policy requires a written procedure for the safe and effective screening for domestic abuse (pp 230-233).*

#### **3.4.4 Other commentary**

An academic commentator had two books published during this, one of which was her own work (Day Sclater, 1999) and the other an edited book in collaboration with another author (Day Sclater and Piper, 1999). Both of these works contain chapters that focus on domestic violence and mediation.

##### **3.4.4.1 Divorce: a Psychosocial Study (1999)**

This book (Day Sclater, 1999) is based on a research project on the psychology of divorce dispute resolution, funded by the ESRC and conducted between April 1996 and June 1997. The research developed a "psycho-social" approach to divorce, which combined psychological and sociological methods and insights with an understanding of law-in-context. Using detailed analysis of case study material, the book discusses the neglected question of how adults cope with divorce, and how their strategies for survival interact with dispute resolution processes. The book is about the psychology of divorce at both an individual and a social level. The discussion is centred upon research work, but the stories which the participants told also provide a point from which to link up with wider theoretical explorations in sociology, psychology and psychoanalysis.<sup>64</sup> Specifically relating to domestic violence and mediation the book contains a comprehensive summary of commentary from the key commentators as well as an expression of concern as to how domestic violence is managed in mediation (pp 61-69).<sup>65</sup>

##### **3.4.4.2 Undercurrents of Divorce (1999)**

In this edited book, the authors (Day Sclater and Piper, 1999) claim that despite considerable comment in the press and in academia, by professionals and by politicians, about divorce reform and the post-divorce family, much has been left unsaid. There are 'undercurrents' of divorce which are not visible and not discussed because they do not fit into a 'dominant discursive framework' for talk about divorce.

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<sup>64</sup> <http://www.bookdepository.com/Divorce-Shelley-Day-Sclater/9781840149005> 14012014

<sup>65</sup> This book also discusses gender and emotional issues as well as power imbalances.

This book aims to bring these undercurrents to the surface and, in that process, seeks to do two things: to explain how and why aspects of divorce, and the lives of those divorcing, have become marginalized in professional and political discussion; and to make visible the practical and legal effects of such exclusion<sup>66</sup>. Specifically relating to mediation and domestic violence, (pp 190 to 193) this book expresses concerns about mediation practice relating to domestic violence.<sup>67</sup>

#### 3.4.4.3 DV and Mediation

There are two commentaries that focus on domestic violence and mediation. The first one (Hunter 2003) is written in defence of lawyers and the second (Lewis et al. 2001) criticises mediation for its process dangers.<sup>68</sup>

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<sup>66</sup> <http://www.bookdepository.com/Undercurrents-Divorce/9781840147339> 14012014

<sup>67</sup> This decade was interesting as the number of NFM mediation services grew, the demand for mediation increased and in 2008 clients had to attend an introduction mediation session for assessment to determine whether they could be excluded from mediation. With this important change, taking into account that these changes were subject to previous consultation, I would have expected that, at the very least, mediators would have considered research into domestic violence and mediation

<sup>68</sup> The main focus for commentary during this decade is on the child (Fricker 2000; Kaganas & Day Sclater 2000; O'Quigley 2000; Lowenstein 2002; Trinder, Beek & Connolly 2002; Kay et al. 2004; Butlin 2006; Smart 2006; Trinder et al. 2006; Trinder & Kellett 2007; Mills 2008; Trinder, Jenks & Firth 2009; Trinder, Jenks & Firth 2010 and it includes commentary relating to in-court conciliation

## 3.5 Post Data Collection

The commentary reviewed in this section relates to documents that were written after the data for this study was collected. These commentaries are important as they reflect government focus and development of family mediation and also give a clear indication that key commentators have kept abreast of research and developments that identify the need to include, domestic violence and mediation in their literature. Another area that has been developed is an introductory acknowledgement of emotions in mediation.

### 3.5.1 Policy and legislation

#### 3.5.1.1 Family Justice Review – Final Report<sup>69</sup>

This was commissioned by the Coalition Government with a remit to fully review the family justice system (in England and Wales). 134 recommendations were made, the majority of which were accepted. It was suggested that alternative dispute resolution be rebranded as Dispute Resolution Services.

It was expected that separating parents should attend a meeting with a mediator that is trained and accredited to a high professional standard. The mediators role would be to:

*‘assess the most appropriate intervention, including mediation and collaborative law, or whether the risks of domestic violence, imbalance between the parties or child protection issues require immediate referral to the family court’.*

The interim report made specific mention of training for screening for domestic violence:

*‘It will be particularly important to ensure that all practitioners are able to assess risks of domestic violence or child protection concerns, which could make Dispute Resolution Services inappropriate. Mediators and dispute resolution practitioners already receive training around domestic violence as part of their accreditation. This will need to be further developed. However, domestic violence should not automatically preclude the use of dispute resolution. Domestic violence varies greatly in its characteristics, and we*

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[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/217343/family-justice-review-final-report.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/217343/family-justice-review-final-report.pdf)

*have heard evidence that the mediation process can successfully handle some cases that involve it (para 5.136).'*

At the time this research project concluded,<sup>70</sup> NFM had not introduced any additional training for domestic violence.

#### 3.5.1.2 Practice Direction 3a

Please see 1.2 above for detail relating to PD3a.

#### 3.5.1.3 Legislation: Legal aid Sentencing and Punishment of Offenders Act 2012

Please see 1.2 above for detail relating to this Act.

#### 3.5.1.4 Legislation: Children and Families Act 2014

Please see 1.2 above for detail relating to this Act.

### **3.5.2: Research: Mapping Paths to Family Justice.<sup>71</sup>**

#### 3.5.2.1 Introduction

Authored by Anne Barlow, Rosemary Hunter, Janet Smithson and Jan Ewing, this was an independent 3-year ESRC-funded academic research project undertaken by the Universities of Exeter and Kent, which ended in June 2014.<sup>72</sup>

#### 3.5.2.2 Background and Aims

The overall aim of the study was to undertake a 'bottom-up' comparative analysis of the most common forms of out of court FDRs, to provide a substantial, up-to-date evidence base. It focused on three forms of 'out-of-court' family dispute resolution, solicitor negotiation, mediation, and collaborative law and sought to produce a 'map' of family dispute resolution pathways.

#### 3.5.2.3 Research Design and Methods

The study focused on the period after 1996, by which time mediation had become nationally available. It was designed in three interlinking phases with the objectives of

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<sup>70</sup> December 2014

<sup>71</sup> <http://socialsciences.exeter.ac.uk/law/research/frs/researchprojects/mappingpathstofamilyjustice/dissemination/>

<sup>72</sup> Three research associates worked on the project at the University of Exeter at different stages during the project; Kate Getcliffe, Paulette Morris and Charlotte Bishop

addressing research questions around awareness and experiences of FDRs from the perspectives of the general public, party participant and practitioner participant.

#### 3.5.2.4 Key findings: what could be done better?

- Availability of counselling or other therapeutic interventions to support emotionally vulnerable parties.
- Greater awareness of potential abuse of mediation and collaborative law, for strategic reasons, by dominant or controlling partners.

#### 3.5.2.5 Key findings: screening for and response to domestic abuse

- Enhanced screening and safeguarding procedures are needed to properly assess risks to victims of violence and abuse, and to any children involved.
- Physical, emotional and psychological abuses affect a person's ability to participate in mediation.
- Separate rather than joint MIAMs should be the default option.
- In mediation there is a need for a more consistent approach to domestic violence and abuse.
- Lawyers as well as mediators need to be aware of histories of abuse and their effects on clients.
- Practitioners could do more to address the support needs of victims of domestic violence and abuse, including referrals to and working with domestic violence support services and therapeutic interventions.
- Better options need to be developed post-LASPO for victims of domestic violence and abuse, who do not have the supporting evidence to obtain legal aid.

#### 3.5.2.6 Key findings: process

The processes of all three FDR's in terms of what went well and what could have been done better in each was were discussed. Specifically, for family mediation, it was found that:

*'Some parties found the process difficult, uncomfortable or traumatic, and expressed concerns about power imbalances, perceived lack of mediator impartiality, unenforceability of agreements, and the cost of multiple sessions. Some felt they had to*

*participate even though they did not expect the process to work; and some felt they suffered from a lack of legal advice.'*

#### 3.5.2.7 Key findings: conflict and emotions in FDRs

For any conflict resolution process to be successful, parties need to be emotionally ready to cooperate and cope with negotiations:

- Many people found mediation to be an emotionally fraught process, even if in hindsight it was positive<sup>73</sup>.
- Conflict between parties was a frequent cause of mediation breaking down.
- Taken into account emotional readiness, combining FDR with therapeutic intervention may enhance capacity to reach agreement.

#### 3.5.2.8 Key findings: focus on the child's welfare

All three processes aim to focus on children's welfare, although such a focus can be difficult to maintain in practice and requires conscious effort. In all three processes, there is an argument for more 'systematic' inclusion of children's voices.

#### 3.5.2.9 Conclusion

This three year study provided a detailed insight into family mediation, collaborative law and solicitor negotiation. Two key concerns flagged up during this project were that screening for domestic violence needed to be improved and the lack of inclusion of children in FDR needed to be addressed.

### **3.5.3 Key commentators**

Both Parkinson (2011) and Roberts (2014a) published further editions of their books since the data for this study was collected, and both of these books offer an enhanced discussion of domestic violence in mediation.

#### 3.5.3.1 Family Mediation (2011)

This is the second edition, of this authoritative and practical guide which clearly explains the mediation process, taking the reader through each stage, explaining how to interact with other professionals, and providing invaluable advice on the role of the

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<sup>73</sup> Ultimately produced a positive outcome where the clients reached agreement



mediator in particular situations. This book covers the mediation full process as well as provides comprehensive detail of the practical issues associated with the practise of mediation.

The UK government is increasingly supportive of this form of dispute resolution and matrimonial lawyers need to be aware of how they can integrate mediation with their existing legal skills.

### 3.5.3.2 Mediation in Family Disputes (2014)

This is the third edition of the book is seen as the seminal text for family mediators in England and Wales. Roberts (2014a) provides a comprehensive handbook for all mediators, from trainees to those with many years' experience and it is equally of value to wider audiences, such as lawyers and judges.

Whilst this edition provides an extensive review of domestic violence it does not deal in depth with the management of emotions.

### 3.5.3.3 a-z of mediation (sic)(2014)

Marian Roberts's '*a-z of mediation*' is the first book that is designed to be used in a 'dictionary like' fashion for all that has an interest in mediation. Specifically, it has substantial content relating to domestic violence and emotions in mediation and discusses various contexts of each. This book goes some way to filling the gap of commentary relating to domestic violence and mediation from an information perspective, but hidden within the book is a model of mediation (the Coogler Model p 23) which builds in separate time for each client at the beginning of each meeting. Referred to as the Bromley model of mediation, the purpose of these separate meetings are to ensure procedural fairness as opposed to specifically screening for domestic violence. (Roberts, 2014b).<sup>74</sup>

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<sup>74</sup> <http://www.bookdepository.com/Z-Mediation-Marian-Roberts/9781137002983> 14012014

### **3.6 Conclusion**

This chapter explained the complex web of research, legislation policy and commentary present in the field of family mediation. Research was driven by respective governments, in an attempt to reduce the legal aid budget. There is very little recent research that explores the client's experience of mediation and no recent research that evaluates client's experiences from MIAMs to post mediation discussions. The latter part of this chapter highlights the fact mediation is not consensual in NFM services. Mediators at a single mediation service (Bromley) consistently see clients before each joint meeting; the mediators in this study did not. The next chapter describes the methods and methodology used in developing this thesis and details the themes used for analysis of the data.

### 3.7 References – chapter three

- Bainham A, Lindley B, Richards M, et al. (2003) *Children and Their Families - Contact, Rights and Welfare*. Oxford: Hart Publishing.
- Barlow A, Hunter R, Smithson J, et al. (2014) *Mapping paths to family justice: Briefing paper and report on key findings*. Exeter: Universities of Exeter and Kent.
- Bradshaw A, Pottinger J and Bowen M. (1984) *Researching Other Peoples Rows: Current Research into Divorce Conciliation*. *Liverpool Law Review* VI.
- Cobb S. (1997) *The Domestication of Violence in Mediation*. *Law & Society Review* 31: 397-440.
- Coogler OJ. (1978) *Structured Mediation in Divorce Settlement*, Toronto: Lexington Books.
- Coogler OJ, Weber RE and McKenry PC. (1979) *Divorce Mediation: A Means of Facilitating Divorce and Adjustment*. *The Family Coordinator* 28.
- Davis G. (1980) *Research to Monitor Bristol Courts Family Conciliation Service*. Department of Social Administration: University of Bristol.
- Davis G. (1988) *Partisans and Mediators: The Resolution of Divorce Disputes*, Oxford: Oxford University Press.
- Davis G. (2000) *Monitoring Publicly Funded Mediation*. Report to the Legal Services Commission.
- Davis G and Lees P. (1981) *A study of conciliation: Its impact on legal aid costs and place in the resolution of disputes arising out of divorce*. Department of Social Administration: University of Bristol.
- Davis G and Roberts M. (1988) *Access to Agreement: A Consumer Study of Mediation in Family Disputes*, Milton Keynes: Oxford University Press.
- Davis G and Roberts M. (1989) *Mediation in disputes over children: Learning from experience*. *Children & Society* 3: 275-279.
- Day Sclater S. (1995) *A Critical Approach to the White Paper on Divorce Reform*. *Web Journal of Current Legal Issues*.
- Day Sclater S. (1999) *Divorce: A Psychosocial Study*, Oxford: Blackwells.
- Day Sclater S, and Piper C. (1999) *Undercurrents of Divorce*. Aldershot: Dartmouth Publishing Company Limited.
- Denning ATL. (1946) *Final Report of the Committee on Procedure in Matrimonial Causes (Matrimonial Causes)*. *Document type: COMMAND PAPERS; REPORTS OF COMMISSIONERS*. [Cmd. 7024], XIII.187.
- Dingwall R. (1986) *Some observations on divorce mediation in Britain and the United States*. *Mediation Quarterly* 11: 5-23.
- Dingwall R. (1988) "Empowerment or enforcement?" *Some questions about power and control in divorce mediation*. In: Dingwall R and Eekelaar J (eds) *Divorce Mediation and the Legal Process*. Clarendon Press.
- Dingwall R and Greatbatch D. (1991) *Behind closed doors: A preliminary report on mediator/client Interaction in England*. *Family and Conciliation Courts Review* 29: 291-303.
- Dingwall R and Greatbatch D. (1993) *Who is in charge? Rhetoric and evidence in the study of mediation*. *Journal of Social Welfare and Family Law* 15: 367-385.
- Dingwall R and Greatbatch D. (1995) *Family mediation researchers and practitioners in the shadow of the Green Paper: A Rejoinder to Marian Roberts*. *Journal of Social Welfare and Family Law* 17: 199 - 206.
- Dingwall R, Greatbatch D and Ruggione L. (1988) *Gender and interaction in divorce mediation*. *Mediation Quarterly* 15: 277-287.
- Eekelaar J. (1975) *The Place of Divorce in Family Law's New Role*. *The Modern Law Review* 38: 241-243.
- Finer M. (1974) *Report on the Committee on One Parent Families Cmnd 5629*, London: HMSO.
- Fricker M and Fricker N. (1997a) *Facing Up to domestic violence Part II*. *Family Law*: 201-202.
- Fricker N and Fricker M. (1997b) *Facing Up to domestic violence Part I*. *Family Law*: 125-126.

- Greatbatch D and Dingwall R. (1989) Selective facilitation: Some preliminary observations on a strategy used by divorce mediators. *Law and Society Review* 23: 613-641.
- Greatbatch D and Dingwall R. (1999) The marginalization of domestic violence in divorce mediation. *International Journal of Law Policy and the Family* 13: 174-190.
- Guise J. (1983) Conciliation: current practice and future implications for the probation service. *Probation Journal* 30.
- Haynes JM. (1984) Mediated Negotiations: The Function of the Intake. *Mediation Quarterly* 6: 3-15.
- Haynes JM and Charlesworth S. (1996) *The Fundamentals of Family Mediation*, Sydney: The Federation Press.
- Hester M and Pearson C. (1997) Research: domestic violence and children - the practice of Family Court Welfare Officers. *Child and Family Law Quarterly*.
- Hester M, Pearson C and Radford L. (1997) *Domestic Violence - A National Survey of Court Welfare Officers and Voluntary Sector Mediation Practice*, Bristol: Policy Press.
- HMSO. (1993) Lord Chancellor's Department. Looking to the future. Mediation and the ground for divorce. A consultation paper. Cmnd 2424.
- Johnson R. (1986) Research Report, Hull and Humberside Family Conciliation Service. Hull: Hull University.
- Kaganas F and Piper C. (1994a) The divorce consultation paper and domestic violence. *Family Law* 26: 143-145.
- Kaganas F and Piper C. (1994b) Domestic violence and divorce mediation. *Journal of Social Welfare and Family Law* 16: 265-278.
- Maidment S. (1977) The laws response to marital violence in England and the USA. *International and Comparative Law Quarterly* 26: 403-444.
- Manchester AH and Whetton JM. (1974) Marital Conciliation in England and Wales. *International and Comparative Law Quarterly* 23: 339-382.
- McCarthy P and Walker J. (1996) The Longer-term Impact of Family Mediation. *Social Policy Research*.
- Murch M. (1980) *Justice and Welfare in Divorce*, London: Sweet and Maxwell.
- NAO. (2007) *Legal aid and mediation for people involved in family breakdown*, London: National Audit Office.
- Norgrove D. (2011) Family Justice Review: Final Report. London: The Stationery Office.
- Norman HE. (1939) Matrimonial Conciliation. *Probation Journal* 3.
- Ogus A, Jones-Lee M, Cole W, et al. (1990) Evaluating Alternative Dispute Resolution: Measuring the Impact of Family Conciliation on Costs. *The Modern Law Review* 53: 57-74
- Owens D. (1975) Battered Wives: Some Social and Legal Problems. *British Journal of Law and Society* 2: 201-211.
- Parkinson L. (1986a) Conciliation in Britain. *Mediation Quarterly* 11: 69-82.
- Parkinson L. (1986b) *Conciliation in Separation and Divorce*, London: Croom Helm.
- Parkinson L. (1997) *Family Mediation*, Australia: Sweet and Maxwell.
- Parkinson L. (2011) *Family Mediation: Appropriate Dispute Resolution in a New Family Justice System*, Bristol: Family Law
- Piper C. (1993) *The Responsible Parent - A Study in Divorce Mediation*, Hemel Hempstead: Harvester Wheatsheaf.
- Raitt F. (1996) Domestic violence and divorce mediation: A rejoinder to Kaganas and Piper and a proposal that the mediation process should always serve the best interests of the child. *Journal of Social Welfare and Family Law* 18: 11-20.
- Roberts M. (1988) *Mediation in Family Disputes*, Aldershot: Wildwood House Ltd.
- Roberts M. (1994) Who is in charge? Effecting a productive exchange between researchers and practitioners in the field of family mediation. *Journal of Social Welfare and Family Law* 16: 439-454.
- Roberts M. (1997) *Mediation in Family Disputes (Principles of Practice)*, Hampshire, England: Arena.

- Roberts M. (2008) *Mediation in Family Disputes*, Aldershot: Ashgate Publishing Ltd.
- Roberts M. (2014) *Mediation in Family Disputes*, Aldershot: Ashgate Publishing Ltd.
- Roberts M. (2014a) *a-z of mediation (sic)*, Basingstoke, Hampshire: Palgrave Macmillan.
- Roberts S. (1983) Mediation in Family Disputes. *The Modern Law Review* 46: 537-557
- Roberts S. (1990) A Blueprint for Family Conciliation. *The Modern Law Review* 53: 88-90
- Robinson PD and Oppenheimer NA. (1984) *Report of the Inter-departmental Committee on Conciliation (ICC)*, London: HMSO.
- Simpson B and Roberts M. (1989) Giving children a voice in divorce: The role of family conciliation. *Children & Society* 3: 261-274.
- Stone OM. (1964) The Matrimonial Causes Act 1963. *Journal of Family Law* 4: 49-52.
- Straker D. (1979) In the Throes of Divorce. *Probation Journal* 26.
- Unknown. (1996) *NFM Guidelines for Screening for Domestic Violence in Mediation*, London: National Family Mediation.
- Unknown. (1996 p 2) *NFM Policy on Domestic Violence*, London: National Family Mediation.
- Unknown. (1996 p 3) *NFM Guidelines for Screening for Domestic Violence in Mediation*, London: National Family Mediation.
- Walker J. (1996) Is There a Future for Lawyers in Divorce? *International Journal of Law Policy and the Family* 10: 52-73.
- Walker J. (2004) Picking up the pieces: Marriage and divorce : Two years after information. Newcastle: Newcastle Centre for Family Studies.
- Walker J, McCarthy P and Timms N. (1994) *Mediation: The Making and Remaking of Co-operative Relationships. An Evaluation of the Effectiveness of Family Mediation*, University of Newcastle on Tyne: Relate Centre for Family Studies.
- Wells T. (1986) The Status of Mediation in the United Kingdom. *Conciliation Courts Review* 24: 91-96.
- Wells T. (1989) All Change for England and Wales. *Family & Conciliation Courts Review* 27: 57-59.

## Chapter 4      Methods and Methodology

*"If we knew what it was we were doing, it would not be called research, would it?"  
Albert Einstein.<sup>75</sup>*

### 4.1 Introduction

Chapter one of this thesis included a summary of the research questions and explained how the research aims were going to be achieved.

My aim in this chapter is to describe the methodological approach employed within this study and also to explain and justify my final choice of methods for data collection and analysis. The importance and specifics of ethical socio-legal research is detailed and the process of data collection, management, and analysis is described.

This chapter is presented in five sections, which address the following:-

- i. The research questions and study design, found in section 4.2 of this chapter.
- ii. The methods of data collection considered for this study, and the issues that arose during the data gathering phase of the project is presented in 4.3.
- iii. The methods adopted to recruit primary and secondary participants are explained in section 4.4.
- iv. Ethical considerations including confidentiality, informed consent and anonymity, are dealt with in section 4.5.
- v. Section 4.6 covers all aspects relating to the management of the data and includes 'cleaning', 'organising' and 'analysis.'

### 4.2 Research questions and study design

It is suggested that the key principles of research design are threefold. They are

- i. There should be a clearly conceived question, problem, or hypothesis*
- ii. The methods proposed should be likely to produce robust data analysis, which will address the research problem*
- iii. The approach taken should be in accordance with accepted ethical practice (Seale, 2004 p 130).*

The development of this study started with a research proposal, which focused on the limitations of a small-scale study that I had conducted in 2008, the outcome of which inferred that domestic violence may have a negative impact on the take-up of

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<sup>75</sup> <http://www.goodreads.com/quotes/747-if-we-knew-what-it-was-we-were-doing-it>

mediation. Negative signifies that in this study, the participants interviewed did not proceed with mediation.

In retrospect, my approach to this study was prejudiced by comments made by the original stakeholder who suggested that poor mediator practice may well be responsible for clients not proceeding to mediation. One consequence of this thinking was that, for me as a researcher, the findings from the study were a surprise and as a consequence they created a level of personal resistance. The level of resistance experienced also related to the fact that (I) the researcher needed to give careful consideration to my professional role as a family mediator researching mediation practice, when embarking on the current study.

For the purposes of research, all elements of this study are conducted from a multifaceted viewpoint as (I) the researcher is a trained and practising mediator, a Professional Practice Consultant (PPC) to mediators, and has also worked as a facilitator for the Duluth Domestic Abuse Intervention Programme (DDAIP), which is a Cognitive Behaviour Therapy (CBT) programme designed to bring about change in male perpetrators of abuse. The data is therefore examined through three different practical lenses, with the consideration or interpretation being dependent on the data under scrutiny. Further interpretation is added from the researcher, which is reflected in the interpretative model of thematic analysis used.

This empirical study consists of five qualitative studies, one of which has a small quantitative element. The studies were informed by a main research question, which aimed to investigate the practice of family mediation following separation.

The main research question was:

***'Do mediators screen for domestic abuse and, if and when they do, how do they manage the process and client responses?'***

From this main research question came a number of secondary questions which developed organically during the study design process. This was achieved by considering what I wanted to know, understanding why I wanted to know it and then identifying what data I needed to collect in order to fully answer the main research question.

The embryonic secondary questions that eventually emerged and evolved were based on my curiosity, both as a researcher and family mediator and these were:-

- i. Why do parents commence mediation and withdraw before the mediator thinks it is finished?
- ii. What does the mediator mean when they say that parents have withdrawn from the process before they think they should?
- iii. What factors do parents consider when they are deciding whether to withdraw?
- iv. During 'intake' and mediation sessions, what impact does the mediator's construction of what mediation is, have on decisions that clients make?
- v. How do other external influences affect their decision-making?
- vi. What critical factor influences their final decision?
- vii. What did they hope to achieve in mediation?
- viii. Why do they come to mediation in the first place?
- ix. What do parents as parents (rather than partners) expect from mediation?
- x. Did parents see withdrawing from mediation as a way of resolving their issues?
- xi. Did parents have any concerns for the child/children's relationship with the other parent?
- xii. What process did they use to resolve the practical issues relating to their separation?
- xiii. What happens during screening for abuse?
- xiv. How do mediators manage disclosure of abuse during mediation?
- xv. How do clients respond to the mediator's management of disclosure of abuse?
- xvi. What types of abusive behaviours exist in mediation sessions?
- xvii. What emotions are expressed (relating to abuse) during mediation?
- xviii. How are expressions of emotions managed?
- xix. Does mediation work for clients experiencing abuse?

Upon further review, the subsidiary questions detailed above were condensed and reframed as:

- i. Is there initial screening for abuse and, if so, how is it done?
- ii. What types of abusive behaviours are alleged or inferred during mediation sessions?
- iii. During mediation, how do mediators manage disclosure of abuse and any client responses to this management?
- iv. How do mediators manage expressions of emotions by clients?
- v. Where a parent expressed concern about the welfare of a child, how was this managed?



The above questions imply that particular forms of data are required in order to find an answer to the main research question. With the primary and secondary (supplementary) research questions identified, the next stage was to design the project using the most appropriate and effective data collection methods.

### **4.3 Selection of data collection methods**

The choice of data collection methods was considered during the research proposal phase of this project and was based on what can be best described as ‘methods in search of problems’. It is written that:

*‘Just as an instrumentalist will not change from playing the clarinet to playing the trumpet because a particular piece demands it, but will usually turn to another piece of music, searching for pieces that suit both the instrument and the player, so researchers give a lot of time and thought to the formulation of possible and potential research problems, looking for those that appear to fit their interests and preferred method .(Walker, 1985) cited in (Robson, 2011 p 232).’*

The first area of interest which evolved from the primary research question was ‘mediation practice’ i.e. ‘how do mediators mediate?’ A number of data-collection methods were identified, all of which were deemed suitable to address the questions for this study. Each was considered for application, in terms of benefits and drawbacks.

The methods of data-collection considered at this stage were:

- i. interviews
- ii. case studies
- iii. focus groups
- iv. questionnaires
- v. observation
- vi. digital audio recording
- vii. video recording
- viii. documentary and archival research

Full consideration was given to each of these data collection methods and some were excluded after initial scrutiny. Those excluded in the early stages were:

- i. interviews
- ii. case studies
- iii. focus groups
- iv. questionnaires

The reason for the early exclusion of these methods was their inability to accurately record details of 'timing' and progression of mediation.

The remaining data collection methods earmarked for further consideration were:

- i. observing mediation sessions and taking notes
- ii. observing mediation session, and digitally recording them
- iii. asking mediators to digitally record mediation sessions
- iv. video recording mediation sessions
- v. interviewing former mediation clients
- vi. conducting documentary and archival research, (including journal articles, e-books, and national archive websites)

In the following sections, the methods that were finally considered are discussed and the rationale behind the data collection methods actually chosen is explained.

#### **4.3.1 Observing mediation**

Ethnography is a particular method of research in which the 'ethnographer' (researcher), participates either overtly or covertly in people's daily lives. This makes the researcher, as participant-observer the primary research instrument (Seale, 2004 p 226). During observation, the evidence available to the researcher will include the opportunity to record other ancillary behaviour, such as non-verbal communication, and body language adding to the corpus of data.

Use of this method required my presence as a researcher, during each mediation session, and this raised a number of concerns. The first concern was that family mediators are predominantly female and the mediation service participating in the study only had one male mediator. Mediators in this service adopt the 'solo-mediation' model with both clients present in the same room as the mediator. This meant that the probability of a male client being in a room with three women was extremely high. The main concern was that he could feel (albeit subconsciously), overwhelmed or indeed threatened. Closely related to this, was the presence of the researcher in the room being a distraction for both clients and mediators. Mediators for example might subconsciously alter or adjust their practice when being observed and clients may either feel the need to either include the researcher in the meeting or suppress their thoughts and opinions, which could reduce their chances of reaching an

equitable agreement. For the researcher, it would be difficult to be fully focused on what is happening in the room. .

The second concern was of a more practical and financial nature based on my status as a part-time researcher and it is dealt with in three parts.

1. The first was logistical – related to the coordination of meeting schedules with mediators. Some mediators work on the same day as each other in different locations.
2. Another concern related to the principle of ongoing participation, which meant that clients would not be asked if they were willing to join or continue with the project until the day of the meeting. This meant that if a client did not agree to their session being observed on the day, data collection could not go ahead. This would then become unplanned research time, and for myself as a part time researcher needing to earn a living, leave no option for generating income on that day.
3. Finally, the estimated costs of fuel and parking, when calculated, fell outside the original budget allocated for this part of the study, largely due to the escalation in those costs after the study commenced.

#### **4.3.2 Video recording mediation sessions**

This method was considered to be the best method for capturing mediation sessions because of its capacity to fully record ‘mediation in action’, capturing all aspects of the interaction between mediator and clients and clients, with each other. Enquiries were made about hiring equipment for each mediation session and a ‘researcher’ rate was agreed.

Working space at each location was identified for the researcher and two pilot recordings were organised. This quickly flagged up two problems:

1. During the first pilot recording, the mediator concerned felt ‘spied upon’, to the point of not being able to concentrate on the meeting. The reason given for this was that she found the equipment to be very obtrusive.
2. The second pilot recording was arranged with a different mediator, the equipment was hired and paid for and the mediator and researcher travelled independently to the venue. However, the clients did not attend the appointment and did not

advise the service that they would not be attending. This non-attendance, the costs of equipment coupled with fuel and parking costs, flagged up the fact that this mode of data collection whilst fully 'fit for purpose', could become an unwanted financial drain.

### **4.3.3 Chosen method - Digitally recording mediation sessions**

A variation on the theme of this method of data collection was successfully used. in the late 1980's by Piper in her PhD thesis (Piper, 1987. Using a cassette recorder, Piper conducted research at a family mediation centre, which involved observing and recording conciliation sessions between parents. This research was later published as a book (Piper, 1993). Additionally, Dingwall and Greatbatch, who were funded by the Economic and Social Research Council (ESRC) and the Wates Foundation, to conduct research into family mediation, used the same technology. The data collected was analysed using 'conversation analysis', with the findings written up from a number of different perspectives. One particular published paper, analysed mediator responses to client's allegations of domestic violence (Greatbatch, 1999).<sup>76</sup>

There are a number of benefits associated with recording mediation, the first benefit being that current digital recording technology is such that the recorder is unobtrusive to the point of invisibility. The second benefit is that digital recorders are relatively inexpensive and can hold large amounts of data. This offered a cost-effective option of providing a recorder at each venue, thus removing the need for the researcher to travel to each of five venues on a regular basis.

The benefit of observer absence was the preservation of the dynamic in the room between the mediator and their clients. The main drawback was that the opportunity to observe non-verbal communication by the clients and the mediator was removed. The decision was finally made to record mediation sessions with the intention of answering the questions detailed in section 4.2 above.

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<sup>76</sup> As discussed in chapter three

#### 4.3.4 Revised method - Interviewing mediation clients

The second area of interest in this study focused on the client's 'lived experience' of mediation. Eventually, this could not be pursued but the methods of data collection considered were:

- i. interviewing clients
- ii. focus groups
- iii. questionnaires

There are three types of interview, *structured*, where each participant is asked the same questions, *semi-structured* where a set of questions are designed to guide the interview and *unstructured*, which is open-ended and no attempt is being made to limit the scope of enquiry. Conversations are a traditional way of obtaining systematic knowledge (Kvale, 2007 p 5). Indeed, Kvale states that the term 'interview' is a term of recent origin, which came into use in the seventeenth century. It is defined as an interchange of views between two persons conversing about a theme of common interest (ibid p 5).

After careful consideration, the decision was made to interview clients using semi-structured interviews. This type of interview gives each participant the opportunity to add their individual perspective to the research questions, '*allowing the subjects to convey to others their situation from their own perspective and in their own words*' (Kvale, 2007 p 11). The original intention was to interview mediation clients that had participated in the first phase of the study and this was considered to be an important phase of this study. Unfortunately circumstances beyond the researcher's control meant that this phase did not proceed as originally planned. The original sponsor at the mediation service left the organisation and the new 'gatekeeper' had other pressing priorities, which meant that the organisation was unable to continue supporting the study in the required timeframe.<sup>77</sup> As (I), the researcher, could not

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<sup>77</sup> During the period of data collection, mediation services that held contracts with the Legal Service Commission (LSC)<sup>77</sup> were required to reapply for their contracts. Additionally, those that also held a contract to deliver the Separated Parents Information Programme (SPIP) (Trinder et al., 2011), had to submit a new bid for that contract. There was also a change of gatekeeper at the mediation service, who did not consider the research project as an immediate priority, thus access to the original participants was denied. Without interviewing these participants the overall original research focus became unachievable.

contact clients directly without such support, the required interviews did not take place.

#### **4.3.5 Documentary/archival research**

Mediation practice has been subjected to more critical scrutiny since 1997, when s29 of the Family Law Act 1996 was introduced.<sup>78</sup> Whilst there is a plethora of data focused on many areas of mediator practice little has been written about the pre-mediation meeting. Thus the decision was made to collect data that related to the four areas listed:

- i. The 'intake' assessment meeting, with a focus on screening for domestic violence.
- ii. Initial training, leading to accreditation, ongoing supervision and continuous professional development.
- iii. Quality standards and regulation of the mediation profession
- iv. Policy and legislation, including developments in the provision of legal aid.

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<sup>78</sup> s29 was implemented on a pilot basis in 1999 but the development of policy and procedure started some years earlier as mentioned in chapter two

## **4.4 Recruitment of participants and original sample**

Recruitment of participants is an important part of the research process and the quality and diversity of a purposive sample will depend in part, on the effectiveness of the recruitment process (Ritchie, 2014 p 141).

### **4.4.1 Identification of participants – convenience sample**

The recruitment of participants was guided by the narrow focus of the research design, so, prior to writing the proposal, I had reached ‘agreement in principle’ that I would work with a mediation service that is based in the South of England. Nine mediators were approached, seven agreed to take part in the project and four provided 115 recorded mediation sessions, of which 68 were fully analysed for this project.<sup>79</sup>

The mediation service is affiliated to National Family Mediation (NFM), a Member Organisation (MO) of the Family Mediation Council (FMC). At the time this research was conducted, the service utilised<sup>80</sup> mediators who had been trained on the (NFM) All Issues Core Training programme (AICTP NFM, 2001).<sup>81</sup>

Mediators practising within a prescribed framework (known then as the ‘funding code’), had to be formally recognised by the Legal Service Commission (LSC).<sup>82</sup> To achieve this recognition mediators had to submit a ‘portfolio for assessment of their competence’ to practice as a family mediator. At the time of data collection this comprised five completed mediation cases.

The NFM training for mediators is delivered by approved trainers and when this research study commenced, a condition for acceptance on the course was that the trainee had to have secured a placement within an NFM member service. At that time it was deemed necessary to ensure that all practising and recognised mediators worked within the prescribed framework.

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<sup>79</sup> All recordings were listened to and an outline of content established prior to the final selection of those to be fully analysed

<sup>80</sup> On a self-employed basis

<sup>81</sup> NFM, 2001 revised in part 2004 and 2011

<sup>82</sup> In April 2013 the LSC was renamed the Legal Aid Agency (LAA)

The service provided to clients of the mediation service does not discriminate between clients who receive public funding and those who do not. The process followed for all cases accepted for mediation is the same, whether the clients are eligible or not for legal aid.

#### **4.4.2 The data samples**

The original samples identified at that time consisted of the following:

- i. Tape recorded mediation sessions sought from LSC mediators practising solo-mediation with parents.
- ii. Tape recorded cases where clients both clients attended MIAM.
- iii. The final sample for further analysis comprised of all cases where domestic violence was alleged or inferred during analysis of the data.

A total of 115 meetings were recorded between April 2010 and January 2011, by four LSC (NFM) mediators from a convenience sample of seven; those recordings reflected 58 cases.

Three mediators did not provide and recordings. One was unable to participate as she was not working at the time because of family issues. The other two made encouraging noises about providing recordings and eventually advised that they were unable to secure participant agreement. Based on my experience as an Associate Research Fellow recruiting participants to record mediation meetings for the Mapping Paths to Family Justice Project, it is possible that personally did not want to be recorded (see 3.5.2 above).

#### **4.4.3 Initial contact**

In winter 2009, I was invited to attend a business meeting at the mediation service, with a view to introducing the research project and encourage mediator participation in the project. To ensure I covered the study detail in the time allocated I developed a checklist as an 'aide memoire', which is to be found below in Box one below:



## Box 1: Research briefing

### Research conversation checklist

Title of research

- Background
  - Previous research
  - Outcomes
  - Limitations
  - Recommendations
- Why held interest
- Current driver
  - Economy
  - Changing face of funding/practice etc
- What am I going to do
  - Empirical
  - 2 studies
    - Interviews
    - Recorded sessions
    - Explain why both
    - Explain what was considered and why excluded
  - How analysed
  - Why this analysis
  - What was considered and excluded
- What do I need from you guys
  - Record mediation sessions
    - Signed consent
    - Permission from clients
- Equipment etc.

The purpose of this checklist was to ensure that I covered all aspects of the project, as this was the only opportunity I would have to speak with the majority of mediator participants in the same room.

Questions were sought from the prospective participants and with all questions answered, verbal participation was sought from each mediator attending the meeting. Seven mediators agreed to participate at that time. Four mediators subsequently recorded mediation sessions. (I explain why the sample was obtained by four out of seven in section 4.6 below).

#### 4.4.4 Setting up the recordings

The recorded mediation sessions focused on the mediator as the primary participant and the mediator was responsible for ensuring that the clients were willing to participate. A 'recording checklist' was developed and introduced to the primary participants (mediators) during a business meeting in April 2010. The research aims and rationale were explained, prior to the introduction of the recording checklist (see Box 2 below).

## Box 2: Recording checklist

### Mediator Checklist for recording mediation sessions

- Explain to clients that you are taking part in a research project about mediation and that the researcher is interested in how the mediator works as opposed to the content of the session
- Brief them from participant consent form
- Ask both parties to sign consent form; explain that the researcher needs to sign form and they can have a copy if they wish to once it is signed.
- Make a note on the reverse of the consent form if they want a copy
- Check machine is on – slide hold button on right side of machine forward to show digital display
- Press 'record' and place recorder on a table/shelf in the room (best placed out of vision of all in the room)
- At the end of the session press 'stop' which is the middle button between the left and right arrows
- Slide 'hold' button on right hand side of machine back to switch machine off
- Place signed consent form and recorder back in pouch until next session
- Once you have recorded your quota please contact me to arrange return/collection of recorder and forms

I appreciate it has been a while since I met with you so if you have any queries about the project and your participation, please call me on 07901 757265 or send me an email to [Paulette.Morris@brunel.ac.uk](mailto:Paulette.Morris@brunel.ac.uk)

The purpose of this checklist was to provide a format to enable each participant to work through the recording process in a consistent way. In addition, the ease of use of the digital recorder was confirmed by giving a practical demonstration.

Digital voice recorders were researched on the internet for data-capacity and ease of use. Five Sony IC-P520 digital voice recorders were purchased and one was delivered to each outreach location, with detailed instructions for recording and storing mediation sessions. The research pack also included consent forms for the mediators to sign (see Box 3 below), as well as a supply of replacement batteries.

### Box 3: Informed consent - Mediator

#### **INFORMED CONSENT FORM: Mediator** **Adult withdrawal from the Family Mediation Process**

Brunel Law School requires that all persons who participate in socio-legal or legal research studies give their written consent to do so. Please read the following and sign it if you agree with what it says.

I freely and voluntarily consent to be a participant in the research project on the topic of Family Mediation to be conducted by Paulette Morris as principal investigator, who is a postgraduate student in the School of Law at Brunel University. The broad goal of this research study is to explore family mediation sessions. Specifically, I have been asked to record mediation sessions, which should take no longer than 90 minutes to complete per session.

I have been told that the recordings will be kept strictly confidential. I also understand that if at any time during the recording of sessions that I feel unable or unwilling to continue, I am free to stop recording. That is, my participation in this study is completely voluntary, and I may withdraw from it at any time without negative consequences. My name will not be linked with the research materials, and I will not be identified or identifiable in any report subsequently produced by the researcher.

I have been given the opportunity to ask questions regarding the procedure, and my questions have been answered to my satisfaction. I have been informed that if I have any general questions about this project, I should feel free to contact Paulette Morris at 07901 757265, [Paulette.Morris@brunel.ac.uk](mailto:Paulette.Morris@brunel.ac.uk), or her supervisor Professor Christine Piper 01895 266228, [Christine.Piper@brunel.ac.uk](mailto:Christine.Piper@brunel.ac.uk). If I have any comments or concerns about the ethics procedures employed in this study, I can contact Dr Roda Mushkat, Brunel Law School, at Brunel University, who is Chair of the School's Research Ethics Committee and whose email address is [Roda.Mushkat@brunel.ac.uk](mailto:Roda.Mushkat@brunel.ac.uk)

I have read and understand the above and consent to participate in this study. My signature is not a waiver of any legal rights. Furthermore, I understand that I will be able to keep a copy of the informed consent form for my records.

\_\_\_\_\_  
Participant's Signature

\_\_\_\_\_  
Date

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I have explained and defined in detail the research procedure in which the respondent has consented to participate. Furthermore, I will retain one copy of the informed consent form for my records.

\_\_\_\_\_  
Principal Investigator Signature

\_\_\_\_\_  
Date

With the success of this phase of data collection relying on the recruitment of secondary participants, information sheets were provided for all clients, as well as informed consent forms for the clients, who agreed that their sessions could be recorded. (see Box 4 below).

#### Box 4: Informed consent – client

INFORMED CONSENT FORM: Mediation Sessions  
Adult withdrawal from the Family Mediation Process

Brunel Law School requires that all persons who participate in socio-legal or legal research studies give their written consent to do so. Please read the following and sign it if you agree with what it says.

I freely and voluntarily consent to be a participant in the research project on the topic of family mediation to be conducted by Paulette Morris as principal investigator, who is a postgraduate student in the School of Law at Brunel University. The broad goal of this research study is to explore adult withdrawal from family mediation. Specifically, I have been asked to permit the recording of family mediation sessions, which should take no longer than 90 minutes to complete per session. I understand that giving my permission for this session to be recorded does not assume that I will withdraw from the mediation process

I have been told that my responses will be kept strictly confidential. I also understand that if at any time during the Interview I feel unable or unwilling to continue, I am free to request that recording is stopped. That is, my participation in this study is completely voluntary, and I may withdraw from it at any time without negative consequences. My name will not be linked with the research materials, and I will not be identified or identifiable in any report subsequently produced by the researcher.

I have been given the opportunity to ask questions regarding the recording, and my questions have been answered to my satisfaction. I have been informed that if I have any general questions about this project, I should feel free to contact Paulette Morris at 07901 757265, [Paulette.Morris@brunel.ac.uk](mailto:Paulette.Morris@brunel.ac.uk), or her supervisor Professor Christine Piper 01895 266228, [Christine.Piper@brunel.ac.uk](mailto:Christine.Piper@brunel.ac.uk). If I have any comments or concerns about the ethics procedures employed in this study, I can contact Dr Roda Mushkat, Brunel Law School, at Brunel University, who is Chair of the School's Research Ethics Committee and whose email address is [Roda.Mushkat@brunel.ac.uk](mailto:Roda.Mushkat@brunel.ac.uk)

I have read and understand the above and consent to participate in this study. My signature is not a waiver of any legal rights. Furthermore, I understand that I will be able to keep a copy of the informed consent form for my records.

Participants Name

Participant's Signature (1)

Date

Participants Name

Participant's Signature (2)

Date

I have explained and defined in detail the research procedure in which the respondent has consented to participate. Furthermore, I will retain one copy of the informed consent form for my records.

Principal Investigator Signature

Date

## 4.5 Ethical considerations

*'Ethics is concerned with the attempt to formulate codes and principles of moral behaviour'* (May, 2011). Ethics approval was sought from the School of Law at Brunel University and was granted on the basis of the following principles for the care and consideration of the participants.

### 4.5.1 Privacy, confidentiality and data protection

Seale (2004 p 116), states that most research studies involve an invasion of privacy at some level and Robson (2011 p 207), states that giving anonymity to participants when reporting on research is the norm. It is regarded as good practice and expected in legal frameworks such as the Data Protection Act 1988.

Participant's confidentiality and anonymity is critical to ethical research and was ensured by the adoption of a number of strategies, which were:

1. Not identifying the final participants to the mediation service, the service from which the data was gathered or the mediators who mediated the cases.
2. Using a dedicated email address/telephone number for participant responses.
3. Keeping all digitally recorded data, research notes and partial transcripts in a separate locked filing cabinet when not in use.
4. Password-protecting all documents, to ensure that they could not be opened by any person other than the researcher and her supervisor.
5. Ensuring that a confidentiality agreement was in place before external transcription services were used; pre assigned pseudonyms were to be used for each case.
6. Ensuring that no information relating to the research project was left unattended in locations where research and writing is conducted i.e. domestic and university offices and libraries.<sup>83</sup>
7. Keeping all data in a locked briefcase when in transit, which in turn was locked in the boot of the car as necessary.

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<sup>83</sup> Buckinghamshire New University, Brunel University and the British Libraries

8. Removing all identifying information such as location, employment and children's gender; deleting all of this information from verbatim quotations, notes written, journal articles, conferences and conference papers.
9. Where examples or quotes were used in the presentation of findings e.g. for written articles for Journals or conference papers, these were to be kept short.<sup>84</sup> All identifiable information i.e. events, names gender of children, people and places was removed.
10. No individual accounts were used in the presentation of the findings; a list of super-ordinate themes was developed and the 'richest' data within each theme was reported.
11. Participants were provided with contact details for the researcher, her supervisor, and the chair of Brunel Law School Research Ethics Committee.

#### **4.5.2 Participant well-being**

At the beginning of each mediation session the mediator explained to each participant that they could withdraw from the research process at any time, even if the process was complete.

In keeping with mediation practice, it was agreed that if any participant should become distressed during the meeting, it would be suspended. Space would be given to the participant to allow them to decide whether to continue or terminate the meeting. They were also given the option to continue or withdraw from the mediation and/or research process.

A list, containing contact details for local supportive services was made available. This included Counselling Services, the Citizens Advice Bureau, Housing Advice, and the Samaritans, was made available to participants as necessary.

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<sup>84</sup> As far as practically possible

### **4.5.3 Client and Mediator safety**

The principles applied to researcher safety were also applied to client and mediator safety. These are:

#### **4.5.3.1 Buildings**

- i. Ensure that the access from the street or car park to the building is well lit
- ii. Ask if the access to the building clear of debris i.e. ramps, paths or steps
- iii. Ask if there are any other features that could cause a safety problem
- iv. Ensure you know where the fire escape is
- v. Check if there is more than one entry/exit

#### **4.5.3.2 Personal property**

- i. Ask if there is a safe place for your personal belongings
- ii. Ensure that you know where your belongings are at all times
- iii. Don't take anything valuable with you unless you have to

#### **4.5.3.3 Clients**

- i. Ensure that at least one other person is in the building with you.
- ii. If working alone, ensure that someone knows where you are, from the time you arrive at the venue to the time that you leave the venue.
- iii. Where clients become aggressive, end mediation immediately
- iv. Train and empower staff in the building to raise the alarm if they deem it necessary (Robson, 2011 pp 209-210).

### **4.5.4 Informed consent**

This is a procedure that can support an individual's autonomy when participating in research and it is designed to ensure that research participants are given enough information to determine whether taking part is in their best interests or otherwise (Seale, 2004 p 121).

Participation in this research was voluntary and both primary and secondary participants signed consent forms as detailed in Boxes 3 and 4 (see 4.3 above) before any data were collected. At the beginning of every mediation session, the primary participants were asked to confirm the secondary participants' willingness to continue recording mediation sessions.

## **4.6 The data**

Collecting data is an indispensable part of a research project – ‘no data equals no project’. Whatever methods are used, there is a need for a systematic approach to data acquisition (Robson, 2011 p 407). This section deals with the retrieval of the equipment from the field, the management of, cleaning of, and analysis of the data.

### **4.6.1 Data and equipment retrieval**

Only four of the original seven mediators who agreed to participate in the project recorded mediation sessions. Of the three that did not participate, one mediator was unable to participate because of some family issues that prevented them from working. The other two mediators that did not participate said that they found it difficult to engage.<sup>85</sup>

An individual meeting was subsequently held with each mediator that participated to collect the consent forms and recorders and to discuss any issues that had arisen during recording. All issues raised were noted, and analysis of these issues suggests that the major frustration initially was gaining clients’ approval for the sessions to be recorded.

Another difficulty related to the regular monitoring of the project, which became erratic at times. As a result of this the focus on the project by the participants waned and this resulted in an inconsistent dataset (see 4.6.3 below).

At the end of the individual meeting, each participating mediator was asked if they would like to see the outcome of the research, which they did, and each were given a small gratuity thanking them for their participation.

### **4.6.2 Use of computer equipment in coding and analysis**

There are many opportunities for using computing equipment and software in qualitative studies, and it is a ‘given’ that a good desktop or laptop should be made available to support research (Miles, 2013 p 46). The large amount of data for this

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<sup>85</sup> It is unclear whether the mediators tried to recruit participants or if they did not want to be recorded



study came from a number of sources and needed 'micro-managing' before analysis. This section outlines the hardware and software used for data analysis in this study.

All recordings were downloaded to the Sony digital voice editor software, that was provided with the recorders and they were stored in a password-protected file, identified by recorder name. The identifiers used at this point related to the location of each outreach centre, after which a number was allocated for each location to ensure that the particular mediation service was not identifiable by named location.

Initially, each recording was listened to, to check the quality of the recording and to assess the content of each recording. No notes were made at this time and all recordings were listened to at least once during the initial 'orientation phase'. The recording quality was good, but it was felt that audio enhancement was needed to aid efficient transcription of the chosen extracts.

To facilitate audio enhancement, Express Scribe Transcription for Typists' software was sourced from an organisation known as NCH Software in Australia and downloaded to the research computer. Each recording was uploaded individually to this programme and notes were added to each recording to identify the recording, using the allocated case number, pseudonym, recording location, mediator name and outcome. Examples of these are:

C017 SI Coleen original recording location 2 Med Wynne X  
C050 JI Errol and Elisha original location 4 Med Glenn B  
C051 JM Timothy and Tina original recording location 4 Med Shelby S

There were a total of 115 recordings in the overall dataset. To aide data management, an Infinity transcription foot pedal was purchased. The main purpose of this piece of equipment was to save time, allowing both hands and feet to be used simultaneously during transcription.

Excel spread-sheets and Word documents (Microsoft Office™), were the main software tools used and templates were developed for the analysis of each study in the project. NVIVO™ analysis software was purchased, and used for data coding in study 4.<sup>86</sup> NVIVO™ is one of many specialist Computer Assisted Quantitative Data Analysis

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<sup>86</sup> The 4 cases where domestic abuse was not 'identified' in the joint meetings

Software (CAQDAS) tools, designed to manage large quantities of data. It is useful to the researcher in finding, categorising and retrieving data (Miles, 2013 p 47). These software tools helped to organise the relevant data from the joint meetings into 'nodes' that were relevant to the secondary research questions,<sup>87</sup> the discussion for which is to be found in chapter seven discussion/eight conclusion.

'Dragon Naturally Speaking' voice recognition software was used in Excel and Word for facilitating note-making through speech. It was also used to create some of the partial transcriptions which are presented in this thesis, as verbatim quotations.

#### **4.6.3 Data management - recordings**

The main purpose of data management is to determine what to store, how to retrieve it and what needs to be retained for the purpose of analysis (Miles, 2013 p 51). There were a number of problems that needed to be addressed before any attempts at detailed data analysis could take place.

1. Firstly, the recorders had been assigned to each outreach location used by the mediation service, and the primary participants had recorded sessions for individual cases on different recorders, based entirely on where each meeting took place.<sup>88</sup>

The start of each recording was listened to and a note made of the mediators name. Once all recordings were identified by mediator, each mediator's recordings were listened to for the purpose of 'clustering' the recordings into 'cases'; each case was then given a four digit number with the first number being C001. The word 'case' in this context identified all recording interactions, including those where only a single recording was made.

2. Secondly, the dataset was complex and inconsistent, due to the fact that there were very few complete cases recorded, with 'complete' meaning from pre-mediation to the obvious conclusion of a case. To ensure the complexity of the dataset was fully captured, an Excel spread-sheet was developed, to identify the

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<sup>87</sup> See chapters 8 and 9, discussion and conclusion

<sup>88</sup> Clients work with the same mediator throughout the process; mediators work at different locations on a daily basis and mobile clients are happy to travel to the mediator

stage in the process of each recording, on a case-by-case basis. This included the duration of the recording in minutes. Colour-coding was used on each recording to identify the issues that were being discussed in mediation.

3. The final challenge was to sort the recordings chronologically. This was necessary because, although spare batteries were provided for the recorders, instructions as to how to programme the date on the digital recorder had been omitted. This was an extremely time-consuming task and an 'iterative' process.

The next stage in managing and understanding the data was implemented on a case by case basis. Each case was recorded on an Excel spreadsheet using a colour code to identify the type of meeting, and the duration of each meeting was recorded in minutes in the cell (see example in Box 5 below).

**Box 5: Example of colour coding**

| case no | SIC1 | SIC2 | SCRN | DV | JIA | JIC | JM1A | JM1C | JM2A | JM2C | JM3A | JM3C |
|---------|------|------|------|----|-----|-----|------|------|------|------|------|------|
| 11      | 38   |      |      |    |     |     | 116  |      | 29   |      | 70   |      |
| 12      |      |      |      |    | 82  |     | 110  |      | 111  |      |      |      |
| 13      | 38   |      |      |    |     |     |      | 59   |      | 38   |      |      |
| 14      | 53   | 51   |      |    |     |     |      | 72   |      | 72   |      |      |
| 15      | 33   | 15   |      |    |     |     |      | 24   |      | 32   |      |      |
| 16      | 40   |      |      |    |     |     |      | 60   |      | 35   |      |      |
| 17      | 37   |      |      |    |     |     |      |      |      |      |      |      |
| 18      |      |      |      |    | 73  |     |      |      |      |      |      |      |
| 19      |      |      |      |    | 114 |     | 101  |      | 108  |      |      |      |
| 20      |      |      |      |    | 56  |     | 113  |      | 78   |      |      |      |

Codes    Pink                      Single intake/assessment meeting  
             Blue                      Joint intake/assessment meeting  
             Yellow                      Joint mediation meeting

#### 4.6.4 Data management - determining what to transcribe

I then listened to the end of the last recording of each case, to ascertain whether the clients had reached agreement. Where they did not appear to have reached agreement I contacted each mediator and asked them for the outcome of each case. These fell into three (of six) available outcomes published by the Legal Aid Agency. They are:

- B            mediation broken down, i.e. no agreed proposals

- S mediation successful, i.e. an agreed proposal was made
- X case did not proceed to mediation

These were appended to each case on the Excel spreadsheet so through sorting by outcome produced the following results for the 58 cases under scrutiny.

The number of cases recorded as mediation broken down '(B)' was 27, the number of cases recorded as mediation successful '(S)' was 16 and the number of cases recorded as not proceeding to mediation '(X)' was 15 (see Box 6 below).

**Box 6: Example of recorded outcomes**

| case no | SIC1 | SIC2 | JIA | JIC | JM1A | JM1C | JM2A | JM2C | JM3A | OUTCOME |
|---------|------|------|-----|-----|------|------|------|------|------|---------|
| 1       | 50   |      |     |     |      |      |      |      |      | X       |
| 2       | 50   |      |     |     |      |      |      |      |      | X       |
| 3       | 91   | 51   |     |     | 100  |      |      |      |      | B       |
| 4       |      |      |     | 104 |      | 84   |      | 75   |      | B       |
| 5       | 19   |      |     |     | 36   |      | 47   |      | 58   | S       |
| 6       |      |      |     |     | 75   |      |      |      |      | B       |
| 7       |      |      |     |     | 104  |      |      |      |      | S       |
| 8       | 97   |      |     |     |      |      |      |      |      | B       |
| 9       | 51   | 14   |     |     |      |      |      |      |      | X       |
| 10      |      |      |     |     | 100  |      | 98   |      | 97   | B       |

**4.6.5 Revising the focus of the study**

Once the data was grouped into cases, each case was considered with regard to 'composition' and seven subsets of data emerged:

1. Cases where both clients attended SI and proceeded to mediation (n=8).
2. Cases where clients attended 2 x SI and did not proceed to mediation (n=3).
3. Cases where a single SI information meeting was recorded and the case proceeded to mediation. In this instance the other client attended a meeting that was not recorded. (n=5).
4. Cases where only one SI was recorded and the case did not proceed to mediation. (n=10).
5. Cases where clients attended a joint information meeting, which was recorded and then proceeded to mediation (n=13).
6. Cases where clients attended a JI and did not proceed to mediation (n=3)
7. Cases where no information meetings were recorded but joint mediation meeting(s) were recorded (n=16).

At the end of this process the cases for analysis were identified as those cases where clients had both attended a MIAM either jointly (JIM) or individually (SIM). These are identified in Table 7 below:

| <b>case no</b> | <b>client 1</b> | <b>client 2</b> |
|----------------|-----------------|-----------------|
| 3              | Alice           | Clive           |
| 4              | Jane            | Alex            |
| 9              | Megan           | Joseph          |
| 12             | Celia           | Malcolm         |
| 14             | Sheryl          | Terry           |
| 15             | Constance       | Levi            |
| 18             | Alvira          | Nigel           |
| 19             | June            | David           |
| 20             | Trisha          | Paul            |
| 21             | Hilda           | Harold          |
| 23             | Sally           | Shaun           |
| 26             | Tasha           | Adrian          |
| 27             | Wendy           | William         |
| 28             | Paula           | Peter           |
| 30             | Nina            | Neville         |
| 32             | Karen           | Karl            |
| 36             | Evelyn          | Elroy           |
| 42             | Shelly          | Mark            |
| 44             | Elizabeth       | Euan            |
| 49             | Salome          | Steve           |
| 50             | Elisha          | Elroy           |
| 53             | Sonia           | Shane           |
| 56             | Linda           | Billy           |
| 58             | Vera            | Aaron           |

**Table 7** Cases for analysis

#### **4.6.6 Data Analysis – thematic framework**

Identifying a tool to analyse the presence of domestic violence was difficult because, the secondary participant's in this sample were not attending an intervention that dealt with the effects of domestic violence. This presented a major difficulty in terms of the identification of domestic violence in these intimate relationships.

An analytical framework was designed that would identify the content of the pre-mediation information meetings, and the detail was taken from the documentation completed by mediators during the session. To ensure consistency in terms of the alleged or inferred abuse, 'identifiers' were added to each analysis.

The identifiers selected were based on my training as a facilitator for the DDAIP. A thematic framework for analysis was developed, based on the eight groups of behaviours that are described as 'tactics of control' and form the basis of the core themes of the programme. The programme was developed in Duluth, Minnesota in 1981, and has been adapted for use by many domestic abuse intervention programmes (DAIP) in England and Wales<sup>89</sup>. The Duluth programme focuses on the man as the abuser and the woman as the victim and the tactics of control are presented as a power and control wheel, showing tactics relating to abusive behaviours (see appendix B)<sup>90</sup>.

These tactics are listed below and reflect the order of the rolling programme as opposed to an order of perceived importance.

#### **4.6.7 Data analysis - themes**

##### 4.6.7.1 Theme one: using coercion and threats

In this tactic the perpetrator says or does something that makes the partner afraid that something bad will happen to them if they do not do what they are asked to do by the perpetrator. Examples of this include threats to leave, or commit suicide, reporting to the benefits agency, making the partner perform illegal acts and/or forcing her to withdraw a statement to the police. The damage caused can be emotional, financial, psychological or humiliation.

##### 4.6.7.2 Theme two: using intimidation

This tactic includes the use of looks, actions and words, that are meant to frighten, scare, or bully their partner. Examples of this include destroying things in the family home, damaging the partner's personal property, abusing pets, and displaying weapons. It is suggested that past use of physical violence increases the impact of intimidation on their partner.

##### 4.6.7.3 Theme three: using emotional abuse

Along with psychological abuse, emotional abuse is seen as the generic category that involves miscellaneous non-physical behaviours. Emotional abuse includes gestures,

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<sup>89</sup> See 1.1 above for further detail

<sup>90</sup> Appendix C relates to post separation violence with a focus on children

statements or actions that are designed to attack the partner's self-esteem, confidence and self-worth, as well as acts that are carried out with the intention of humiliating the partner. Whilst often coexisting with other forms of abusive behaviours, emotional abuse can exist independently of physical violence and may continue to be used as a method of control even after a relationship has ended.

#### 4.6.7.4 Theme four: using isolation

Isolation is used to separate the 'victim' from their support network, and, in the case of children, the child from their mother. The perpetrator starts by placing a negative focus on victims' friends', suggesting that they lead them astray, or complaining that they spend too much time with them. Once contact with the friends has ceased, the focus is then placed on isolating the victim from her family, for example refusing to attend family functions. From the child's perspective, keeping a child away from their mother and not knowing the location of their child is tantamount to isolation. Preventing the child from spending time with their peers and seeing members of the extended family, is also considered to be isolation.

#### 4.6.7.5 Theme five: minimisation, denial and blame

'Minimisation' is used to make light of an assault or abusive behaviour. Denial is designed to suggest that the abuse or controlling behaviour under discussion never happened. Abusers often shift the responsibility for the abuse to something or someone else. These three behaviours can best be described as subtle and powerful mind games designed to distort the truth and to twist the facts, in some cases to the point of total absurdity, thus shifting the focus from the perpetrator to the partner.

#### 4.6.7.6 Theme six: using children

In this tactic the children are often caught in the middle of the parents' conflict relationship. Examples include making a partner feel guilty about the children, using the children to relay messages, taking advantage of contact visits to harass, and threatening to take children away. Additionally, post-separation, other tactics deployed include undermining her ability to parent, thus disrupting her parental relationship with the children, endangering or disregarding children, and discrediting her as a mother.

#### 4.6.7.7 Theme seven: using male privilege

Within this tactic of control is a patriarchal belief system that men are entitled to certain privileges because they are the head of the household. Within this tactic is a refusal to recognise their partner as equal, and, on occasion, as an adult in their own right. There is an assumption of certain masculine entitlements, such as treating her as the servant and making all of the major decisions. All of these actions tend to reinforce the definition of the male as being the dominant person in the relationship.

#### 4.6.7.8 Theme eight: using economic abuse

In this tactic, behaviours include preventing the partner from getting or keeping a job, putting her in a position whereby she is given a small allowance, and then making then ask for money when the allowance runs out. Withholding information and access to the family finances is often coupled with taking her money, for example child benefit.

To further support the DDAIP themes, appendix C details the post separation power and control tactics with a focus on violence to children.

### **4.6.8 Data Analysis - Pre-mediation ('intake' - MIAM)**

A 'homogenous' dataset was taken, which comprised of information sessions where both clients had attended either jointly or individually. (n=24). The data is detailed in 4.6.3 above and forms the starting point for the data analysis.

#### 4.6.8.1 Study one: Content of the three stages of the MIAM

This study is presented in two parts, with the first part being a small quantitative study using data drawn from the analytical framework and recorded on an Excel spreadsheet. The average time for different sections of the meeting is identified along with the longest and shortest time for each key section of the pre-mediation meeting. The second part of this study is a thematic analysis of the three stages of the intake meeting and it focuses on how the mediator conducts the meeting, and seeks to answer the subsidiary research question:

- i. Is there initial screening for abuse and, if so, how is it done?*



#### 4.6.8.2 Study two: The 15 MIAMs where domestic violence was alleged or inferred

The Excel spreadsheets developed and used in study one was also used for this study. Fifteen of the cases from the original dataset contained evidence where domestic abuse was alleged or inferred during the meetings, and these cases are used in this study (n=15). This study answers subsidiary research questions (ii to iv).<sup>91</sup>

- ii. *What types of abusive behaviours are alleged or inferred during mediation sessions?*
- iii. *How do mediators manage disclosure of abuse and any client responses to such management during mediation?*
- iv. *How do mediators manage expressions of emotions by clients?*
- v. *Where a parent expressed concern about the welfare of a child, how was this managed?*

#### 4.6.8.3 Study three: The 4 MIAMs where domestic abuse was alleged or inferred that did not proceed to mediation

This study outlines the 'intake' meetings where domestic abuse was identified and the case did not proceed to mediation (n=4); a synopsis of each of these cases is included.

The recordings were partially transcribed 'verbatim in context' and the extracts were recorded manually on a template designed using Microsoft Word to record data that related to the subsidiary questions. Consideration was given to scanning each of these to a PDF document and using NVIVO™ to code the partial transcripts. However, it was decided that the amount of time it would take to do this was probably equal to the amount of time it would take to type the evidence into an Excel spreadsheet. The evidence was then clustered into themes using post it notes™.

### 4.6.9 Data Analysis - Joint meetings

*Study four: The 4 cases where domestic abuse was not 'identified' in the joint meetings*  
*Study five: The 7 cases where domestic abuse was 'identified' in the joint meetings.*

Initial analysis of the JM's relating to the 11 cases in study two was conducted, to determine whether abuse 'identified' during the intake meeting was referred to in the JM. A total of four cases were identified where abuse was not present. A review of each of these four cases is included in this study. The remaining cases are analysed

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<sup>91</sup> Four of these cases did not proceed to mediation and they are discussed in study three

using thematic analysis based on the Duluth identifiers detailed earlier in this section, and answers subsidiary research questions as detailed in above.

Each case was partially transcribed, 'verbatim in context' into individual Microsoft Word documents. These documents were then uploaded into NVIVO™ and a number of nodes were developed within the software for coding purposes. These nodes relate to themes taken from the tactics of control in the DDAIP, and the data was coded to these themes, which are seen as abusive behaviours. The findings are presented in chapter 7 of this thesis.

#### **4.6.10 Summary**

This chapter provided a full and detailed description of the study methods used to develop this thesis. These included the research question and study design, data collection, recruitment of participants, ethical considerations and management and analysis of the data. The next chapter will present the analysis and findings for study one - Content of the three stages of the MIAM, as detailed in 4.6.8. above.

#### **4.7 References - chapter four**

- Greatbatch D and Dingwall R. (1999) *The Marginalization of Domestic Violence in Divorce Mediation. International Journal of Law Policy and the Family* 13: 174-190.
- Kvale S. (2007) *Doing Interviews*, London: Sage Publications.
- May T. (2011) *Social Research -Issues, Methods and Proces.*, Maidenhead: Open University Press.
- Miles MB, Huberman AM and Saldaña J. (2013) *Qualitative data analysis: A methods sourcebook: SAGE Publications Incorporated.*
- NFM. (2001) *AICTP Training Manual*, Bristol: National Family Mediation.
- Piper C. (1987) *Divorce conciliation: Who decides about the children? Thesis: Brunel University.*
- Piper C. (1993) *The Responsible Parent - A Study in Divorce Mediation*, Hemel Hempstead: Harvester Wheatsheaf.
- Ritchie J, Lewis J, Nicholls CM, et al. (2014) *Qualitative research practice: A guide for social science students and researchers*, London: Sage.
- Robson C. (2011) *Real World Research*, Chichester, West Sussex: Wiley.
- Seale C. (2004) *Researching Society and Culture*. London: Sage Publications.
- Walker R. (1985) *Doing research: A handbook for teachers: Methuen London.*

## Chapter 5 Data Analysis and Findings – MIAMs

### 5.1 Introduction

Chapters five and six present the analysis and research findings that relate to the primary and secondary research questions, from the recorded Intake Assessment /Mediation Information Assessment Meetings (MIAM).<sup>92</sup> These are:

#### 5.1.1 Primary

*“Do mediators screen for domestic abuse and, if and when they do, how do they manage the process and client responses?”*

- i. Is there initial screening for abuse and, if so, how is it done?*

#### 5.1.2 Secondary

- ii. What types of abusive behaviours are alleged or inferred during mediation sessions?*
- iii. How do mediators manage disclosure of abuse and any client responses to such management during mediation?*
- iv. How do mediators manage expressions of emotions by clients?*
- v. Where a parent expressed concern about the welfare of a child, how was this managed?*

As previously outlined in section 4.6.4, the dataset comprises of 24 digitally recorded mediation cases, where both clients attended an ‘intake’ session jointly or individually. The raw data from the MIAMs was analysed as a whole, together with three subsets of the data corpus.

### 5.2 Introducing the three studies

#### 5.2.1 Study one: Content of the three stages of the MIAM

This study focuses on the practice of the mediator during the MIAM, using procedural guidance for conducting a MIAM published by National Family Mediation (NFM). NFM is one of six Member Organisations (MOs) of the Family Mediation Council (FMC). It

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<sup>92</sup> The words ‘intake’, intake assessment, pre-mediation and MIAM, are used throughout this thesis to describe these meetings. This reflects the number of changes in terminology in the field that have taken place since this research project started in 2008

uses NFM policy and guidance (NFM, 2012 pp 74-75) for consistency of process that suggests that the MIAM has three clearly defined stages, which are:

- i. gathering and giving information (information stage)
- ii. assessing suitability (assessment stage)
- iii. deciding the way forward (final stage).

Study one presents the findings in relation to these three stages of the MIAM. Screening for domestic violence takes place within the 'assessing suitability' stage. Therefore the finding for stages i and iii and for part of ii do not directly address the research questions. However, it is helpful to place screening for domestic violence not simply within the context of the assessment stage (stage 2), but also within the context of the whole of the MIAM process. Without this context it is not possible to appreciate fully the role of screening does or does not play in the MIAM.

Study one is a mixed method study using thematic and content analysis and is presented in two parts. Part one is a quantitative study of the three stages of the MIAM outlined above. The detailed analysis presents the amount of time each key stage of the meeting takes and is broken down to reflect some individual components within each stage. It is presented as two tables (tables 9 and 10), which reflect the two types of 'intake' meeting 'joint intakes (JIM) and single intakes (SIM)' used by mediators.

Part 2 is the qualitative element of the study and presents evidence of mediator practice and client responses for each stage of the MIAM. For consistency, efficiency, and expediency, I made the decision to use two MIAMs from each mediator, one where both clients had attended a JIM, and one where both clients had attended a SIM. The reason for this decision was that when listening to the recordings during the data management stage of the process, I noticed that each mediator followed a personalised version of the standard format for the intake meetings.

The extracts for the qualitative part of this study come from the following cases and they reflect the practice of each of the mediator participants.<sup>93</sup>

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<sup>93</sup> The data did not include any SIM's from Med 4

| Case No | Mediator | JIM/SIM | Client 1 | Client 2 |
|---------|----------|---------|----------|----------|
| C003    | Med 1    | SIM     | Alice    | Clive    |
| C004    | Med 1    | JIM     | Jane     | Alex     |
| C012    | Med 3    | JIM     | Celia    | Colm     |
| C014    | Med 3    | SIM     | Sheryl   | Terry    |
| C019    | Med 4    | JIM     | June     | David    |
| C021    | Med 2    | SIM     | Hilda    | Harold   |
| C042    | Med 2    | JIM     | Shelly   | Mark     |

**Table 8**

**Qualitative MIAM sample by mediator**

### **5.2.2 Study two: The 15 MIAMs where domestic violence was alleged or inferred**

During the early stages of analysis, as the Duluth identifiers was evidenced, these were added to the notes for each case. These eight identifiers relate to ‘power and control’ and are used in this study as themes that represent abusive behaviours. Content from 15 of the 24 cases in the homogenous dataset contained allegations of abusive behaviours, or such behaviours that could be inferred from the narrative. This study presents the findings based on the eight ‘tactics of control’, which are:

- Theme 1: Coercion and threats
- Theme 2: Intimidation
- Theme 3: Emotional abuse
- Theme 4: Isolation
- Theme 5: Minimisation, denial and blame
- Theme 6: Using children
- Theme 7: Male privilege
- Theme 8: Economic abuse

Study two thus seeks to answer the following research questions:

- ii. What types of abusive behaviours are alleged or inferred during mediation sessions?*
- iii. How do mediators manage disclosure of abuse and any client responses to such management during mediation?*
- iv. How do mediators manage expressions of emotions by clients?*
- v. Where a parent expressed concern about the welfare of a child, how was this managed?*

### **5.2.3 Study three: The 4 MIAMs where domestic abuse was alleged or inferred that did not proceed to mediation**

Study three is a subset of Study two and concentrates on the 4 cases in that study where domestic abuse was alleged/inferred and those cases did not proceed to mediation. It seeks to identify the commonalties and differences that led to these cases not proceeding to mediation.

### 5.3 Study one: The content of the three stages of the MIAM

Study one is presented in three parts with part one discussing JIMs, part two SIMs and part three comparing and contrasting JIMs and SIMs. The key to abbreviations used for both tables is:

|          |                  |
|----------|------------------|
| Ass      | Assessment       |
| AVG      | Average          |
| 1        | Client 1         |
| 2        | Client 2         |
| Scrn     | Screening        |
| Sep meet | Separate meeting |
| Tot      | Total            |

As mentioned in 5.2.1, this study focuses on the three stages of the ‘intake’ meeting/MIAM and provides detail of each of the three stages, with data to support that detail. It aims to set ‘screening’ in context and specifically, seeks to answer the secondary research question:

- i. *Is there initial screening for abuse and, if so, how is it done?*

The first stage of analysis, listening to the recorded MIAMS and assessing themes and process, led to the emergence of the following as the key time related aspects of the process to be investigated using quantitative analysis. The relative times taken for the different stages shed light on the use, position, and importance of screening for domestic abuse.

- i. The total time taken for each meeting
- ii. The length of stage two (assessment stage)
- iii. The amount of time taken to assess eligibility for legal aid for each client
- iv. The amount of time taken for screening for domestic violence for each client
- v. Time spent speaking with the parents together

The table below refers to the thirteen JIMs in this sample and provides a detailed breakdown of each of the five key aspects of the JIM. Times are given in minutes ‘rounded’ to the nearest quarter minute; the averages stated are the ‘true’ averages.



**5.3.1 228: Joint intakes - content in minutes and percentages**

| case no    | total time   | sep meet 1   | % of total   | sep meet 2   | % of total   | ass 1       | % of total   | ass 2       | % of total  | scrn 1      | % of total  | scrn 2      | % of total  | joint story  | % of total   |
|------------|--------------|--------------|--------------|--------------|--------------|-------------|--------------|-------------|-------------|-------------|-------------|-------------|-------------|--------------|--------------|
| 4          | 104.00       | 30.00        | 28.85        | 42.00        | 40.38        | 10.00       | 9.62         | 8.50        | 8.17        | 3.75        | 3.61        | 2.50        | 2.40        | 33.75        | 32.32        |
| 12         | 82.00        | 9.75         | 11.89        | 13.50        | 16.46        | 10.50       | 12.80        | 1.50        | 1.83        | 1.25        | 1.52        | 0.25        | 0.30        | 55.75        | 68.03        |
| 18         | 73.50        | 21.50        | 29.25        | 12.25        | 16.67        | 7.00        | 9.52         | 0.75        | 1.02        | 2.25        | 3.06        | 2.75        | 3.74        | 35.25        | 48.07        |
| 19         | 114.50       | 26.00        | 22.71        | 33.00        | 28.82        | 10.50       | 9.17         | 3.00        | 2.62        | 4.00        | 3.49        | 2.00        | 1.75        | 59.75        | 52.12        |
| 20         | 56.75        | 25.00        | 44.05        | 14.50        | 25.55        | 6.00        | 10.57        | 4.25        | 7.49        | 0.00        | 0.00        | 0.00        | 0.00        | 6.25         | 10.92        |
| 27         | 101.00       | 14.50        | 14.36        | 21.00        | 20.79        | 7.00        | 6.93         | 0.75        | 0.74        | 1.75        | 1.73        | 2.00        | 1.98        | 65.75        | 65.06        |
| 30         | 94.50        | 20.25        | 21.48        | 29.50        | 31.16        | 7.25        | 7.67         | 2.50        | 2.56        | 2.25        | 2.38        | 1.25        | 1.32        | 43.00        | 45.54        |
| 32         | 46.00        | 15.25        | 33.15        | 13.75        | 29.89        | 7.50        | 16.30        | 2.50        | 5.43        | 0.75        | 1.63        | 2.00        | 4.35        | 0.75         | 1.87         |
| 42         | 36.50        | 8.75         | 23.97        | 4.50         | 12.33        | 7.00        | 19.18        | 4.75        | 13.01       | 1.00        | 2.74        | 2.00        | 5.48        | 15.50        | 42.25        |
| 44         | 85.00        | 13.50        | 15.88        | 25.50        | 30.00        | 12.50       | 14.71        | 7.00        | 8.24        | 2.75        | 3.24        | 2.00        | 2.35        | 41.50        | 48.82        |
| 49         | 63.00        | 23.00        | 36.51        | 23.75        | 37.70        | 12.00       | 19.05        | 8.25        | 13.10       | 0.00        | 0.00        | 0.00        | 0.00        | 2.25         | 3.65         |
| 50         | 49.50        | 8.00         | 16.16        | 15.00        | 30.30        | 7.50        | 15.15        | 2.00        | 4.04        | 0.00        | 0.00        | 0.00        | 0.00        | 11.25        | 22.62        |
| 58         | 74.75        | 14.00        | 18.73        | 25.50        | 34.11        | 8.25        | 11.04        | 3.00        | 4.01        | 0.50        | 0.67        | 0.50        | 0.67        | 26.75        | 35.63        |
| <b>AVG</b> | <b>75.46</b> | <b>17.66</b> | <b>23.40</b> | <b>21.05</b> | <b>27.90</b> | <b>8.69</b> | <b>11.52</b> | <b>3.74</b> | <b>4.96</b> | <b>0.20</b> | <b>0.27</b> | <b>1.33</b> | <b>1.76</b> | <b>29.90</b> | <b>39.63</b> |

Table 9

Joint intakes

Please see the next page for a detailed explanation of this table

The mediation service in this sample diarises two hours for a JIM to take place, with thirty minutes of this time allocated for mandatory paperwork (administration). Four cases took more than the prescribed time to complete, the remaining nine took less than the allocated time, and the average time for a JIM was just under seventy six minutes. The longest JIM took 114½ minutes (C019) and the shortest 36½ minutes (C042).

There is no published guidance as to the length of time each client's separate meeting should take. The length of each separate meeting depended on whether the client needed to be assessed for eligibility for legal aid. The shortest of these meetings in this sample was just under 5 minutes (C042), the longest 42 minutes (C004), and the average meeting time just under 28 minutes.

In terms of assessing eligibility for legal aid, where a client was not assessed the shortest time taken for this was ¾ minute (C018); where a client was assessed for legal aid the longest time taken to complete the assessment was 12½ minutes, representing 14% of the overall JIM. The average assessment time for both legal aid and private clients was just under 9 minutes.

In contrast, the amount of time spent on screening for domestic violence was less than that spent on assessing for legal aid, with the shortest screening time being ¼ minute the longest being 4 minutes and the average being ¾ minute. The average figure is 'skewed' because in three cases in this sample no specific screening questions (as detailed in the NFM training manual) were asked, but in two of these cases the notes that I made relating to the discourse in the JIM contained enough evidence to show that an assumption of abuse could have been made by the mediator. In the third case, the clients were returning to mediation and had been previously screened, which may account for the fact that no specific screening questions were asked on this occasion.

If these three cases are removed from the calculation, based on 10 cases in this sample, the average screening time becomes 1¼ minutes. Whichever average is used in this sample, substantially more time was spent on assessing eligibility for legal aid, than on screening for domestic violence. This finding is as expected and validates the concerns that have been expressed by key other commentators {Barlow, 2014 #3784}.

The time spent with both clients together ‘telling their joint story’ varied enormously with the longest joint story lasting just under 56 minutes, representing 68% of the total meeting time, the shortest just under 1 minute representing 2% of the total meeting time and the average being just under 30 minutes which represented 40% of the average meeting time. In three cases (020, 032 and 049) the mother started crying as soon as the meeting started and the mediator decided to conduct separate meetings for the clients early on in the JIM.

### 5.3.2 Table 10: Single intakes – content in minutes and percentages

The table below details the 22 SIMs in this sample (11 cases) and reflects a detailed breakdown of each of the four key areas of the SIM which are:

- i. The total time taken for each meeting
- ii. The amount of time taken to assess eligibility for legal aid
- iii. The amount of time taken for screening for domestic violence
- iv. Time spent telling their story.

| Name       | case no | total time   | Ass         | % of total   | scrn        | % of total  | story        | % of total   |
|------------|---------|--------------|-------------|--------------|-------------|-------------|--------------|--------------|
| Alice      | 3       | 91.00        | 10.25       | 11.26        | 5.50        | 6.04        | 75.25        | 71.70        |
| Clive      | 3       | 51.00        | 2.25        | 4.41         | 0.75        | 1.47        | 48.00        | 94.12        |
| Joseph     | 9       | 14.00        | 2.50        | 17.86        | 0.75        | 5.36        | 10.75        | 76.79        |
| Megan      | 9       | 51.75        | 1.75        | 3.38         | 3.50        | 6.76        | 46.50        | 89.86        |
| Sheryl     | 14      | 53.75        | 2.00        | 3.72         | 2.75        | 5.12        | 49.00        | 91.16        |
| Terry      | 14      | 51.50        | 2.25        | 4.37         | 3.25        | 6.31        | 46.00        | 89.32        |
| Constance  | 15      | 33.25        | 2.25        | 6.77         | 4.50        | 13.53       | 26.50        | 79.70        |
| Levi       | 15      | 29.75        | 12.00       | 40.34        | 0.75        | 2.52        | 17.00        | 57.14        |
| Harold     | 21      | 35.25        | 1.50        | 4.26         | 0.75        | 2.13        | 33.00        | 93.62        |
| Hilda      | 21      | 35.75        | 10.00       | 27.97        | 2.75        | 7.69        | 23.00        | 64.34        |
| Sally      | 23      | 46.50        | 1.75        | 3.76         | 1.25        | 2.69        | 43.50        | 93.55        |
| Shaun      | 23      | 24.50        | 0.75        | 3.06         | 0.75        | 3.06        | 23.00        | 93.88        |
| Adrian     | 26      | 37.75        | 0.75        | 1.99         | 2.25        | 5.96        | 34.75        | 92.05        |
| Tasha      | 26      | 54.25        | 4.25        | 7.83         | 3.00        | 5.53        | 47.00        | 86.64        |
| Paula      | 28      | 23.00        | 4.00        | 17.39        | 2.00        | 8.70        | 17.00        | 73.91        |
| Peter      | 28      | 20.00        | 2.75        | 13.75        | 2.00        | 10.00       | 15.25        | 76.25        |
| Elroy      | 36      | 44.25        | 2.00        | 4.52         | 2.75        | 6.21        | 39.50        | 89.27        |
| Evelyn     | 36      | 55.25        | 3.50        | 6.33         | 4.25        | 7.69        | 47.50        | 85.97        |
| Shane      | 53      | 36.00        | 3.00        | 8.33         | 3.00        | 8.33        | 30.00        | 83.33        |
| Sonia      | 53      | 38.75        | 11.25       | 29.03        | 3.75        | 9.68        | 23.75        | 61.29        |
| Linda      | 56      | 55.00        | 13.75       | 25.00        | 2.25        | 4.09        | 39.00        | 70.91        |
| Billy      | 56      | 50.00        | 3.25        | 6.50         | 2.50        | 5.00        | 44.25        | 88.50        |
| <b>AVG</b> |         | <b>42.38</b> | <b>4.44</b> | <b>10.49</b> | <b>2.50</b> | <b>5.90</b> | <b>35.43</b> | <b>83.61</b> |

Table 10

Single intakes

The mediation service in this sample diarises one hour for a SIM to take place, with fifteen minutes of this time allocated for administration. 10 of the 22 SIMs took more than the prescribed time to complete, whilst the remaining 12 took less than the allocated time. The average time for a SIM was just under 76 minutes with the longest taking 91 minutes and the shortest 14 minutes.

In terms of assessing eligibility for legal aid, where a client was not assessed the shortest time taken for this was  $\frac{3}{4}$  minute (C026); where a client was assessed for legal aid, the longest time taken to complete the assessment was  $13\frac{3}{4}$  minutes, representing 25% of the overall SIM. The average assessment time for both legally aided and privately funded clients was just under 11 minutes, representing just less than 11% of the overall SIM.

In contrast, the amount of time spent on screening for domestic violence was again less than that spent on assessing for legal aid, with the shortest screening time being  $\frac{3}{4}$  minute (C003), the longest being just under 6 minutes (C003) and the average screening time being  $2\frac{1}{2}$  minutes, representing just under 6% of the overall SIM.

In terms of the amount of time each client had to tell their story, the average time was 35 minutes, representing just under 83% of the total meeting time, with the shortest time being  $10\frac{3}{4}$  minutes (C009) and the longest being  $75\frac{1}{4}$  minutes (C003).

### **5.3.3 Summary –part one**

All clients in this sample were verbally informed of the cost to them of *mediation*, which varied according to individual income. However, the costs of *legal representation* were not generally covered, as this issue was dealt with in the initial paperwork sent to each client.

Section 2 of the original Funding Code Criteria (2000) requires that the mediator asks questions that relate to a 'legal dispute', but no detail of such questions is given, and the use of the term 'legal dispute' does not appear in any of the recorded mediation sessions<sup>94</sup>.

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<sup>94</sup> Since LASPO, the argument relating to legal aid only being available to fund legal family disputes became dominant and the definition of a 'legal dispute' became problematic

There proved to be a stark contrast between JIMs and SIMs in terms of the amount of time made available for clients to speak individually about their current situation. Clients who attended a JIM tended to have a great deal less time for this, averaging a joint time of just less than 30 minutes (40% of the overall meeting time). The average time allowed for their individual story during a JIM was just under 12½ minutes. Conversely, clients who attended a SIM had more time to focus on their story, averaging 83% of the overall meeting time.

In terms of screening for domestic violence, in both SIMs and JIMs the average time was less than three minutes. When considering the secondary research question:

*i. Is there initial screening for abuse and, if so, how is it done?*

The answer is that screening IS conducted in both JIMs and SIMs, but the one-to-one nature of the SIM, gives those clients more time to tell their individual stories. To this end, the mediator is able to focus on a single client and the opportunity for better screening (in terms of available time) presents itself. Nevertheless the amount of time spent on screening does not give the clients enough opportunity to disclose any abusive behaviour.

The second part of this study sheds light on the three stages of the MIAM as detailed in 5.2 above, using qualitative analysis.

## 5.4 Information stage

This stage can best be described as the administration section of the meeting and is used by the mediators to break the ice and build a level of rapport with the clients. All mediators were found to deal with the requirements at this stage, which are:

### 5.4.1 The purpose of the meeting and the amount of time it will take

Each of the mediators provided this information in a different way and the following extract is taken from a SIM:

*Med 1 Okay, so I know that your solicitor Jones and Williams have referred you to come to mediation*

*Clive Yes*

*Med 1 and the purpose of this meeting really is for you to decide whether you think it might be helpful*

In the above extract, Med 1 uses the source of referral to mediation to introduce the purpose of the meeting at the outset of the meeting, whereas Med 2 in the following extract from a SIM, approached this in a slightly different way opting initially to engage in 'small talk' relating to parking, which eventually led to her then introducing the meeting as follows:

*Med 2 Okay, so what do you understand today's session to be about?*

*Harold well um it's about talking and seeing what the options are really*

*Med 2 right, it's actually an information session for me to hear from you what's been going on, where you are now, and where you're trying to get to. For me to talk to you a bit about mediation and tell you what we can and can't do, and also to do an assessment on you to see if you're eligible for the costs of the mediation to be paid for*

*Harold I don't think I am*

\*

In a JIM, Med 4 opted to centre the meeting by explaining its purpose, as the following extract presents:

*Med 4 The 1st thing today is for me to give you a bit of information about mediation and to answer any questions that you've got, and to find out a few details about the 2 of you, what you're expecting from mediation, what you want to cover and it's also to do the public funding assessment, to find out if you get mediation for free or if not what you do about payment. Do you mind where I start really? Have you got any questions?*

*David no I'm fine*

*June no*

\*

Both Med 3 and Med 2 opted to give more detailed information about the purpose of the meeting but all mediators covered this section of the meeting.

Analysis of this section of a MIAM revealed that each mediator adopted a similar personal style of delivery during each meeting. There was no evidence at the beginning of each meeting, in any of the recordings, that information was given about the length of time the meeting would take, although in one case, when Med 2 asked Mark and Shelly, what they understood the meeting to be about, Mark's immediate response was:

Mark *'Firstly, how long is it?'*

This was an unusual response and as the meeting progressed it emerged that Mark was not fully engaged at all with the overall process.

#### **5.4.2 The mediation process and key principles of mediation**

Each mediator had their own 'script' for explaining mediation. The following extract is Med 1's description of the process and principles. It can be best described as an 'indirect approach':

*Med 1 It's a very neutral process, it's not about us judging blaming or taking sides, it's not about who's right or wrong, it is very much about sorting things out. If you start mediation and you decide you don't want to continue or if you say you want to and you change your mind, that's fine.*

Med 1 explained mediation to the client without using the principles, as detailed in 2.3 above, whereas Med 4 described the principles and process giving specific examples. The following extract is Med 4's explanation of confidentiality:

*Med 4 I need to tell you about mediation, it's confidential, we don't pass on any information to any organisations, we don't pass anything to the court, the only exception would be if there was a concern for you or the children. And I'm not here to judge or to take sides, I definitely don't want to make decisions for you so it's a chance for you to follow through the process in a constructive way so that you can get to the point where you can make decisions.*

Meds 1 and 4 gave the clients information about the mediation process in different ways and selected different descriptors for the stages of the process. In considering the approach of Med 1, the delivery could potentially inhibit the client from raising any

concerns that may arise because it leaves the impression with the client that if they are not happy with the process they can always opt out. On the other hand, the more direct approach used by Med 4 made it clear that both clients would be given a chance to speak up, thus encouraging equal participation. Med 4 suggested this when she explained her role in the mediation process:

*Med 4 And my role is to be impartial and sometimes balancing, checking out that you're both given a chance to speak, sometimes I might give bits of information such as background information but not legal advice. And there might be times when you need to go and get information and advice from elsewhere. Is that pretty much what you expected?*

#### **5.4.3 Gathering factual information and checking information held**

Basic factual information is gathered at the time of referral to mediation and this needs to be checked for accuracy with the clients at the first meeting. In the following extract, taken from a SIM, Med 1 asks a direct question about Clive's housing situation, after which she acknowledges the level of tension that he is living under:

*Med 1 so you've actually got no fixed address at the moment*  
*Clive I'm still moving to a place, but for the last two months I've been homeless*  
*Med 1 right, how has that come about?*  
*Clive that's because my wife Alice threw me out*  
*Med 1 right*  
*Clive threw a couple of bags on the street and just refused to let me come back into the house so. So I went to the garden and tried open the side window to our house because I couldn't open the door, and she grabbed the stick off me and called the police*

\*

In a JIM, mediators were able to check factual information with both clients at the beginning of the meeting and in the following extract Med 4 checks the information held for June and David:

*Med 4 So you're still both in the same house as I can see you have the same address. Can I just ask you a few questions about dates?*  
*David Yes*  
*June Yes*  
*Med 4 When did you get married?*  
*David (gives the date)*  
*Med 4 and did you live together before?*  
*June Yes*  
*Med 4 Do you know roughly how long?*

\*



Med 4 continued to ask factual questions, which included the following: when they made the decision to separate; whether it was a joint decision; whether they had tried Relate prior to deciding to separate and whether they had been able to speak with each other since they agreed to separate.

In this sample, where clients attended a JIM, the facts were checked with them together in all cases (n=11).

## 5.5 Assessing suitability (separate meetings)

### 5.5.1 Receiving some explanation from each client about the current situation

The purpose of this part of the assessment process is for the mediator to explore and understand current living arrangements, employment status and where applicable whether regular arrangements for contact have been agreed.

The following extract gives some context to the development of the session to the point where the mediator suggested separate meetings:

- Med 2 I think for me it would be useful to hear from you both about um what's been going on and where you're trying to get to and obviously I want to hear from both of you*
- Shelly okay well we separated October we have had several reconciliations um (pause) we've got as far as decree nisi so we here now to sort out the finances for the absolute.*
- Med 2 what led to the breakdown in the relationship?*
- Shelly he had an affair (very long pause)*
- Med 2 Okay since the relationship is irretrievably broken down (Train passes at the same time as a blue light siren). At this stage then that is all I need to hear from both of you together.*

In the above extract, Med 2 asked Shelly and Mark to give some detail of the background to the breakdown in their relationship, stressing that she wanted to hear from both of them and having heard from just one of them suggested separate meetings. The first separate meeting was held with Shelly, and the mediator started the session with a direct question:

- Med 2 So you separated in October, how did you find out about the affair?*
- Shelly Well he had the affair in the summer last year*
- Med 2 right*
- Shelly and a friend of mine found out*
- Med 2 right*
- Shelly and she made him tell me, he came to tell me. Then he left but he's been back three or four times tried to make it work but he is still with her.*
- Med 2 Okay and how does that feel for you?*
- Shelly Gutting (huge sigh)*
- Med 2 You don't like it*
- Shelly (nervous laugh)*
- Med 2 Okay it was just like a bolt out of the blue for you. So do you feel able to sort out the finances?*
- Shelly I need to because what happened was then before he left our house was on the market*
- Med 2 right*

During this section of the session Med 2 is listening to Shelly, acknowledging her story as it unfolds. Med 2 shows empathy with Shelly by exploring and acknowledging her feelings. Shelly then continued to explain the current situation:

*Shelly and we had actually gone, we were halfway through selling it so we carried on selling*

*Med 2 mmm*

*Shelly and he came back at Christmas we spent it together*

*Med 2 right*

*Shelly our home was in Borcetshire*

*Med 2 right*

*Shelly but my family and my work and friends are all here*

*Med 2 right*

*Shelly and he works in Ambridge. So, you know, when he was leaving, I was determined to move, I knew it wasn't financially the best thing to do but emotionally I don't think I could have managed being there on my own. You know I was quite isolated. Anyway so he moved back with me in December and then left again on Boxing Day.*

*Med 2 right*

*Shelly He's been back 2 or 3 times since.*

*Med 2 Right so is the family home sold now?*

*Shelly The family home's sold and we, the monies from the sale of the house are in an account in my name, which he agreed to.*

*Med 2 right okay*

*Shelly My rent is currently coming out of that money so every month it is going down*

*Med 2 Right - how much was that?*

*Shelly (states an amount of money)*

*Med 2 Right - so it is not a huge amount is it? So what are you planning to do for the future?*

*Shelly what we were looking for somewhere, only last week we were looking at somewhere to rent together, until I found out he was back with her.*

*Med 2 right so a bit of a rollercoaster you sound quite emotional. So you're going to go through with the absolute?*

*Shelly yes*

*Med 2 so you will end up renting*

*Shelly I plan to buy something small*

*Med 2 right okay*

*Shelly just because for stability really*

The separate meeting appeared to be coming to a close with the mediator clarifying the issues that Shelly needed to resolve in mediation, when the following exchange took place between her and Med 2:

*Med 2 Do you have any concerns that you want to raise at this point in time before I swap you round?*

*Shelly um you mean financially?*

*Med 2 financially and emotionally anything that comes to mind really.*

*Shelly the only thing that comes to mind is he is due to retire in April and he's in the services*

*Med 2 right*

Shelly *and whether he retires or not, he doesn't have to retire then, he gets a lump sum*

Med 2 *right*

Shelly *and I don't have a pension because it was agreed we agreed when we were living together but I wouldn't take out a pension because I didn't need it because we would always have his and we put our son through private school so whatever extra I would put into a pension we kept just to live on really and to pay bills. So I am concerned that I just don't know any more whether he would take the money and run.*

Med 2 *he can't do that really*

Shelly *I know I know but*

Med 2 *I know what you saying. Part of the financial disclosure asks for the pension transfer value*

Shelly *he has asked for it but he hasn't declared it yet to his solicitor or me*

Med 2 *Okay*

Shelly *he's applied to pension evaluation*

Med 2 *those evaluations can take quite a while*

Shelly *he's got it*

Med 2 *he's got it has he?*

Shelly *well he said he's got it*

Med 2 *right - I will be asking for that information so obviously if we get a point where we can't get all the information can't declare the financial information. You have the right to a share of that pension so that and the lump sum has to go into the pot.*

Shelly *and my emotions are if I don't get this sorted out soon or later he'll want to come back and I know if I let him he'll do it again*

Med 2 *Okay right, I do understand you what you're saying sometimes it's better the devil you know.*

It is unusual for a mediator to ask another question at the point of 'swapping clients around', and there is nothing evident in the recording that suggests a specific concern that the mediator may have had. This question gave Shelly the opportunity to raise her real fears, which were her vulnerability and Mark's pension and gave the mediator the opportunity to deal with the emotional and financial fears that she had. It may be that this question should be asked as a standard question to all clients.

In this extract the mediator listened more than she spoke, using words such as 'right', 'okay' and 'mmm', to reassure Shelly that she was being heard. Med 2 also used questioning to gather information and clarify what she had heard, and she also acknowledged Shelly's emotions.

This case was the only one in the sample where the mediator did not specifically ask the other partner, in this case Mark about the current situation. Normally in mediation, clients are not asked to defend a statement made by their former partner; Mark did not attempt to offer a defence to Shelly's explanation.

### 5.5.2 Giving information about the cost of mediation, the likely costs of legal representation and assessing eligibility for legal aid.

The gross income threshold for assessment for public funding is £31,884 per annum. Any client, whose gross income exceeds this figure, is quoted a fee that is based either on their gross income or on the type of dispute. Child-only cases are usually charged differently to those that contain additional financial issues. Some NFM services offer a sliding scale of fees based on the client's income, whereas others offer a fixed fee based on the type of mediation required by the client.

All clients whose income is below the assessment threshold can opt to be assessed for public funding; the award of this is subject to the client providing the appropriate evidence to support their claim. Regardless of whether a client is fee paying or potentially eligible for public funding, fee assessment will be conducted separately where a couple attend a JIM.

The following is an extract that relates to Colm who is over the income threshold for assessment:

*Med 3 So what I would like to do now is see you both separately to do the assessment and then get you back together after that and talk through paperwork.*

There is a conversation between Colm and Med 3 about parking and it is decided that he will be assessed first and then move his car, returning for the final part of the meeting:

*Med 3 Your assessment is not really going to take too long to be fair because you haven't got to complete a form because you are over the limit for assessment. So it's £155 for each session. £75 each for today if Celia is not eligible.*

*Colm Oh right okay— Oh I see.*

*Med 3 its £75 for today which you may not have to pay if Celia is eligible, and after this each session will be £155 per session. Okay?*

*Colm I forgot to bring the list with me.*

\*

Nina, who had a 6 month old baby Mallory, was assessed for public funding by Med 1:

*Med 1 Are you on maternity leave?*

*Nina No I'm currently on a career break. I was due back at the beginning of June but with all this happening, there is no way that I'd be able to sort out who was going to look after Mallory so I spoke to work and they gave me a career break of six months*

*Med 1 I see. So what are you doing for income at the moment?*

Nina proceeds to offer the financial evidence that she has brought with her to the meeting:

*Nina I've applied for family tax credits and I'm using savings at the moment. I've got my letter from work which says I'm on a career break. And I have my P60.*

*Med 1 This is actually fine*

*Nina Okay*

*Med 1 (b)ecause it basically says that you are on an unpaid career break. Can I hold on to that so that I can take a copy? So your income is child benefit and you've applied for tax credit. If you can sign there for me please.*

*Nina We have a joint account.*

*Med 1 How much do you have in savings at the moment.*

*Nina (states an amount)*

*Med 1 You could claim income support, contact them today so that your claim is dated for today.*

This extract shows that the mediator carried out the assessment, and during the conversation with Nina, completed the CLSMeans7<sup>95</sup> form, which she then asks her to sign. The mediator ended this part of the session by 'signposting' Nina to the DWP so that she could claim income support.

### **5.5.3 Clarifying the issues that the client would like to bring to mediation and exploring the feasibility of these issues**

Where the clients attended a JIM, they were initially asked, during the introduction stage, what issues they were hoping to resolve in mediation. These issues were then further clarified during the separate meetings. For clients who attended a SIM, where the whole meeting is 'separate', this merged into the time spent 'telling their story'.

Attending mediation was recommended to Harold during a recent court hearing. The issues were clarified in a very short space of time and clarification took place at the very beginning of the meeting. This is not typical of the rest of the sample, as clarification of the issues normally takes place near the end of the assessment stage of the MIAM. During his SIM Harold presented his issues as follows:

*Harold The court asked me if I wanted to do mediation*

*Med 2 right*

*Harold with my ex partner?*

*Med 2 yes*

*Harold and I said I would like to do that because I invited her to mediation two years ago and she refused,*

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<sup>95</sup> This form is now known as a CIVMeans7

Med 2 *mmm*  
Harold *so yes if that is a way forward, and if we can agree an agreement I will be very very happy to do so*  
Med 2 *okay*  
Harold *but if the cost involved is too high with regard to me, if the cost involved is to me to get my son at the end it could be as high as possible I don't mind*  
Med 2 *you don't mind*  
Harold *I need to have my son at the end otherwise I'd rather go through my solicitor*  
Med 2 *what's actually happening is your son living with mum at the moment*  
Harold *yes*  
Med 2 *and are you seeing him?*  
Harold *No I'm seeing him under supervision at the school two hours twice a week*  
Med 2 *Okay so you have some contact have got some contact*  
Harold *some contact*  
Med 2 *so what is it you're wanting to get?*  
Harold *like a normal person should get I guess every other weekend*  
Med 2 *right*  
Harold *maybe once in the week*  
Med 2 *mmm*  
Harold *and take him on holiday*  
Med 2 *Okay*  
Harold *to my family to have access to a little boy as well*  
Med 2 *Okay, so, did you live with Hilda?*

What was particularly interesting about this extract was the fact that Harold had a clear idea what he wanted the outcome of mediation to be and he was 'happy' to pay if he got his desired outcome. In this instance the mediator explained that no outcomes are guaranteed in mediation.

#### **5.5.4 Screening for domestic abuse**

There are three methods of screening suggested in mediation policy. These are 'by telephone,' 'by questionnaire' or 'by an individual meeting'. Of the three screening methods suggested, there is a preference for screening to be conducted face-to-face as it enables the mediator to assess body language and look at non-verbal reactions. It also allows mediators to deal with any emotions that a client expresses.

Good practice guidelines recommend that mediators use a range of questions (indirect, impartial etc.) during the screening process, but usually direct questions are discouraged. The mediator is trained to accept the client perception of the violence and not judge the client or their situation. The practice guidelines also state that screening for domestic violence should take place throughout mediation and not just during the 'intake' (NFM, 2001).

NFM policy guidelines on screening state the following:

*'Screening for domestic abuse should be carried out separately with each participant. This should occur in circumstances that allow free, frank and safe discussion of the issue of domestic abuse to take place, and fully informed choice to be made by the participant as to whether or not to proceed to mediation.'*

*The Service should adopt clear procedures to implement screening of all clients, decisions about proceeding to mediation and termination. If mediation continues, procedures to ensure client protection, child protection and mediator safety must be implemented.*

*Whether or not domestic abuse emerges as an issue at initial screening, procedures should be in place to ensure continued attention is paid throughout mediation to its possible existence.*

*In cases where the abused person has made a choice to try mediation, procedures should make clear the mediator's responsibility is to ensure informed consent, safety, and information on alternatives to mediation. If in doubt about the appropriateness of mediation, the mediator should withdraw.*

*If a client wishes to proceed with mediation, procedures should make clear that the mediator must explore safety matters, safe termination, voluntariness, informed consent, and implications for children.*

*If mediation does not proceed, procedures must be in place to ensure that mediation is terminated safely, alternatives to mediation explored and appropriate advice and referral possibilities considered.*

*All staff involved in intake should be trained in the principles and practice of pre-mediation screening for domestic violence and all mediators should be trained in the management of domestic violence issues arising in relation to mediation. No specific reference is made in the policy to risk assessment.<sup>96</sup>*

This stage was always conducted in a separate meeting with each client and there were many examples of the mediator restating something that the client said when both clients were together, which was used as an introduction to domestic violence screening.

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<sup>96</sup><http://www.nfm.org.uk/index.php/member-library/policy-library/finish/53-policy-manual/431-f2-domestic-abuse-policy> 14012014



Where couples attended a JIM, the mediator adopted a similar approach with each client during their individual screening. The extracts below are taken from a JIM with June and David. The first extract relates to David as he had his separate meeting first:

*Med 4 we talked a little bit about um arguments, when um you have them, where, where you had different opinions on things um where decisions needed to be made, what kind of reactions, you don't need to give me specific examples, what kind of reactions might there be from each of you, each of you if you were disagreeing?*

*David Um well I would try to just logically explain things and these wouldn't only be arguments about problems, it would be things that she\_wanted and I'd have to explain why I didn't think that was a good idea.*

*Med 4 mmm*

*David you know she wants a conservatory so I patiently explained the downsides you know*

*Med 4 mmm*

*David eventually she would just get frustrated she'd storm off,*

*Med 4 mmm*

*David she'd would then not talk to me for two days*

*Med 4 yeah*

*David okay I was pretty much the pain*

*Med 4 mmm*

*David sometimes it usually ended up with her saying piss off\_and slamming the door and I'd be sat there thinking here we are again.*

*Med 4 Okay*

*David normal service will be resumed in two days.*

*Med 4 and how would it resume? Would you just start talking again? (Mediator sneezes)*

*David bless you um it would get just sort of pick up again in a couple of days if there was anything to talk about on her side mostly because I thwarted her plans*

*Med 4 yeah*

David went on to explain that most of their arguments were financial and that his wife would want to improve the family home or go on a family holiday and he would have to explain why this could not happen. His view was that June wanted everything her way and that he thought she felt he was being obstructive. Med 4 observed during this conversation that financial concerns often led to the breakdown of a relationship. The screening continued as in the following extract:

*Med 4 And was there any aggression any violence between the two of you in either direction?*

*David apart from her door slamming I don't think so and telling me to piss off*

*Med 4 would you feel okay coming into mediation sitting here in the same room and having these sort of discussions? you wouldn't be worried about I can't say that because or you'd be able to for example, if an option didn't work you'd be able to say. That's not going to work*

David *I think we'd need to be open and say everything what we feel whether it's splitting up or if it's cash or if she's brought in other irrelevancies\_(unclear) which she'd just use it about*

Med 4 *Um and as we said briefly at the start, mediation is not so much about that bit um*

David *yeah*

Med 4 *I'll check on this now a little bit because*

David *it's just that*

Med 4 *it might depend on how you move forward because what we are talking about in mediation will be what needs to happen now, what will be the options, how would you want to sort of move forward*

David *Yeah I think that'd be fine we should be able to work through that together*

Med 4 *Okay*

David *we are on friendly terms*

Med 4 *yeah*

David *because I was in agreement when she said she wanted to split up, I didn't get on my knees and say no don't no, I actually think it, I'll be free of it. It will be a weight lifted and my parents said the same, in the long term I will be happier than I am now.*

During this part of the screening process, David mentioned his wife potentially bringing up 'irrelevancies', with a suggestion that they might be used to blame. Med 4 clarified this concern by explaining what mediation focuses on, and then checked that David would be willing to work with the mediation process. Med 4 'swapped the clients around' and conducted June's 'separate meeting'. The following extract is the screening part of the assessment meeting:

Med 4 *so just um you've given examples of how you'll get in touch and you'll be flexible, and this does not need to relate to any specific example um. If you two were to have different opinions about something if you were to have a disagreement, what kind of reactions might there be from each of you, how would you each respond typically.*

June *Uum Well I usually go grumpy and silent, he just bottles up and doesn't say anything at all sometimes and then*

Med 4 *Okay*

June *And then saves it up and then (makes an explosion sound)  
Mediator laughs (unclear comment)*

June *Um It's difficult to get thing out of him and then you know he'll just let rip and just let the whole thing out.*

Med 4 *right*

June *Uum*

Med 4 *and how does it come out?*

June *Uum just him being really sounding angry you know just being cross about it and just end up shouting a bit*

Med 4 *mmm*

June *Uum he'd never be like aggressive Uum I think most people have disagreements, though*

Med 4 *Yeah*

June *Uum and actually it can be cleared up and sorted out, I mean*

Med 4 *mmm*

June especially with the kids though lots of things I would want Addison to have opinions on things because she's 13, I think she's allowed

Med 4 mmm

June she's got a right to you know, if I say is this okay with you, sort of thing um, but it depends what the disagreement is as well really, yeah

Med 4 I mean the reason for asking is because we need to check out whether mediation will be safe I want to know whether there has been violence

June Oh no, No

Med 4 and really to kind of get a sense of whether you'd feel comfortable sitting there in the same room, whether you feel you could say what you needed to say, for example being able to say that's not going to work,

June yeah

Med 4 you could explain that without feeling um intimidated would you feel Okay

June Yeah if I didn't I would just say to you or something

Med 4 ...and you could have a break or you might say I just need to spend a couple of minutes with each of you

June I would say if I was starting to feel a bit, but generally no, I seem to have got a little bit stronger than I have been in the past umm. I just seem to have like changed, I think it's because I've realised, you know about things that I need to do this

Med 4 right

June maybe it's made me feel a bit stronger um but I don't like confrontation

Med 4 mmm

June at the best of times

June at all uum yeah but no he has never been violent or anything like that so there'd never be a problem just shouts a lot

Med 4 and I guess the reason for that needing to check, there are various reasons, one of them is that you will be talking through different ideas you might have different thoughts and obviously your needs might be a bit different obviously you might be pulling a bit, you might prefer one option,

June yeah

Med 4 and he might prefer another and the way you get round it is to say what you need and how you've thought of achieving it

These samples of data demonstrate the fact that the mediator identified an area that required further clarification and used open, closed, and direct questions to explore each client's perception of abuse. June speaks about the relationship and focuses on the fact that David shouts a great deal, however she feels that this is normal, as all couples disagree.

She also states that she doesn't like confrontation, suggesting that she had avoided them during the relationship, which dovetails with David's explanation about how they dealt with arguments - the only difference being the fact that June's experience was that 'he shouts a lot' and David's view was that he was 'explaining logically'. (The Duluth identifiers suggest that the behaviours mentioned in these extracts infer intimidation, economic abuse, and emotional abuse.

Whilst this screening meets the guidelines and was typical of the JIM screening in this sample, it reflects a simplistic exploration of abuse in a relationship, with a focus on violence, and leaves the question of effective screening unanswered.

However, where couples attended the MIAM separately, the screening questions tended to vary, responding to the individual dynamic of the meeting, as shown in the two extracts below involving Sheryl and Terry:

*Med 3 So what are you hoping to achieve in mediation? Where are you trying to get to?*

*Sheryl I want some reassurance from him*

*Med 3 right*

*Sheryl That he's not going to drink or take drugs. I'm frightened for Kelly who's 10 and she's becoming more and more, you know what children are like, they seem to pick up on things, like you said, she's probably picking up on my feelings. You know (sighs loudly) you know what I don't know! I want the reassurances, I can't promise him anything in return at the moment because, it's been so up and down.*

*Med 3 Right um do you feel as if he bullies you?*

*Sheryl I do I feel completely you know we went to um I said to him Kelly is not coming this weekend because we are going to Scotland for a wedding. We weren't going to bring Kelly but my husband had to fly to Italy for a conference...I said to Terry we've got a family wedding we're going to take Kelly, I gave him over a weeks' notice, so of course he wasn't happy about that...The following weekend I was going to stay with my Auntie and then we got a solicitors letter.*

Sheryl had never lived with Terry, and the Government's definition of domestic abuse focuses on 'intimate' family relationships. The fact that they are both parents to Kelly makes it clear that they did have a previous intimate relationship. As Terry's focus is on Kelly, his main aim is for Kelly's time to be shared 50:50 between them. He opted to use a solicitor, who Sheryl referred to as 'ferocious' and a 'lunatic'. To this end, intimidation and coercion and threats were suggested to have been perpetrated by a third party (the solicitor), and emotional abuse inferred by Sheryl's reaction to the solicitor's letter (see 6.1.1). Terry also attended a SIM, and the following extract shows that to introduce screening, the mediator drew on something that was mentioned earlier in the conversation:

*Med 3 You were saying you never lived together but were in a relationship and you've got your daughter. When you argued, what were your arguments like?*

*Terry (sighed)*

*Med 3 The reason I am asking this is because you see I'm trying to understand how you might respond to each other if the conversation gets heated who responded in what way.*

*Terry she'd gets very angry and I used to get upset part of my development has been self-confidence and things like that. She is very strong willed and her mum and dad are Irish she's got a real fire in her and I said this when we sat down in July. Her husband said well you know what she's like you know, and I said well yes that's why I was attracted to her in the first place*

*Med 3 right*

*Terry the last time we met in July she was very nervous and I was very calm as I am with you now and it didn't she didn't really know how to take it she, on both occasions she had to get up and walkout.*

Terry spoke about the fact that when he and Sheryl were dating he would get upset when they argued. He then spoke about her being nervous when he met with Sheryl and her husband in July. This response did not answer the screening question *per se* and Sheryl's 'nervousness' could be attributed to many factors, one being the letters from Terry's solicitor.

\*

Within this sample, there was, one particular case where, following the initial screening session, the clients' emerging story flagged up issues, which led to the mediator being concerned about keeping mediation safe. Alice had been speaking about the breakdown of her relationship with Clive, which included harassment and threats. Immediately following this explanation Med 1 responded as follow:

*Med 1 I'm just thinking from a risk point of view*

*Alice I don't think he's going run me over or anything like that he's never hit me*

*Med 1 okay fair enough I'm thinking in terms of if you come to mediation you're going to try and sort something out.*

*Alice If he can have contact with Glenn that's regular I think, I don't think he'll back off me forever, but he should for a while*

*Med1 right*

*Alice and then he'll try and push the boundaries again in six months but he will, I know that he will, he hasn't accepted that the relationship is over*

*Med 1 right*

*Alice and he has a history of stalking girlfriends*

*Med 1 I see*

Screening for domestic violence in family mediation focuses on domestic abuse from the client's perspective of their situation. Alice states that Clive has never hit her, which suggests that her perception of domestic violence is 'physical abuse'. She goes on to speak about an incident at a school event where Clive 'made a scene' because Glenn could not come home with him, even though it had been previously agreed that Glenn would return with the childminder. He called her that

evening and left a threatening message and the following morning called her demanding contact.

She was expecting Clive to repeat his call that evening, so she was shocked when he showed up at the childminder's house and made another scene. This time Glenn was present. Clive threatened Alice with 'child protection' and 'social services' and said that he was going to 'throw her guest out of the house'. The mediator decided at that point to assess Alice for legal funding. Once the assessment was completed, the mediator asked a further question:

*Med 1 have you got any concerns about working in the same room together?*  
*Alice no, you know I think he won't shout at me*  
*Med 1 I don't do shouting so it won't last for long*  
*Alice He cares a lot about how he's seen by other people, it depends who the person is, some people he doesn't really care, but he does care about how he's perceived by other people so I don't think he would want to, I think he would make huge efforts to control himself. Also he's paying costs to be here*  
*Med 1 right*

Alice went on to justify why Clive might not argue describing mediation as a 'very expensive argument to have' and stating that they would value mediation because they had to pay for it. The mediator then asked a further question:

*Med 1 So you've got no concerns about, arriving, sort of walking in the car park or anything like that, when you arrive?*  
*Alice No, I don't he, I think it will be okay*  
*Med 1 If anything crops up we do have separate sessions from time to time*  
*Alice yes*  
*Med 1 so if anything does crop up you just need to be very clear with me*  
*Alice right*

The mediator was concentrating on Alice's physical safety whilst in mediation, as opposed to how the abuse might affect the process. This is unusual as Med 1 had previously conducted initial screening with Alice that lasted for just under 3 minutes.

Perhaps the most significant finding of this study is the fact that the mediators in this sample consistently spent a great deal less time screening for domestic violence than they did assessing clients for public funding. In this sample, the average time spent on screening was less than 3 minutes, whereas the average time spent on assessing eligibility for legal aid was more than 11¾ minutes. As these numbers represent what most clients have experienced, this finding is of great concern.

Another significant finding is that there is clear guidance requiring that screening should take place at the beginning of a JIM, before the clients meet with the mediator together. In this sample, each meeting started with both clients in the same room and they were then separated for assessment and screening. This is a training and development issue, and a practice that is not adhered to by many NFM mediation services. The predominant JIM model starts with both clients in the same room, possibly due to logistics and pressure of time.

### 5.5.5 Exploring the client's ability to negotiate

This question is incorporated throughout the session and, depending on the client, can be dealt with at any stage of the MIAM meeting. It is therefore difficult to assess accurately the amount of time devoted to this part of the screening process.

As previously mentioned in 5.5.1, Shelly's husband Mark had been having an affair and returned to her on more than one occasion, claiming that the extra-marital relationship was over. She expressed her emotional vulnerability to the mediator who checked her ability to negotiate.

\*

Nina and Neville had recently separated and had a very young child. Nina's explanation of the breakdown in their relationship suggested that there was a 'power struggle' relating to parenting, which started as soon as their child Mallory was born:

*Med 1 with all that has gone on do you feel in a position to make decisions jointly*

*Nina yes, I think we've got to*

*Med 1 do you feel you will be able to say what you want to say when you are together?*

*Nina we've had some very very upsetting conversations and emails and um messages over the last couple of months and that's what's brought us here in the end, very different ideas about what our daughter needs,*

*Med 1 this is very much about making sure we create an environment that feels safe.*

Similar questions were asked of June (5.5.4) during her screening session with Med 4. June admitted that she did not like confrontation and the mediator checked with her to ensure that she would 'speak up' if she did not like anything or preferred a different option to the one David proposed.

### 5.5.6 Screening for child protection issues

This is sometimes dealt with during screening for domestic violence. Guidelines dictate that this should be an important focus when a parent suggests that, from their perspective, the other parent does not look after or treat the child well.

In the case of Jane and Alex, Jane had expressed concern for Alex's ability to care for Blaine who was born prematurely with a serious health condition. Blaine had undergone a number of operations and was under the care of a specialist paediatrician. Alex had spent very little time caring for Blaine who had a 'corrective development age' of eleven months.

*Jane Is it a complicated one?*

*Med 3 No, no it's not complicated at all! It's just that you clearly have got a lot of things going on in your head, and we usually spend quite a lot of time having a conversation about that but I think the important question that I need to ask you is what's your concern about Blaine spending time with Alex outside your home?*

Jane explained the fact that she had no issues with increasing the time that Alex spends with Blaine to a day. Her main concern was that she felt that Blaine was very vulnerable at this point in time. As a result of poor health, Blaine was a fractious baby and needed to sleep a great deal. Jane explained that Blaine was currently breast-fed and Alex's view on this was that he would make Blaine take a bottle. Med 3 suggested that she could express milk. Jane agreed that she could and continued explaining her concerns:

*Jane Of course I can, he comes he's here from nine till six. I'm worried that Alex never ever notices when Blaine gets cold, Blaine cannot be allowed to get cold and I'm not saying, I've never ever said and I've said to Alex as well I've never ever said that I want to stop you seeing, taking your child away completely, I'm just saying at the moment, I want to see Blaine have his operations, have um a little bit of convalescing time, I'm talking months I'm not talking*

*Med 3 mmm*

*Jane wait until he's 5 years old before he can spend a day with his dad I'm talking I'm asking for a little patience*

*Med 3 yes*

*Jane until he's feeling a bit stronger and better*

*Med 3 I think sort of listening to Alex, he feels uncomfortable, he feels marginalised, he's being side-lined, that's his feelings, um and his perception about what's going on is and that may not be the case, but um it's something that the two of you have got to work out so that you can get the understanding between you.*



*It's not complicated it's a variation on a theme of what happens for everybody else basically.*

Jane went on to express her concern about Blaine making a return trip of three hours to Alex's house, when he was in such poor health. The mediator agreed with her stating that it was a question of how to frame the concern in a way that enabled them both to find some 'common ground'; to identify a common goal and the steps they would need to take to reach that goal. The mediator in this case went on to suggest that they make an appointment to see the Health Visitor to discuss Blaine's condition together.

\*

When Alice was explaining the current situation between her and Clive she mentioned the fact that Clive had threatened to report her to social services. The mediator clarified the situation with her by asking:

*Med 1 .you mentioned social services. Has social services been in contact with you?*

*Alice They haven't*

*Med 1 No so it's probably just a threat*

### **5.5.7 Checking children's understanding of the current situation**

All the parents in this sample were asked whether their children were aware that they were separating and, where children were aware, mediators enquired how this news had affected the children. In the majority of the cases under review, some concern was expressed about the emotional well-being of a child by one or both parents, which the parent/s linked to their separation and/or the current arrangements for contact. In some cases, concern was expressed about a parent's ability to care for their child and the negative impact that had on them. (In the previous section, Jane expressed concern about Alex's parenting.)

Specifically, one of the Duluth 'tactics of control' relates to 'using children' which tends to be interrelated with a number of other tactics such as 'using emotional abuse', 'using intimidation' and 'using coercion and threats'. Research shows that incidents of domestic violence increase at the time of separation {WAFE, 2013).

The following extract relates to a teenager with both parents expressing some concern for the young person. In this instance during her separate meeting,

Celia spoke about her concern for their 17 year old son Frank, who had become withdrawn:

*Med 3 ... Now you spoke about Frank and the fact that he has stopped driving because of the atmosphere at home, how is that manifesting itself to the point where you believe that to be the case.*

*Celia Because James told me about that our older son*

*Med Right*

*Celia Because I said have a word with Frank, I don't understand why he's suddenly decided he doesn't want to drive anymore*

Celia went on to explain that Frank had also been struggling at school and she had reached the point where she feels that he may just have given up. She also expressed concern that he spent all of his spare time in his room only coming out for meals.

This case was one of two cases in the sample where the mediator suggested that the young person could 'have a voice' in mediation by attending a meeting with the mediator, if both parents (and the young person) agree that this meeting should take place. Additionally, both parents needed to agree to attend a feedback session, to hear their child's views and to consider how they could include those views in any decisions that they made as parents.

This practice is known as Direct Consultation with Children (DCC). Four cases in this sample involved children over the age of eight, which is generally the lowest age that a child will be considered for consultation. Two cases in this sample were offered the option of DCC and both took up the offer.

## **5.6 Making a decision**

### **5.6.1 Discussing and deciding (together) whether to proceed further. If mediation is proceeding, giving information about the next step**

Where clients attended a SIM, they were asked if they wanted to proceed with mediation. If they were the first client to be seen, it was explained that the second client would also need to be seen before a final decision could be made, except for instances where the first client did not want to proceed. Where the first client wished to proceed, permission was sought from them to share their decision with the second client. In cases where this permission was given, the mediator concerned did not share this information until close to the end of the meeting, allowing the second client time

and space to come to an individual decision. Once both clients had been seen and both wanted to proceed to mediation, arrangements were made for the first joint meeting (JM).

Where couples attended a JIM, proceeding further was discussed with them together, after they had both met with the mediator separately. Within the dataset was an area of concern that remains unanswered as the researcher is unable to analyse non-verbal cues, one example being a 'look' that elicits a required response. Where both clients wished to proceed to mediation, and their issues included finance and property, a brief planning session took place, which guided the clients through the completion of the All Issues Mediation (AIM) financial disclosure form.

The following extract is taken from Shelly and Mark who arranged another meeting with the mediator, which they did not subsequently attend:

*Med 2 how much time do you think you need to actually complete those forms?*

*Shelly what today or just*

*Med 2 not today. In terms of a week to weeks*

*Both a week*

*Med 2 You wanted to come to (alternative venue) didn't you?*

*Mark yes*

*Shelly I don't mind*

*Mark here is easier for me*

*Med is it, okay then?*

Mark, Shelly, and Med 2 checked diaries and an appointment was arranged for two weeks after the JIM. The mediator then explained that the next meeting would focus on financial disclosure, discussed the fee for the JIM, and the evidence required to confirm Shelly's eligibility for legal aid. Just before the meeting was closed, Med 2 asked the clients if they had any further questions. (This question was asked of all clients in this dataset, toward the end of all of the recorded sessions in this sample.)

### **5.6.2 If mediation is not proceeding, giving information about who will be informed and how, paperwork that needs to be completed and next steps for that client**

The decision as to whether or not mediation proceeds was made by the clients and the mediator usually during the MIAM. If the decision not to proceed was made right away, the mediator discussed other options and potential 'next steps' with each client. If the decision not to proceed was taken after the MIAM, then the service

administration would send the client a closing letter with suggested next steps by way of 'signposting'.

The following example of mediation not proceeding is an example of the mediator determining that mediation was not suitable for the particular circumstances and the clients concerned.

Hilda had a number of concerns about increasing contact. A court order had recently been put in place ordering four hours per week supervised contact, and Harold was already pushing for more contact:

*Med 2 It doesn't sound as if mediation will be of much help to you because it's about the two of you working together and trying to sort things out*

*Hilda I know this is it*

*Med 2 and you've got some very clear issues and concerns about Jesse's health which you're not going to move on,*

*Hilda I know I know*

*Med 2 which is fine you have a right to feel that way*

*Hilda I really want, sorry to interrupt Jesse to have a father and to grow up and be happy,*

*Med 2 mmm*

*Hilda Of course I do why would I stop him*

*Med 2 but not on those terms*

*Hilda why should I stop him from having a father*

The other concern that the mediator may have had, was the fact that Hilda stated that she was 'totally intimidated' by Harold and that just the sight of his car at school made her feel nervous. This was the only case in the dataset, where the mediator decided that mediation was not suitable. Both Harold and Hilda had been intransigent in terms of their wishes for contact during their SIM.

## 5.7 Conclusion

In this sample, the NFM procedure for conducting the MIAM was followed and all three stages were completed. Screening for domestic violence was conducted to a greater or lesser extent in all of the cases in the sample, either by direct screening questions or (in four of the cases), through interpretation of behaviours that occurred in the meeting. The fact that all mediators 'screened' in this sample goes some way to establishing the fact that mediators now generally do screen for domestic violence. But as previously mentioned, the amount of time spent on screening in mediation, does not appear to give the mediator enough time to adequately explore the presence of violence in the client relationship.

This chapter presented the findings relating to the structure of the 'intake' meeting and provided evidence that the structure, as detailed by NFM, was being followed, except in relation to the 'positioning' of the separate assessment meetings. However, it also revealed a disparity in relation to the time given to clients for them to 'tell their story'. It also suggested that screening might be too short to be effective.

Chapter 6 presents the findings for the intake sessions using as themes, the eight Duluth DAIP (DDAIP) 'tactics of control' that represent abusive behaviours. It will, therefore, shed more light on the possible existence of domestic abuse in the relationships of the clients dealt with in the current chapter.

## **5.8 References – chapter 5**

- Barlow A, Hunter R, Smithson J, et al. (2014) Mapping paths to family justice: Briefing paper and report on key findings. Exeter: Universites of Exeter and Kent.
- NFM. (2001) *AICTP Training Manual*, Bristol: National Family Mediation.
- WAFE. (2013) *Domestic Violence Statistics - update*, Bristol: Womens Aid Federation of England.

## Chapter 6 Data Analysis and Findings - MIAMs

### 6.1 Introduction

Chapter 5 presented the findings and discussion for Study one.<sup>97</sup> This chapter presents the findings for Study two<sup>98</sup> plus the discussion for Study three.<sup>99</sup> Study two presents the findings using the eight tactics of control outlined in the Duluth Domestic Abuse Intervention Programme (DDAIP) as themes for analysis.

Study three, is a subset of four cases taken from Study two, where the clients attended a MIAM and then did not attend a mediation meeting. This study initially discusses each case separately and then discusses any commonalities identified.

### 6.2 Study two: The 15 MIAMs where domestic violence was alleged or inferred

In this study, the data from 15 cases in the intake/MIAM sample was analysed using as initial themes, the eight tactics of power and control identified by the DDAIP. The analysis of these cases focuses on the mother's narrative during the MIAM, comparing and contrasting with the father's narrative as necessary, and presents the findings in relation to each tactic/theme (see 4.6.7 above for justification for using the *mother's* extracts). The findings for each theme are prefaced by a brief overview of each tactic of control, indicating abusive behaviour, but full details of each tactic can be found in 4.6.7 above.

#### 6.2.1 Theme 1: Using coercion and threats

This tactic relates to actions that make a partner afraid that something bad will happen to them if they do not do as they are asked. This tactic of control was found to be present in 80% of the sample under observation (n=12).<sup>100</sup> In all of the cases in which this tactic was identified, it took the form of a parent threatening the involvement of external agencies such as the police, social services, solicitors and the court. The

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<sup>97</sup> Content of the three stages of the MIAM

<sup>98</sup> The 15 MIAMs where domestic violence was alleged or inferred

<sup>99</sup> The 4 MIAMs where domestic abuse was alleged or inferred that did not proceed to mediation

<sup>100</sup> Three cases that did not contain evidence of 'coercion and threats.' These are C032 Karen and Karl, C042 Shelly and Mark and C049 Salome and Steve

mention of these agencies by the father suggested the potential involvement of these agencies might coerce the mother to acquiesce to their demands.

#### 6.2.1.1 Solicitors

At the time of data collection, a parent who wanted to make a legal aid application to court on matters relating to separation and divorce had to attend an 'intake'/assessment meeting with a mediator. Four of the mothers in this sample were referred to mediation in this way; this type of referral was known at that time as a 'funding code' referral.

With one exception, in each of the 9 cases identified as having solicitor involvement, the solicitor was engaged by the father, the purpose being to either establish or increase contact. In the other case, the mother engaged the solicitor; this is explained in more detail later in this section. The mothers in this sample who received solicitors' letters generally found them to be cold and threatening; it would seem that solicitors were used by some of the men to put pressure on their former partners, and those partners felt intimidated, and at times threatened, when they received the letter(s).

\*

Sheryl speaks about communication that she received from Terry's solicitor:

*Sheryl and of course I just you know the solicitors letter I just panicked and I just feel that everything that she writes this woman, she's almost like a lunatic*

*Med 3 Which solicitor is it?*

*Sheryl (names solicitor)*

*Med 3 I see, I've heard of her*

*Sheryl God she's ferocious, I was terrified, I phoned up my friend in tears and said he's going to take us to court take me to court or try and take my child.*

Sheryl's description of her reaction to the content of the letter suggests that she found the content distressing and that the content triggered negative emotions. When Med 3 met with Terry, she asked him what he was hoping to get out of mediation and his response was:

*Terry What I want to do through mediation my lawyers feel, my solicitor is still working with me we have the court papers ready to go if we need to. This has been going on since July and I haven't been able to maintain a consistent relationship with Kelly throughout this period.*



This extract suggests that Terry was coming into mediation with a firm idea as to what he wanted the outcome to be. Some mediators will ask clients to suspend their activity with their solicitor to allow mediation to take place. There was no evidence in this sample that such a conversation took place during the 'intake' session.

\*

Similarly, during his JIM, Alex made it clear that he was not happy with the amount of contact he was having with Blaine and threatened to go to a solicitor if he did not get the 'amount' of and 'type' of contact that he wanted.

In the one case where it was the mother who had engaged a solicitor the father, Nigel, was harassing Alvira by sending her unwanted text messages on a daily basis to the point where she felt intimidated and had become scared of him. The solicitor had taken this seriously:

*Alvira Ever since January I have been receiving texts on an almost daily basis, which have been so aggressive, the language and the content so shocking that when I showed them to the solicitor, she said that we need to take out a non-molestation order. It needs to be understood in context what has been going on.*

This led the mediator to check during her separate meeting that Alvira was in a position to work in the same room as Nigel and to make plans for the future:

*Med 4 I think I've got to ask you a couple of questions really because mediation is very much about the two of you sitting in the same room working together, sort of focused on the future and looking forward.*

Alvira explained that she wanted to get things sorted and, based on what Nigel had said to her recently, she felt that despite the previous harassment she could work with him to resolve the financial issues, as long as there was a third party present.

Alvira's tone of voice calmed down when she was speaking with the mediator on her own and she became more assured towards the end of the separate meeting. The mediator spoke with her about changes that would need to be made, citing communication as one of those things. The mediator also listened to her and explained that she was not judging any of the accusations previously made by either of them, thus 'mutualising' their current difficulties.

### 6.2.1.2 Court

Four of the fathers in this sample applied to court for s8 orders for contact. Such applications require the applicant to specify what they want by way of contact.

\*

Hilda describes Harold's court application and her concerns relating to the application:

*Hilda Oh yeah he took me to court basically because he was trying to up the, you have to excuse me my brain ever since having a child they do say though the brain turns into sieve.*

*Med 2 baby brain*

*Hilda I was thinking after 2½ years it would come back, I can blame that but it's probably me being half-blonde. He took me to court because he wants to up the times Jesse stayed with him*

*Med 2 right*

*Hilda and he pretty much wanted it every other weekend and three weeks of each year separately for holiday.*

*Med 2 right*

*Hilda now that well the problems began with the contact because Jesse, I felt was experiencing a lot of separation anxiety he was quite young when he started going to Harold's just one night.*

\*

Similarly, Linda also responded to an ongoing court application by her former partner Billy that was under review by the court. The court had ordered a change of venue and that contact would take place at a contact centre every other week for two hours for a minimum period of twelve months before review; Billy was pushing the boundaries of the order:

*Med 1 what's been going on and how did your solicitor come to make the referral?*

*Linda all where do I start? Basically, my son is seven*

*Med 1 right*

*Linda and having contact with his dad*

*Med 1 okay*

*Linda and its not working*

*Med 1 okay*

*Linda every time I go to court I keep voicing my concerns. Basically, we're here today because of my worries about my son*

*Med 1 okay*

*Linda we need to communicate somehow with the ex, with his father um he's just not having it! All he keeps saying is I want to take him home, I want to take him home to my parents and that's it that's all he keeps saying. And basically he's just is not interested in Selby he's not even sitting with him playing with*

*him talking to him. They meet every two weeks for two hours at the soft play area.*

\*

Furthermore, Harold tried to push the boundaries of the recent court order for supervised contact with Hilda by trying to 'trade' her request to take Jesse on holiday abroad for non-supervised activities.

*Hilda Before half term I asked him if I could take Jesse, I couldn't take Jesse on holiday this year with my mum actually, we live with my mum, and she said come on lets go away this summer because we need a break. But at the same time we couldn't because of the application that Harold made to court, we weren't sure when the court date was so I said okay let's go away in half term. I asked Harold if I could take Jesse out of the jurisdiction because you have to by law don't you?*

*Med 2 mmm, yes*

*Hilda ask permission really from the other parent and he basically said if you let me have Jesse next weekend to take him to the zoo, then you can go on holiday. I said he's not a bargaining tool; please could we just go on holiday?*

Hilda went on to restate the challenges that she faced with Harold and eventually the mediator responded by saying:

*Med 2 It sounds as if mediation might not be able to do much to help you.*

Hilda's story had built up during the session to the point where the mediator felt that Hilda and her circumstances were not suitable for mediation for a number of reasons as will become clear during this chapter (see 6.2.2, 6.2.3, 6.2.4, 6.2.6, and 6.2.7 below).

### 6.2.1.3 Police

Three of the women in this sample experienced situations where they felt that it was necessary for the police to become involved because they became concerned for their own safety, as is revealed in the extracts below.

\*

Linda had previously described her relationship with Billy as possessive and controlling. When asked by the mediator about the event that led to the separation she responded:

*Linda Because he hit me so much happened sorry so much happened I'm just trying to tell you the important stuff because he hit me he pushed me down the stairs and I had the baby with me. Shelby was one and a half or two years old at the time, I called the police.*

Linda went on to explain that when the physical attack took place she fled to the Health Centre, which was close to their home and they advised her to contact the police immediately. The abuse was taken seriously and Linda moved to a refuge, which provided a safe place for Shelby and her. In providing a safe place, a refuge offers the mother a place at a safe distance from their local area. So in this case, Linda was also isolated for a period of time from her support network (WAFE,2009 p 27).

After hearing Linda's disclosure, the mediator asked her how things were for her now and she replied that she had moved on, had a new relationship and a new baby.

In terms of screening, the mediator asked her some standard screening questions one being '*do you feel able to work in the same room as Billy?*' Linda said she felt that she could. The nature of Linda's story made it clear that there were a number of tactics of control in their relationship when they were together, and, as will become clear in this thesis, some of the behaviours still continued after they separated.

\*

In 5.4.3 above, Clive spoke about the fact that Alice called the police after he tried to gain entry to the former family home. Following their separation, Clive started to harass Alice to the extent that the police continued to be involved. Alice spoke of the situation after Med 1 asked her a question to clarify the current situation:

*Med 1 Do you feel he has actually accepted the separation?*

*Alice No not at all he's been harassing me so much it's just been horrendous.*

*Med 1 okay, have you taken steps to deal with that?*

*Alice I have, the police have contacted me, and I've contacted them and I was interviewed on Friday,*

*Med 1 right*

*Alice and they are looking to see if they are going to press charges for harassment.*

*Med 1 right, okay...So there's that ongoing.*

Immediately following this extract, was one of the two further occasions, as detailed in 5.5.4 above, that the mediator returned to 'screening' type questions.

\*

Another mother, Karen, was physically attacked at her home by her husband's former partner. Karen found the attack very distressing and explained the impact that this had on her:

*Karen His ex lived around the corner I could see her house from where we lived and if we couldn't have the girls for whatever reason, as we had plans like my 21st birthday. We went out and she found out it was like my birthday, and she came round and slapped me round the face because we couldn't babysit while she went out, but I was pregnant as well.*

*Med 1 right*

*Karen at the time and it just all got too much to be honest*

*Med 1 right*

*Karen I just said I'll need to call the police because she came to our front door and hit me and that's not on, and he said no he didn't want to upset things with his children and I was like well she can't get away with acting like that is not on is it?*

*Med 1 Does he understand why you left?*

Her former partner stopped her from calling the police because he wanted to maintain the status quo with his former wife, leaving Karen feeling that his needs mattered more than hers did. The mediator appeared to be extremely concerned, slowed the pace of the meeting down, and asked questions for clarification. When Karen was screened for domestic violence, she spoke about Karl scaring her when he was drunk. He would get extremely angry and hit and kick the furniture and doors. During his assessment session, Karl spoke about losing his temper when he had a drink, and said that he knew that she was sometimes scared of him.

### **6.2.2 Theme 2: Using intimidation**

This tactic includes the use of looks, actions, and words that are intended to frighten scare or bully a partner. This tactic of control was found to be present in 11 of the 15 cases in this sample (73%)<sup>101</sup>. In each of these cases, behaviours were described that scared the mother. Intimidation has many forms and the participants described many incidents of intimidation, some of which are detailed below.

The fathers used email to harass Nina, Jane, and Hilda, whilst text messages were sent that harassed Alvira. During her separate meeting with the mediator, Alvira described

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<sup>101</sup> The four cases that did not contain evidence of intimidation are C020 Trisha and Paul, C026 Tasha and Adrian, C042 Shelly and Mark and C048 Salome and Steve

a particularly difficult period in her life after the separation, where she received continuous one-way communications from Nigel who had warned her against commenting on the content. She describes in an emotional way, how this communication made her feel:

*Alvira it has gone through a very bad phase but this week things seemed to have calmed down and um we actually met on Saturday we had argued a few times face to face, I hadn't been willing to do that because we haven't been communicating. He's been sending me how he feels but it's not something for discussion so the only thing I could respond on is to slag him off in. So in doing that because I've not been communicating with him I've been afraid of him. And I did tell him this for the first time on Saturday.*

Alvira's comment inferred that she found the circumstances relating to the messages emotionally abusive as well as intimidating.

\*

Hilda explained the relentless emails that she received from Harold making the same repetitive demand:

*Hilda since the court date Harold has been bombarding me with e-mails - I can't take time off work and see Jesse during the week you're going to have to let me have him at the weekend can I take Jesse to the zoo this weekend. Every week he'd say I want to take him at the weekend and I was e-mailing him and sort of saying no, look an order's an order Harold and you shouldn't have agreed to it if you couldn't do it.*

Hilda's use of the word 'bombarding' suggests that she found the repetitive nature of the messages disturbing. Nina also received regular emails from Neville making repetitive demands for contact, which she described as upsetting, and Jane described the emails that she received from Alex as relentless. In addition to text messages and emails, many of the mothers were harassed face to face or by telephone.

This data gives evidence that the fathers often used new and invasive forms of communication, particularly text message email. As a significant proportion of the sample experienced this negative communication, there is every reason to propose this suggests a general trend.

\*

When these behaviours were disclosed in the MIAM, the mediators utilised a range of tools with the clients. These included acknowledging, questioning, empathising and summarising. The nature of mediation is such that poor or inappropriate communication is considered a joint issue that is usually dealt with during joint meetings. However, this will be discussed in more detail, in chapter 8.

\*

Other mothers in this sample experienced different intimidating behaviours by their former partners, as is shown in the next extract, where Alice describes an action that became a regular occurrence in the latter stages of their relationship. Clive would talk 'at' her nonstop for long periods, and if she dared to interrupt, he would shout and scream at her:

*Alice* There was this one night where there was lots of anger, lots of shouting, lots of him talking for like an hour talking for ages and if I say anything, don't interrupt, don't interrupt, you know and at the end of it he said "look if you know, I don't", he started to say this phrase quite a lot towards the end 'look I don't want to hurt your feelings and I'm saying this with your best interest at heart', something along those lines, but I think that you've got a mental health problem, you've got a personality disorder and I think you should go and see a psychotherapist' ...

*Med 1* right

*Alice* and it was at that point I just thought he was quite a dangerous person that he would go basically he would completely drive me mad.

*Med 1* mmm

*Alice* by rather than changing his life style he's prepared to send me down the road of going to see a therapist ...I just didn't know what to think it sent my head in a whirl.

Alice's experiences of Clive regularly repeating the suggestion that she had a mental health issue clearly amount to emotional abuse, as Alice herself sees the danger – '[he] would completely drive me mad'. Alice spoke about the fact that she could no longer trust Clive. The mediator, seeking to clarify what Alice was referring to, asked her about their relationship prior to her decision to seek separation:

*Med 1* has that changed over a period of time?

*Alice* yes definitely, because he complains a lot now about most things in life

Alice continued explaining the complexities of Clive's complaints and his difficulties with his current employer, which, over the years had become a regular negative pattern. The mediator continued to listen to Alice, occasionally saying right; mmm; 'okay'. The mediator then summarised what she had heard, drawing on previous comments that Alice had made during the session:

*Med 1 you've rowed about childcare, about his cannabis abuse, was that the final straw? ... so the bottom line is it's about the children, it's not about you, it's not about Clive, we (mediator) always say that we focus on the best interests of the children...*

Alice spoke about the escalation in conflict once they had separated explaining that she had suggested separation a couple of times previously. The way he responded to her, by shouting and screaming scared her. She started to believe him when he insisted that they would always have to live together to be Glenn's parents. This suggests that Alice had already been emotionally damaged by Clive's behaviour.

\*

Another mother, Sonia, spoke about the moods that Shane would get into, and explained that she could tell by a certain look on his face that he was likely to 'explode'. She shared this information in response to a question from the mediator during the screening process:

*Med 3 how will I know if you're struggling with working with him? Will your knuckles go white or*

*Sonia well, yes he's very difficult to, he's a bit unstable um, since leaving he's admitted that he's been to the doctors, I've always said that I think he's up and down*

*Med 3 right*

*Sonia and um me and the children know, what mood, I can tell by his eyes as to what, it's really strange but I will know when he's in one of his moods and I can sometimes get him out of it, probably over the last six months I haven't*

*Med 3 is that because you decided not to*

*Sonia He'd even say to the children sometimes you're killing me, you're going to give me a heart attack and those things scared me.*

In this extract, Sonia described the non-verbal cue that she recognised in Shane that made her behave in a way that would appease the associated 'behaviour'. The



mediator asked questions for clarification that focused on what Sonia needed to make mediation safe for her:

*Med 3 In terms of mediation, how will I know if you are finding things difficult?*

*Sonia will it always be with you will it now?*

*Med 3 yes*

*Sonia that's easier then, I know who you are*

*Med 3 is that helpful*

*Sonia yes, I'll be able to say*

*Med 3 it's quite normal to ask for a break if you need one.*

The mediator explained how 'having a break' worked in that both clients are seen separately and given the opportunity to explore any concerns that they may have. This extract suggests that Med 3 had, in a short space of time, managed to build a good level of rapport with Sonia. Rapport is one of the key tools in the mediator's tool bag and necessary to develop a good working relationship. There was also a suggestion that Sonia felt that she could trust the mediator to look after her during mediation. The mediator then summarised Sonia's needs as '*stability and security for herself and the children*'.

\*

Similarly, when Med 1 asked Linda what had led to the break down in her relationship, Linda described her relationship with Billy as 'possessive' and 'controlling', and said that she was scared throughout the relationship:

*Med 1 What was the final thing that led to you leaving?*

*Linda he was on drugs*

*Med 1 right*

*Linda he's been doing it since he was 16 and he was 32 at the time I left*

*Med 1 right*

*Linda every week he would just keep on getting angry hitting me and shouted at me and verbally there was a lot of verbal abuse because he wanted money and every week you know when the child tax credits money kept coming in*

*Med 1 right*

Linda's description of the incident suggests that she also experienced emotional abuse and this links into the economic abuse that is described in 6.2.7 below. Linda described this abuse again, but this time ended her commentary by adding another dimension:

*Linda when he used to get angry he used to kick doors and kick walls he'd kick anything in his way because he was so mad because I wouldn't give them the*

*money because sometimes I didn't have the money and anyway it wasn't just the money it was his mum and dad that they're manipulating him because you know they're very old-fashioned...*

She went on to explain that his parents' controlled their lives by dictating where and when they socialise and that she felt 'bullied' by them:

*Linda we're (religion), and their way is, you've got to go to this function you've got to do this you've got to do that, and he was a mummy's boy*

*Med 1 mmm*

*Linda he was controlled by his mum, especially his mum he used to everything her way and that's where the arguments were. I'm modern, I'm westernised*

*Med 1 mmm*

*Linda and my thinking was different. My son had an asthma attack and every time went to hospital, we are forced to go to functions, to show him off because he was so cute.*

She explained that all the arrangements were made through Billy and she was excluded from those decisions. She also described how he isolated her from her support network and the impact that isolation, along with the other abusive behaviours, had on her:

*Linda He stopped me from going out, he stopped me from seeing my mum, I was only allowed to go there once a month, I was depressed. I carried on with the marriage because I wanted to make it work.*

The mediator listened to all that Linda shared with her and acknowledged the inter-cultural differences within their relationship.

\*

In Jane's case, a specialist hospital was monitoring her son Blaine for a medical condition that he was born with. Alex had spent very little time on his own with Blaine and was pushing for longer visits and overnight stays. Because of Blaine's health, Jane was still breastfeeding and was not yet ready to introduce bottle feeds to his regular routine. She describes Alex's response:

*Jane I have said to Alex that I understand and I'm very happy that in the future, he should have time and a day with Blaine and that should happen in the future, but at the moment, I feel Blaine is still fairly vulnerable*

*Med 1 mmm*

*Jane and I also, I have concerns about whether Alex is um equipped enough to notice the subtle needs of his vulnerability because he's a fractious baby and needs to sleep a lot. He sleeps a lot because of his condition. He doesn't take a bottle he's breast-fed. My concerns are 'Oh I'll make him take a bottle'.*

*Med 1 You can express milk to be fair.*

*Jane yes I know I can*

Jane's response to the mediator's observation that she could express milk is not easy to interpret. It might suggest that if she felt Alex was capable of looking after Blaine by monitoring his health, then expressing milk would not be a major issue. Certainly, Jane continued to speak about the fact that Alex was regularly putting her under extreme pressure to increase the amount of time that Blaine spent with him. This was based on what Alex wanted, as opposed to what Blaine needed, which suggests that Alex held a scant regard for Blaine's health needs. Indeed, this is later reflected in 7.4.5 below.

\*

In 5.5.4 above, Sheryl explained that she felt bullied by Terry and in 6.2.1 above, she described the communication style of his solicitor as 'ferocious'. Kelly, their daughter, had started to refuse to visit Terry. Sheryl was concerned that her behaviour had changed in recent months and that she was having tantrums. Sheryl cited a number of concerns that had built up over a long time, which she felt might be affecting Kelly:

Sheryl ...things have been very troubled since day one

Med 3 right

Sheryl I refused to let him take Kelly out of the country in August, we gave him a good two months' notice and he started getting a solicitor involved.

Med 3 right

Sheryl saying that he wants 50% access for all holidays. He wants to have her at the weekends, he wants her on Wednesdays and I'm not trying to deny access, but his behaviour, he has a drink and drug problem and it's given us great concern me and my husband and Kelly's behaviour has changed recently so whether she's becoming more aware of what's going on but she's refusing to go

Med 3 right

Sheryl She has been going

Med 3 When was she going usually?

Sheryl She normally went every Wednesday and every other weekend

Med 3 right

Sheryl but since probably May, April/May of this year, she started to say I'm not going, I don't want to go, and crying a lot.

Med 3 right

The mediator brought up the possibility of Kelly picking-up on the tension between her parents and Sheryl agreed that was likely to be part of the problem. The mediator also checked Kelly's behaviour at school as another indicator as to the extent of the changes in a child's behaviour and found there was no change in her behaviour at school. The mediator had previously met with Kelly and Kelly spoke about enjoying school, which suggests that the purpose of the question was to clarify her own thinking on Kelly's behaviour based, on their previous conversation.

\*

Hilda had a turbulent relationship with Harold, which ended with Harold ordering her to leave the home that they shared with their child Jesse. Answering a direct question posed by the mediator, she spoke about the past and the present in terms of the impact that Harold's 'virtual' presence had and still has on her:

*Med 2 Did he ever hit you?*

*Hilda no (very long pause)*

*Med 2 but he frightened you*

*Hilda he frightened me and he still does I can't be in the same room as him I'm just that why on my sheet it says if we come here I don't want to be waiting with him... I see his car and I don't know my body just starts to nerve up*

*Med 2 when did that start happening to you or for you?*

Hilda's description of the impact that Harold being in the same place had on her suggests that their relationship had deteriorated to the point where she was emotionally terrified of him. It is interesting to note the length of the pause that the mediator allowed and it is clear from the recording that Hilda was struggling to retain her composure. It would also seem that, based on the length of the pause, the mediator allowed Hilda some time to regain her composure. After that, the mediator opted to pose a further direct question. The mediator continued in this vein until Hilda had managed to compose herself. Further extracts from this conversation are in 6.2.3 below.

### 6.2.3 Theme 3: Using emotional abuse

This tactic, along with the use of psychological abuse, is the generic category that involves miscellaneous non-physical behaviours. It is usually part of the behaviours classified as 'other tactics of control', as some of the extracts above indicate. This tactic of control was alleged or inferred in all of the cases in this sample (n=15), and was presented in many different ways. All of the mothers in this sample described experiences that left them with negative emotions.

\*

Several women became pregnant around the time the relationship ended but also had to contend with abuse in the form of the response of the father. Tasha and Hilda, had to deal with the 'emotional fallout' of unplanned pregnancies. Trisha had to deal with a confirmed pregnancy that was soon followed by Paul's decision to end their relationship. Jane found out that she was pregnant after Alex had left her for another woman. All were told by their former partner that he did not want the child. Extracts from the accounts of some of these mothers follow.

\*

Hilda spoke about the fact that she was unhappy in the relationship but stated that they were still having intimate relations. When she found out she was expecting twins, she saw the pregnancy as an opportunity to rebuild their relationship, and she begged Harold to go through the pregnancy with her. Harold was clear that he was not prepared to do that and appeared to threaten her as to what would happen should she go through with the pregnancy. The following extract is Hilda's recollection of the conversation that took place at that time:

*Hilda Before we separated things weren't good and we were still making love we were in love but it was just getting very difficult*

*Med 2 mmm*

*Hilda anyway I became pregnant again*

*Med 2 right*

*Hilda and it was twins actually and obviously I didn't go through with it actually I begged him to go through with it I said please let us have them. I told him I'm pregnant and we didn't know it was twins and I was really excited I thought you know it might work you know it's really silly to depend on that. But and he was just basically you know, you must get a termination. I'm not having these children you'll end up on a council estate I won't support them I'll support Jesse*

*all my life but I won't support them you'll be on your own I'll never speak to them and just quite horrible really and like he basically told me to leave. ...*  
*Med 2 It sounds quite miserable actually.*

Hilda described her initial elation, as being excited that they might be able to make things work, and the 'low point' of feeling silly for thinking that having the children would make things better. The mediator empathised with Hilda's experience, and after that spent some time ensuring that Hilda did not continue to be upset following her disclosure.

Linda had similar thoughts to those described by Hilda in 6.2.2 above, where the notion of maintaining the relationship and trying to make it work was important to them both.

\*

Adrian blamed Tasha, who found she was pregnant with their third child, for allowing herself to get pregnant. He was clear that if she went through with the pregnancy she would do so without his support. Tasha described how he withdrew emotionally from her during the pregnancy:

*Tasha He didn't want the child, you know he wanted me to go for an abortion and I said no I went through with it he didn't lift a finger in the whole pregnancy he never took any responsibility. Obviously when the child was born when Taylor was born, it was different. He obviously loved her did everything for her but the damage had already been done.*

There is evidence from the very emotional nature of Tasha's voice when she explained the situation in which she found herself, that she found sharing this difficult part of her life with the mediator upsetting. The situation Tasha outlined suggested quite serious emotional abuse, which still had an emotional impact on her. She, like Hilda, felt pressured to have a termination that she did not want.

\*

Trish and Paul planned to have a second child and, initially, Trish was not sure that she wanted to have another child because their first child (Paris) had had some health problems that had made her early months of motherhood difficult. She was eventually persuaded to have another child and had just had the pregnancy confirmed when Paul announced that he was leaving because he did not want to be with her and that he did

not want the child. The following extract is Paul's explanation on the breakdown of their relationship:

*Paul I told her that I didn't want to be with her and I didn't want the baby, that's how I felt*

*Med and what happened?*

*Paul I left and she had a termination*

The mediator, by asking a direct question elicited his reasons for ending the relationship in a very short space of time.

\*

Jane and Alex had planned to start a family and had been trying for a baby when Alex had an affair and left the family home. Jane found out she was pregnant after Alex left her and decided that she would go ahead with the pregnancy. Alex's affair ended and whilst Jane hoped for reconciliation, Alex did not want to rekindle the relationship and did not want Jane to go ahead with the pregnancy.

\*

In addition to the above two further women, Nina and Karen, experienced emotional abuse after their first child was born. This is dealt with later in this section.

\*

There were many other suggestions of emotional abuse, and as mentioned in 6.2.1 above, Alvira had been bombarded by text messages by Nigel, who did not want her to respond to them. When she was admitted to hospital, the messages continued. She describes the situation in the next extract:

*Alvira I was quite ill in the summer and I had an operation, I was in hospital for a week, then I had an operation later and physically I was very very low and there's no two ways about it he did treat me appalling over the summer when I was ill, he did. ...*

Alvira went on to explain that things became so bad between her and Nigel that her father eventually intervened and that finally she had spoken with a solicitor who suggested that she considered making an application for a non-molestation order (see 6.2.1 above).

\*

Karen felt unsupported by Karl when his former partner attacked her and she felt that their son Ira received less attention from Karl, than his children from a previous relationship did. She explained that they had not had intimate relations since Ira was born and that she felt unwanted:

*Karen yes (laughs) when I left is just he's got two other children from ex-previous and um I married him knowing this by didn't marry him knowing that I'd play more of a mum to than their mum. Their mum was quite happy to leave them with us four nights a week and go out and all the rest of it and since we had Ira, Ira didn't get a look in to be honest*

*Med 1 right*

*Karen we didn't have sex since Ira was born*

*Med 1 right*

*Karen He's 16 months, nothing, he just went off me once I had Ira*

*Med 1 right*

*Karen to be honest it's just that and he used to belittle me to his girls*

At this point, the mediator intervened, as Karen appeared to be struggling to 'get her words out' and was speaking in a 'tearful' way:

*Med 1 what sort of things did he say?*

Karen continued explaining how she felt that Karl belittled her to his daughters, which in turn led to her decision to leave:

*Karen like it was his house (starts to cry) his rules (crying increases muffled talking) and I just felt I wasn't wanted there.*

*Med 1 right*

*Karen I didn't want my son to see me being belittled*

*Med 1 how old are his girls?*

*Karen (states ages) and he'd say don't listen to Karen it's my house my rules and like its mine and your child's home as well*

*Med 1 mm*

*Karen it just didn't feel like that (continues crying)*

*Med 1 I'll go and get some tissues*

*(Leaves room and returns with tissues, which she gives to Karen).*

Karen went on to say that, she had decided that Karl did not want her and Ira, hence her decision to leave. After this discussion, the mediator changed the focus of the meeting and conducted Karen's assessment for eligibility for legal aid.



When Med 1 asked Alice what led to the breakdown in their relationship, she explained his use of cannabis and his resultant negative behaviours as being the main reasons for their separation. Alice went on to explain how Clive never took responsibility and explained that she knew of people with 'real' health problems. In 6.2.2 above, Alice mentioned the fact that Clive used to talk 'at' her and shout at her if she tried to speak. The following extract highlights the impact that this had on her emotionally:

*Alice I just found it draining you know the constant complaining about everything, from the commute to the job and I just felt that he's just taken on too much. The job is maybe just too challenging or being a husband and living together, maybe because I'd worked in health services I'm too much of a listener and I'm too reflective, and we don't balance each other out anymore, I don't feel*

*Med 1 right*

*Alice it's not just the cannabis we rowed about childcare.*

Following this emotional disclosure, the mediator discussed Alice's concerns relating to childcare with her by acknowledging her position, asking questions to elicit information clarifying the information given, empathising and summarising.

\*

When their child Mallory was born, Nina's husband Neville was recovering from an emotional breakdown after he had experienced a traumatic life event. Med three had checked Nina's capacity to make joint decisions during mediation (see 5.5.5 above.) Prior to that, Nina described the circumstances that led to them separating:

*Nina ...there was so much pain and that became hate and I was the closest the closest thing to him and I just felt like, I was just his punching bag, not physically at all just um over the last few months I felt like he could see just no good in me anymore*

*Med 1 mmm*

*Nina all he saw was the bad in me um and that just became very, very heart-breaking for me and um I did find myself getting very annoyed and I realised that you know you mix all this with Mallory, and we were having cross words mainly when she was asleep or napping, um it wasn't the right situation for her to be in and I knew that I couldn't afford to sink any lower.*

*Med 1 mmm*

*Nina I explained that to Neville that I felt really low and that I was needing a way out and un that I needed some space and some peace um yes and and I felt that I needed to put my daughter first.*

Nina's explanation suggests that she had come to the end of her tether and was struggling to deal with the way life had become. During Nina's explanation, the mediator's voice was almost silent as the mediator listened without interrupting her; she then summarised all that Nina had spoken about, thus ensuring that Nina felt 'listened to'.

\*

During the JIM attended by Salome, Steve became angry and verbally abused Salome based on her nationality (see 6.2.7 below). Salome started to cry and the mediator conducted the rest of the JIM as two separate meetings. A similar situation occurred when Trisha and Paul attended their JIM; Trisha was reduced to tears in the early stages of the JIM, possibly due to Paul's matter-of-fact approach to the process, again, the rest of the JIM was conducted as two separate meetings.

#### **6.2.4 Theme 4: Using isolation**

Isolation is a result of the combination of other abusive behaviours and includes separating the person that is being abused (adult or child), from their support system. This tactic of control was present in 53% of the case in the sample (n=8).

In 6.2.3 above, Nina described the struggles that she was experiencing. She went on to raise a concern for herself and her daughter, which related to the amount of time that Neville was suggesting that Mallory spent with each parent. Prior to the next extract Med 3 had asked her if some of the differences in their relationship were cultural:

*Nina I wouldn't say so but that's not the main thing it's that Neville's family very much support him um they've supported him, they very much want to keep contact with their grand-daughter, which I've facilitated in every way possible since we separated but they want a situation where my daughter is, Neville wants a situation where my she is at his parental home, two weeks, one week half week, it's, we've talked about all sorts and we tried it, I'm not happy with it is why I've tried to sort things out, to go to a situation where daddy has her for a week and mummy's nowhere to be seen and then the following week you know daddy's gone and to have you mummy and daddy coming and going, now you see me, now you don't, I just feel that, that's a very destructive thing for a little girl who doesn't really understand what's happening.*

Nina went on to explain that she had spoken to a child psychologist as well as the health visitor and GP and they had advised that long lengths of separation were not advisable for a child of Mallory's age. The mediator questioned Mallory's understanding of the situation in a rhetorical way by stating that anything that becomes a routine can be considered 'normal'. She also went on to say that an arrangement being 'normal' does not mean it is in the child's best interest. She also asked Nina to share the professional guidance that had been given to her, and as will become clearer in Chapter seven, the mediator used this knowledge to suggest a parental activity for Nina and Neville.

\*

The narrative of two other mothers Hilda and Linda, suggested that they felt controlled by the father's mother and that the father allowed that to happen.

During her SIM Hilda explained that when Harold's mother came to visit them that his mother took control of Jesse and that Hilda's sole role was to feed and change him:

*Hilda His mother was over his mother just flipped out one day, a very controlling mother as well very much I'm here, I'm having Jesse all to myself you can't you know*

*Med 2 mmm*

*Hilda Really sort of like, I was quite happy they were together but I was only allowed to sort of interact with Jesse if it was changing time or I had to feed him or you know it was very much like that.*

Hilda went on to explain that when they first separated, Jesse was having more contact with Harold and that when Harold came to collect Jesse, the child would cling on to her. The following extract describes her distress during one such handover:

*Hilda He used to say to me I'm going to send Jesse off to Europe, to stay with my mother for a week. I opposed it I said come on he's young, that's separation anxiety. He used to have to peel Jesse off me to take him away and he'd speed off in the car and I'd just phone him and he'd be very, you know he wouldn't tell me what was going on and then complain to me that that Jesse was really unhappy and that it was my fault, that I'd made him unhappy.*

Hilda describes a fraught handover where both parents were tense, the child was tense, and that tension stayed with the child for the duration of contact. The abuse

stemmed from the fact that Harold blamed her, because Jesse remained upset after he had forcibly removed him from Hilda when he was clinging to her.

Additionally, Harold threatening to send Jesse abroad to his mother, without either parent, suggests 'isolation', as Jesse's main support network would not be available to him while he was away.

\*

In 6.2.2 above Linda explained that her husband was possessive and controlling and that his parents were manipulative because they controlled their social life.

*Linda He was controlled by his mum especially his mum and he did everything her way that's where the arguments were because I'm more modern and westernised and my thinking was different. If my son, he had asthma attacks a lot and every time we went to the hospital we were forced to go to functions to show him off because he was so cute.*

During her JIM, Trish expressed concern not only that Paul would turn up late for contact and when he eventually arrived would not tell her where he was, taking Paris, but also that Paul isolated her from the support of his family:

*Trish I don't feel comfortable with Paul having Paris and him not answering his telephone, and not allowing me to speak to his family to check that Paris is okay and him giving Paris to other people to take her out of the house is totally unacceptable.*

*Med 3 yes it is actually*

*Trish He just says what are you going to do about it?*

*Med 3 It's actually reasonable to expect to know where your child is. She's not a bag of shopping she's a living person*

*Trish on the text he says to me Trish, I watched her walk out the door and down the street. Well where to she's five for god sake (at this point Trish broke down in floods of tears)<sup>102</sup>*

Trish was extremely emotional when she was speaking. She was concerned that she did not know where Paris was or whom she was with, as Paul had decided she did not need to know. Additionally, there was a suggested 'intent' of emotionally abusive behaviour in the text messages that he sent to Trish. The mediator acknowledged

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<sup>102</sup> See also 6.1.6

Trish's concerns by reassuring her that they were valid and then opted to change the focus of the meeting to the assessment for legal funding.<sup>103</sup>

### 6.2.5 Theme 5: Minimisation, denial and blame

'Minimisation' is used to make light of an assault or abusive behaviour contrary to their partner's views; whereas 'denial' is designed to suggest that the abuse or controlling behaviour under discussion did not happen. Abusers often shift the responsibility for the occurrence of the abuse to something or someone else. This tactic of control was present in all of the cases in this sample (n=15).

\*

As discussed in 6.2.3 and 6.2.4 above, Nina was concerned about the arrangements that Neville was seeking to impose for the care of their child. Neville had returned to live with his parents following their separation and with Mallory being less than a year old, Nina was concerned that Neville's suggestion of a week with each parent would be developmentally damaging for Mallory. In the following extract, Nina explains how she eventually agreed to a change in the pattern of contact and the impact that this had on Mallory:

*Nina I have not seen this. What I have seen is that when I relented after weeks and weeks of discussion and I said okay what I saw, do remember that week she came back to me after five days, you bought her back after five days and she wasn't the same little girl I could not think she's that had been away for so many nights and suddenly she was with Neville's family for five days and when she returned she took three days to get back to normal but that is when I did see her screaming, very very clingy you know not want me to leave her she was very she regressed back a couple of months she really had regressed to a place that she was at two months before when she wasn't happy if you left her.*

Neville's response to this was to revert to a series of events that started before they first separated and using these, blamed the fact that Nina took Mallory to visit different people for Mallory's regression. The next extract shows Nina's response to Neville's allegation:

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<sup>103</sup> Three further mothers spoke about isolation from their support system during their MIAM. These were Alice C003, Sheryl C014 and Sonia C053

*Nina being with me going to different environments has never affected her! You're very keen to put you know those three days after the first separation from her mummy in her life you very keen to put the adverse effects that I saw, that my family saw, that everybody around me saw in her after those three days. You're very keen to put that down to me having been in my mums house and my friends house and completely do not conceive that it's most likely to be due to the fact that she was separated from her mummy for the first time in her life for five days that's the most obvious reason for that distressing her*

Neville's response suggested that he has was not responsible for the difficulties that Mallory was experiencing, but the nature of his response suggested that he was questioning the amount of time that the Mallory spent with extended family and friends. (This extract also presents the behaviour of using children).

This focus on time featured in a number of cases in this sample. During his JIM, Alex focused on the fact that Jane regularly took Blaine to visit family and friends and stated that she allowed her mother to look after Blaine. Alex felt that he should have been given the opportunity to look after his child, rather than the grandmother, who was his regular carer while Jane was at work.

\*

During his SIM, Terry too focused on the amount of time Kelly spent with extended family and friends and instructed his solicitor to write to Sheryl demanding 50:50 contact (see 5.5.4 above). This focus will be discussed further in Chapter 8.

\*

During her SIM Sheryl spoke about what could best be described as Terry's dismissive attitude to many of the concerns that she raised. The next extract gives an example of one of those concerns:

*Sheryl I could fill a book with the things that he's done, he gave her a laptop last year and we went on holiday, with my in-laws in July and we were looking for a film and we found all of Terry's 18 rated films on there*

*Med 1 On her laptop?*

*Sheryl On her laptop.*

Sheryl went on to explain that the films were not password protected and that the content of the films was explicitly sexual and violent and contained 'colourful'

language. Sheryl goes on to explain Terry's response in which he minimised his behaviour:

*Med 3 Well it's obviously one that he's used for himself and given to her  
Sheryl Exactly and I said to Kelly is this your laptop or is this Daddy's laptop? Daddy uses it for work. It had all his work spreadsheets on there it had absolutely everything and when we broached the subject he turned it around completely and said well we all make mistakes; I said not that kind of mistake! There's pornographic stuff on there that she does not need to be exposed to.*

Terry also appeared to have little regard for the negative effect that viewing adult rated films could have on his daughter, so essentially another behaviour present in this extract is 'using children'.

\*

As mentioned in 6.2.3, Tasha had an unplanned pregnancy, which she revealed when the mediator asked her why their relationship had broken down. This extract specifies the level of blame associated with the pregnancy:

*Med 3 so what led to the breakdown in the relationship?  
Tasha well let's just say he's selfish (laughs)  
Med 3 right  
Tasha I think I'm pretty easy-going and he probably wouldn't agree with me even though if you'd seen me a couple of years ago in the marriage, but he's very much sort of selfish with this time. He said I got myself pregnant and basically didn't want the third child, he said if I had the third child I've got to do it by myself. He doesn't want anything to do with the third child, obviously, he loves her, and he does everything for her.*

Stating that Adrian was selfish with his time suggests that Tasha had borne the majority of responsibility for childcare, with little help from Adrian, and also that he felt that he should make all the big decisions: '[h]e wanted me to have a termination'. A further extract, in 6.2.8 below, adds a further dimension to the breakdown in their relationship.

### **6.2.6 Theme 6: Using children**

In this tactic the children are often caught in the middle of the parents' conflictual relationship. This tactic of control was present in 12 of the cases in the sample

(80%).<sup>104</sup> 'Age inappropriate' activities were present in ten of the cases in the sample and focus on 'the child needs a relationship with their father' in seven of the cases.

Sheryl was concerned about the situations that Kelly was exposed to when she spent time with Terry. This extract explains one of her many concerns:

*Sheryl I've found out he's been drinking with her and on certain occasions he's taken her to a wedding, he's left her on her own and he got so drunk, he couldn't walk upstairs she got lost in the hotel and lots of incidences over the years.*

Later she describes the adult content that Terry left on the laptop he gave to Kelly:

*Sheryl None of them were parental coded or whatever you call it protected so you had to have a code to put into it there was things like Bad Boy, 18-inch chest, or 44-inch chest.*

*Med 3 I don't know what these are*

*Sheryl They're all 18 movies that are all explicitly violent and sexual and then there was a little clip and it had, you know the icon's you get, you know the picture with shoot gerbil? Well we clicked into it it's called Gerry the Gerbil*

*Med 3 Is it porn?*

*Sheryl It's not porn but the language is quite graphic*

*Med 3 right*

*Sheryl it uses the C word it goes on about anal sex and this in on her laptop.*

*Med 3 Well it's obviously one that he's used for himself and given to her*

As mentioned in 6.2.5, when this content was raised as a concern to Terry his response was 'we all make mistakes', thus 'minimising' Sheryl's concerns. The mediator used questions to elicit information, and following this empathised and summarised Sheryl's concerns.

\*

Neville was concerned about the fact that Mallory was finding handovers distressing and, as mentioned in 6.2.5, blamed that distress on the fact that Nina took Mallory to visit her family and friends in different locations. The mediator mutualised the concern by way of clarification:

*Med 1 it's interesting; you're both concerned about the fact that she is finding things quite distressing at the moment*

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<sup>104</sup> The three cases that did not contain evidence of using children were C019 June and David, C042 Sheryl and Mark and C049 Salome and Steve



Nina immediately refuted this as not being her experience of handovers:

*Nina I don't actually see that I take on board what Neville is saying that's how she is when she's with him I've not seen any ill effect, she is extremely settled little girl she sleeps through the night, she has a morning nap has an afternoon nap, I'm not disputing what Neville said about what she's like when she's with him I can't know that but I know that the handover times I've not seen this screaming I've seen what is it probably being that you've not had contact with her for three days but she called to you and she cried she went to you at once.*

The concern Neville expressed relating to handovers then was used to introduce another concern that he had, which focused on the amount of time Mallory spent with other people (as opposed to with him). The mediator acknowledged Neville's concern and assured him that they would both get an opportunity to discuss all areas of concern in the joint meeting. She also acknowledged their differing perspectives on the situation under discussion and normalised the fact that children responded differently to each parent.

\*

In 6.2.3 above, Karen spoke about the breakdown in her relationship because she felt that Karl did not treat their son Ira as well as he treated his children from a previous relationship. In fact she suggested that Ira was almost ignored by Karl.

\*

Additionally, Hilda expressed her concerns for Jesse spending time with Harold in 5.6.2 and 6.2.1 above and she continued by explaining other concerns when Jesse returned from contact with Harold:

*Hilda And then Jesse would come back to me to me and he's actually behind quite a lot. Jesse had grommets fitted in January this year*

*Med 2 right*

*Hilda and it has delayed his speech at first we thought he's being bought up bilingually so you know they say that may delay things etc. and then had to take Jesse back to see a paediatrician with regard to this separation anxiety*

At this point, the mediator asked a question to clarify the extent of the distress that Hilda was describing:

*Med 2 was it just the clinging to you or was there other symptoms?*

Hilda continued explaining her concerns, focusing on the fact that Jesse regressed each time he spent time with Harold, explaining that she felt that the disruption to his routine was a big factor in that regression:

*Hilda obviously a lot of frustration with regards to not being able to communicate*

*Med 2 right*

*Hilda to talk and to tell me how he felt. But also not wanting to go to bed on his own without me. I had a routine*

*Med 2 mmm*

*Hilda Tea, bath bed by seven... and I do know that when he was staying with Harold that he would just let him fall asleep on the sofa and when his mother came over from Europe.*

Hilda's concerns about Harold's mother in 6.2.2 and 6.2.4 are also borne out in the above extract.

\*

Out of concern for Wallace's welfare, Paula had stopped Peter from seeing her because she had started to say that she did not want to stay with her dad. Med 1 asked Paula a direct question:

*Med 1 Why hasn't he seen her?*

*Paula Because of all the problems that we've got you know he's getting worse*

*Med 1 right*

*Paula I say to him you're getting worse and worse and she comes home you know she complains you know, she never wakes up during the night one night she woke up to go to toilet and she came to my room and she really freaked me out because she never does normally*

*Med 1 right*

*Paula she started to cry she said that I can't get rid of this song in my head the sad song my dad plays. So during the weekend when she's with him he just, you know well I don't blame him he's you know he's upset he's lonely and the only family he's got is her*

*Med 1 right*

*Paula you know and I am feeling for him you know in a way*

*Med 1 mmm*

*Paula but he shouldn't show his feelings that he's heartbroken he's lonely he's in pain he wanted someone to feel sorry for him*

*Med 1 what is it that he's doing that concerns you?*

*Paula it's the drinking and everything else.*

Wallace was essentially in an environment where Peter was telling her how sad he was. This was an adult exchange that he should not have been having with Wallace. Paula felt that the conversation was making Wallace uncomfortable and by not going to spend time with her dad she would not have to listen to the sad music that he played. Paula understood why Peter was unhappy, but felt that she could not allow Wallace to be upset in that way. I would also suggest that the impact hearing this song had on Wallace was also emotionally abusive. Similarly in her SIM, Sheryl explained that Terry would upset Kelly by telling her that if she did not come to see him he would be lonely.

\*

Trisha, in 6.2.4 above, described a situation where their child Paris was kept from her because Paul refused to let her know where he had taken her. A text message that he sent to Trisha suggested that he watched Paris walk down the road on her own. If that was the case then this was also an example of 'using children'.

### **6.2.7 Theme 7: Using male privilege**

The description of this tactic reflects the Duluth description, which states that the control is based on a belief system that men are entitled to certain privileges because they are men. This tactic was present in 14 of the cases in the sample (93%).<sup>105</sup>

\*

In the next extract, Hilda describes how Harold made all the major decisions and one of those decisions was to purge her mobile telephone of certain numbers:

*Hilda and also Harold has got I don't want to talk badly of him but you know it's going to come up some just going to found his ways very militarian he's very pushy. I know Europeans are different culture wise that's fine.*

*Med 2 what do you mean when you say militarian?*

*Hilda He deleted all my male friends from my phone, I should have realised actually in the beginning because when he did that I just thought ohh, I don't know I thought he's a little bit jealous but it just got worse and then obviously having Jesse and I just thought wow this has got to work I'll try, I'll try I'll try*

Hilda's explanation of this event, and other incidents previously mentioned in this chapter, also suggest that Harold's intention may have been to isolate her from some of her support network. Additionally, as mentioned in 6.2.4 above, Harold, by

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<sup>105</sup> The case that did not contain evidence of male privilege was C014 Terry and Sheryl

threatening to send Jesse abroad to his mother, potentially against Hilda's will suggests the use male privilege, in that he is making a major decision about the child without considering the child's welfare.

\*

In the next extract, Paula spoke about the years of sexual abuse that she experienced when she was living with Peter:

*Paula this is what I always said to him he sits there feeling sorry for himself I said when I needed someone you were there you know and you needed me at the time I needed you know I tried you wanted, this is what he wanted was to have a family have a kid you know*

*Med 1 mmm*

*Paula and I gave all that to him and made his house spotless you know I gave him, I married him I had Wallace with him I tried so many years with him you know*

*Med 1 mmm*

*Paula eight years, I'm with him through violence and rape I didn't leave him*

They had both been dependent on each other, and the Paula's level of dependency meant that she tolerated and justified Peter's bad behaviour for a number of years, before eventually leaving him.

\*

During his separate meeting, David spoke about his wife in a disparaging way:

*David: you'd have thought after a hard day's work there'd be a meal waiting for me. There wasn't and everything came out of packets.*

\*

Similarly, Steve was disparaging about Salome, stating:

*Steve she couldn't cook proper food, just loads of foreign muck*

Both Steve and David had an expectation of been provided with a 'decent meal' after a hard day's work - both were disappointed that their wives did not provide them with such a meal. (The mediators concerned did not respond to these comments).

### **6.2.8 Theme 8: Using economic abuse**

This tactic of control was present in all of the cases in the sample (n=15), with the main issue being access to finances.

\*

Tasha explained the breakdown in her relationship in 6.2.5 above and, following on from that, went on to explain the major difficulties in their relationship:

*Tasha but at this stage so our marriage sort of broke down because of the financial side of it we were always arguing about money like all the time, but it really broke down when I was pregnant with my third child*

*Med 3 right*

*Tasha he didn't want the child, you know he wanted me to go for an abortion and I said no I went through with it he didn't lift a finger in the whole pregnancy he never took any responsibility. Obviously when the child was born when Taylor was born, it was different. He obviously loved her did everything for her but the damage had already been done. I was between 15 and £20,000 in debt he – said I was spending it all myself. It was nothing to do with the household debt it was because at the end of the month I didn't have enough money to pay for stuff for myself pay for stuff for children so it went on credit cards.*

Tasha's commentary suggests that Adrian controlled the finances and that he gave her an allowance for the family expenditure. When this ran out before the end of the month, she resorted to other means to secure what she considered necessities for herself and their children. Adrian took no responsibility for the debt and suggested that Tasha had spent the money solely on herself.

\*

In 6.2.2 above Linda explained how scared she was when Billy demanded her tax credit payments as soon as they arrived, even though he had an earned income:

*Linda he kept making me give it to him £50 and he kept asking for the money and he said I need it I need it I need to do this I need to do that and he was earning £1,200 a month*

*Med 1 so he was earning enough money*

*Linda and then the white man used to come round the back and they used to deal there*

*Med 1 right*

*Linda I used to tell him stop it because his eyes were red and he was always up high and he's always angry he never spent any time with my son he sits there watching Thomas the Tank Engine*

*Med 1 um stay and play which is where?*

Following this exchange, the mediator opted to 'future focus' the conversation by asking a question about the current arrangements for contact.

\*

In 5.5.4 above, June explained that she did not like confrontation and that she would avoid it if at all possible. The following extract depicts David's view on the family finances:

*David she wanted something and I said no*

*Med 4 mmm*

*David most of these things were, you know financial, like a conservatory, in other words you want me to pay*

*Med 4 yeah*

*David you know trips to Florida and do the house this year*

*Med 4 yeah that might have been how things started, sometimes financial reasons, you said you tried to explain your side, she'd like get frustrated,*

*David she'd think I was just being obstructive or tight or something, she wants everything to be her side those discussions*

*Med 4 mmm*

*David you know she wanted an extension put on the house and I said the gas meter and the electricity meter's there, we'd have to get the gas board to move those, it'll cost tens of thousands just to move those to buy us two foot in the kitchen. It's not gonna work. It's her saying oh you're not sensible, shed think I'm being obstructive.*

*Med 4 mmm*

*David it was banging my head against a brick wall to make her see the logic.*

David saw his role as 'keeper of the family purse' and to that end made all of the big decisions. The mediator 'normalised' 'financial reasons' as being the possible start in the breakdown in the relationship.

\*

Similarly, Salome did not have access to the family finances and Steve had claimed both child benefit and tax credits; these were paid into a bank account that was in his sole name.

### **6.2.9 Summary of Study two<sup>106</sup>**

This study presented the findings from analysing the MIAM data using the eight themes detailed in 6.2 above. Full discussion of the significance of these findings will

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<sup>106</sup> The 15 MIAMs where domestic violence was alleged or inferred

be presented in Chapter eight of this thesis. In the next section, the findings and discussion relating to Study three<sup>107</sup> are detailed.

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<sup>107</sup> The 4 MIAMs where domestic abuse was alleged or inferred that did not proceed to mediation

### **6.3 Study three - The 4 MIAMs where domestic abuse was alleged or inferred that did not proceed to mediation**

Study two presented the findings from 15 cases in which domestic abuse was alleged or could be inferred during the MIAM. Rather than analyse the cases in more detail using the DDAIP identifiers, this study draws out, on a case-by-case basis, evidence within the data that suggests why four of the cases did not proceed to mediation. The participants in this study were Alvira and Nigel, Hilda and Harold, Shelly and Mark and Sonia and Shane.

#### **6.3.1 Alvira and Nigel**

Alvira and Nigel were living separately and had regular arrangements for 'contact'. Nigel would often turn up late, and would never let Alvira know in advance that he was going to be late. This led to regular 'cross words' in front of the children.

After a difficult summer (see 6.2.3 above,) during which she had been too scared to speak with Nigel, Alvira had consulted her solicitor about applying for a non-molestation order. When the parents attended their JIM, they had only very recently resumed communication and some of the exchanges between them were high-conflict and full of tension. Prior to this extract, Alvira had been explaining their decision to separate, after which the mediator asked Nick if he wanted to add to Alvira's explanation:

*Nigel I find that is quite one sided, I understand why. I appreciated meeting up on Saturday. Whatever has happened and no one's perfect or faultless, whatever happened in the past happened in the past it's now about the future*

*Med 4 mmm*

*Nigel I've had to move on, I've been devastated by not living with my children and I have to rise above, her father getting involved in what is a private matter. It was not helpful at all.*

At this point Alvira tried to explain the reason for her father getting involved to which Nigel interrupted in a raised voice:

*Nigel I'm talking to the mediator and this continues perhaps the mediator will have an opinion as to the fact that you find it difficult not to butt in (pause) okay. No more Alvira, I'm glad it's over, okay. It's a shame you did that...He called*



*me an arsehole in front of my mother, using that language in front of my daughter, her best friend all my football friends, it was unacceptable.*

He was very upset and the mediator suggested that he did not need to continue if he did not want to and that this was probably a good time to speak with them separately. She also explained that she was not seeking to determine who was right or wrong in this instance, but needed to understand their current circumstances, and get some sense of the issues that they needed to resolve.

The mediator spoke with each of them during their separate meetings; some of the detail from Alvira's meeting is in 6.2.1 above. When Nigel had his separate meeting the mediator, after thanking him for waiting asked a direct question:

*Med 4 I'm sensing you've been quite angry*

*Nigel (laughs) I have been but I'm trying to move on really*

*Med 4 right, it's still there isn't it*

*Nigel of course it's still there. When you've made an effort so many times and said let's forget the past let's move on, I've expressed that commitment so many times and the finger jabbing just continues.*

The mediator ensured that Nigel had enough time to tell his story and then explained that she needed to ask questions that would help her understand the dynamics of the relationship. She also reminded Nigel that Alvira had said at the outset, that she was not speaking for him. This appeared to calm Nigel down and once this was achieved, the mediator was able to speak with him about the practicalities of the mediation process, in particular the 'future focus' nature of the process.

After speaking with them both separately, both parties met with the mediator again, and after co-ordinating three diaries, eventually managed to book two future appointments. Alvira was concerned that the next meeting was three weeks away and stated that she had hoped for a meeting in two weeks. She suggested that she might try to find a private mediator who could see them both sooner. They did not attend the meeting booked, so in this instance, based on the content of the meeting, it would appear that they might well have managed to get an earlier appointment elsewhere.

### 6.3.2 Hilda and Harold

Harold and Hilda had a young son Jesse, who was experiencing developmental difficulties. He was unable to speak, so could not communicate with either parent verbally. Hilda described Harold as a 'militarian' (see 6.2.7 above) and there had been a number of court hearings prior to them attending their SIMs. During Hilda's SIM, she expressed some strong views about contact in the future and she explained that being in Harold's presence had a negative effect on her (see 6.2.2 above).

Harold was the first client to meet with the mediator, and during his SIM, he explained his expectations of mediation (see 5.5.3 above). Essentially, he was happy to pay for mediation as long as he could get contact with his son at the end of mediation. Otherwise, he would prefer to go to court. This expectation would be problematical for the mediator because mediation involves a conversation between two people and the outcome is unknown at the start of the process.

Equally, when Hilda met with the mediator she too was clear about her resistance to making any change in existing contact arrangements. These were summarised by the mediator in 5.6.2 above as *'[s]ome clear ideas and concerns about Jesse's health'*, which from Hilda's perspective had a direct impact on Harold spending additional time with Jesse.

The mediator may well have had concerns about reviewing contact with the clients, given that the contact ordered was supervised contact. A similar order was granted to one other case in this sample.<sup>108</sup> These and other orders are usually made on the recommendation of the Family Court Adviser (FCA), after speaking with both parents and prior to the first hearing of the application.<sup>109</sup> I would suggest that the majority of mediators would not seek to change supervised contact orders drastically. An example of the mediator response to such a request in this sample is the case of Linda and Billy, (see 7.4.1 below).

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<sup>108</sup> C053 Sonia and Shane

<sup>109</sup> In some instances, the FCA will also speak with the children

As stated in 6.2.1 above, this was the only case where the mediator determined that the clients and their issues were not suitable for mediation.

### 6.3.3 Shelly and Mark

Mark and Shelly separated after Mark confessed to Shelly that he had had an affair (see 5.1.1 above). Shelly had petitioned for divorce, a decree nisi had been granted and she had been advised to agree the finances with Mark before applying for a decree absolute. Both clients had separate meetings with the mediator, and during Shelly's meeting, she expressed two main concerns. Firstly, Mark had the option to retire in a matter of months and whether he retired or not he would get a lump sum from his pension.

The second concern was that he had returned to her, saying that the affair was over, on a number of occasions and she had taken him back only to find out that the affair was ongoing. Emotionally, she needed to get things resolved as quickly as possible, because she felt that if there were further delays, she would let her guard down and take him back. During his separate meeting, Mark made his intentions clear about mediation, as detailed in the following extract:

*Med 2 Thanks for waiting. Okay, so have you got a payslip?*

*Mark yes*

*Med 2 I just need to work out your cost for mediation*

*Mark I rounded it up – I should have rounded it down*

*Med 2 actually it doesn't make a difference, it's still £165 per session*

*Mark £165? What's that for an hour?*

*Med 2 An hour and a half*

*Mark Bloody hell, between the two of us>*

*Med 2 No, the costs are done separately*

*Mark That's an incredible amount of money £165, it's more than a solicitor would charge. They charge me £100 per hour*

*Med 2 you've got a very good solicitor, because most solicitors round here charge more than that per hour.*

The mediator explained that the charges were for the whole meeting including paperwork and that VAT was not added to the cost, also that the fees were calculated using a sliding scale based on income. To which Mark replied he had just paid over £1,000 for solicitors fees and that he was not prepared to spend money on mediation.

Both clients arranged another meeting, which they did not attend (see 5.6.1 above).

#### 6.3.4 Sonia and Shane

Sonia and Shane attended SIMs and during Sonia's meeting, she described a number of controlling behaviours that she had experienced during their relationship:

*Med 3* Would you like to tell me how you came to move out and where you are trying to get to?

*Sonia* Basically, I think, my husband has always been very controlling and um with aspects if I watched a certain programme and I said something about it he'd say that it wasn't my view...Um and he just used to sort of be, well he started on our five year old son, to the point where we were on a family holiday with my family, this year and whenever he told Robyn off, he'd tell him off for a good hour,

*Med 3* mmm

*Sonia* he started swearing at him...he'd say things that you know to a five year old are unacceptable

*Med 3* right

*Sonia* on a another occasion my nephew and Robyn were play fighting and er Shane came outside and Robyn and James were cuddling and he said he wished he had a camera because he would prove that Robyn was a weirdo, because it looked like he was giving Sydney a blow job.

*Med 3* was this in front of the children?

*Sonia* yes and my sister was there as well.

She went on to explain that Shane used to pick on her but as she had got a bit stronger she had started to stick up for herself. She felt that once Shane started to pick on Robyn she could not stay in that environment, so she had decided to leave and went to live in one room in her sister's house.

Other controlling behaviours continued after she left the family home, Shane replaced the external locks and would not let her have access to collect personal effects for her and their two children. The following extract reflects this:

*Med 3* you say you've got stronger what were things like?

*Sonia* He was always controlling, I mean the house is in his taste. He's living in the family house, this is the other thing, we've got all the financial side

*Med 3* right

*Sonia* we're living at my sisters in one room

*Med 3* in one room?

*Sonia* and he's got the house and he's changed the locks...

*Med 3 is the house in both names?*

*Sonia yes*

Following a court hearing the previous week where Cafcass submitted preliminary reports, supervised contact was ordered, with Cafcass required to carry out a full 'section seven' welfare report)<sup>110</sup>. Sonia did not want to review contact in mediation. However she was also concerned about the contact that had taken place:

*Sonia He didn't really want to go and he came back so subdued about things*

*Med 3 did he say what had happened?*

*Sonia He just said that he'd asked for something, because obviously quite a lot of stuff is still at the house, we'd asked for his Wii because he loves his Wii and Shane said he was keeping it at the house for when he goes back and he had discussed the fact that he had written to the Judge and the Judge would decide when he could see the children again. He explains things to the children like they're an adult.*

*Med 3 it's good to know that Cafcass did take on board what you had said? Are they going to see the children?*

The mediator asked more questions about her concerns for the children and 'affirmed' her for telling Cafcass what had been happening during the time she was still at home, as well as during the period after she had left the family home:

*Med 3 If you don't tell them they are not going to know*

Sonia repeated the fact that she did not want to discuss contact in mediation - she wanted to focus on the finances. The mediator summarised what Sonia had said, acknowledging the fact that she did not want to discuss contact in mediation. In a similar way, Hilda and Linda, it would seem that she was concerned that Shane would try to push the boundaries relating to supervised contact; he was keeping Robyn's toys at the family home until they returned home.

When Shane attended his SIM he began his meeting by saying:

*'I didn't want a divorce, I'm here for her. She wants the divorce I want the kids.'*

As the SIM progressed, Shane corroborated his wife's explanation of the abusive behaviours as is shown in the following extract:

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<sup>110</sup> Children Act 1989

*Shane* When Robyn was one Sonia went through a patch where she was very aggressive, very demanding, very controlling and actually quite abusive towards me in a sense that she'd treat me like her underdog if you like. It was my entire fault I got her knocked up and she had a C-section and all those sorts of things. And then again when Jilly was born she went through similar thing.

*Med 3* it sounds as if she may have been depressed.

Shane went on to explain that with hindsight at that time they were both extremely tired and he worked long hours, which earned them good money. He then stated that after Darryl was born he had taken on a new contract and he was working long hours and needed his sleep. He acknowledged that Sonia also needed sleep but essentially his need was greater; he was always tired even at the weekends and Sonia was also tired because he was not allowing her to have any sleep:

*Med 3* So what happened next?

Shane went on to say that a bitter dispute started where he had 'worked his arse off all week' and needed to catch up on his sleep at the weekend. He did not appreciate the fact that she felt that she was entitled to a break at the weekend and eventually she became depressed. They eventually went to Relate for couple counselling. The following extract reflects Shane's version of Sonia's views expressed earlier in this section:

*Shane:* We went to one session and she just wasn't being herself, it was almost as though she was acting like someone else. It wasn't real

*Med 3* When you say she was acting what do you mean?

*Shane* She made up a story that I didn't relate to at all

*Med 3* right

*Shane* about what she felt she was going through

*Med 3* right

*Shane* and she made up this what seemed like a story

*Med 3* right

*Shane* like it had a plot line and some characters and I was in there and the kids were in there, but it didn't really relate to the way I saw things.

*Med 3* right

*Shane* it was like a story, it wasn't anything that we both agreed it was just a story that came out and I was like that's not the way that I see things.

*Med 3* what did she say?

*Shane* well it was pretty much a case of, I can't really remember to be honest with you

*Med 3* right

*Shane what it was about? It was almost as if she had been talking to people and she'd got this story that I don't do enough, that I don't spend enough time with the children... I don't give her enough sleep*

*Med 3 mmm*

*Shane but when the counsellor tried working between us, it was like I didn't recognise her she was just telling a story, I don't know if I'm explaining that well*

*Med 3 It's your interpretation of what went on*

*Shane it wasn't reality, what she was saying was partly based on how she felt*

*Med 3 mmm*

*Shane the way she perceived things in her mind*

*Med 3 mmm*

*Shane and the story she had been telling herself about how things had gone on.- she was acting in front of a group of other people and she had disconnected from me.*

*Med 3 So what was the final event that led to the end of the relationship?*

Shaun continued to speak about his interpretation of incidents that had occurred in the past and eventually determined that his wife left him because of her 'story telling malarkey'. Nonetheless, the way he explained events as they occurred during the relationship suggested that their relationship was abusive, and evidence indicated that all eight tactics of power and control were present in the relationship.

In terms of them not attending a joint meeting, Sonia was clear that she did not want to discuss the contact arrangements for the children. Shane was unclear as to why they needed to attend mediation, as he had submitted an application for ancillary relief to the court.

From the mediator's perspective, as stated in the case of Hilda above, mediators are often reluctant to encourage discussion about changes to a supervised contact order. As a mediator, I respect and work with the guidance of the FCA's in such cases.

## 6.4 Commonalities in all four cases

This section discusses the cases where some DDAIP identifiers were in evidence in all four cases.

### 6.4.1 Emotional abuse

Each of the women in the above cases expressed a level of emotional vulnerability, after their relationship ended. Alvira and Hilda's vulnerability came from the harassment, intimidation and emotional abuse that they had both experienced and both mothers confessed to being scared of their former partners. Sonia's vulnerability was linked to the fact that Shane was living in the marital home and withholding the personal effects of her and the children. In the case of Shelly, her vulnerabilities were equally complex, in that her husband Mark had been playing with her emotions and had left and returned to her on a number of occasions. She wanted to resolve the financial issues as soon as practically possible, lest she became irresolute enough to allow him back into her bed.

### 6.4.2 Economic abuse and Male privilege

In terms of economic abuse, whilst pregnant Hilda had been forced to work with a groin strain and shortly after Jesse was born, Harold had insisted that she return to work.

\*

Sonia had not worked since the children were born and after she left the family home, Shane refused to pay any maintenance. At the time, she attended her SIM she was still waiting to hear from the Child Support Agency (CSA).<sup>111</sup>

\*

Shelley's financial concerns were focused on her husband's imminent option to retire and she was worried that he might *'take the money and run'*. She did not have a pension, as there had been an agreement that when Mark retired, his pension would be sufficient for both of them.

\*

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<sup>111</sup> This is known as the Child Maintenance Service (CMS)



From Alvira's perspective, money became a problem because Mark was of the view that any transgressions that he made should be forgotten because he provided for her and the children.

Another financial commonality was related to the father's views on finance. Harold explained in his SIM, that Hilda did not contribute to the family finances, Similarly Shane focused on the fact that he worked to provide for the family, yet ceased to provide appropriately when they left the family home., It is possible that he was of the view that things would go back to normal when they returned home.

Mark had a slightly different approach to money in that he was not prepared to pay for mediation. His discourse during his JIM made it clear that he would not return to mediation, because he felt he could pay less for solicitor advice. The content of the recording suggested that he was stalling the outcome or maybe had not really accepted that Shelly felt the relationship was over, even though they already had a decree nisi.

In each of these cases, 'male privilege' manifested itself in many ways and the suggested dominant nature of each father may have contributed to the decision not to return to mediation.

#### **6.4.3 Minimisation, denial and blame**

All four mothers had experience of this tactic. Shelly's emotions were abused by Mark's denial of his ongoing affair and his repetitive returning home and then leaving again, Hilda, Alvira and Sonia were blamed by their former partners for events that occurred both when they were still living together and after they had separated.

## **6.5 Divergences**

This section discusses the prevalence of other tactics of control, which, on a case-by-case basis may have contributed to a decision not to proceed to mediation.

### **6.5.1 Intimidation**

Their former partners had intimidated Alvira, Hilda and Sonia; at the time they attended their MIAM, Hilda was still being intimidated by Harold, and Alvira had met with Nigel for the first time since separating, a few days before mediation, suggesting that she might still have had negative feelings, (see 6.2.1 and 6.2.2 above). During her SIM, Sonia asked for 'separate waiting' at the venue when they both attended a JM, indicating a concern about being in the same location as Shane. Mark did not intimidate Shelly, who described their relationship as 'strong'.

### **6.5.2 Isolation**

Two of the four mothers alleged or inferred isolation during their MIAM and both experiences differed. In Hilda's case, the isolation took the shape of Harold forcibly removing Jesse from her when Jesse was upset, as well as threatening to send him to Europe to spend time with his paternal grandmother.

In Sonia's case the isolation was different in that the 'support system' that she and the children were being isolated from, was their personal effects as detailed in 6.3.4 above. During her SIM, Sonia spoke about a particular incident where Robyn had spent some time with Shane at the family home. When he was leaving, he asked if he could take his Wii™ with him and Shane would not let him take it, telling him that it would stay there until they all returned home. Children are dependent on their computers and games, and Sonia described how unhappy Robyn had been after this visit.

### **6.5.3 Using children**

Three of the four mothers experienced this tactic of control and, in the case of Shelly, the use of the child was unusual in that the money that could have been paid into a pension for her, had been used instead to pay for Logan's school fees. Both Hilda and

Sonia had concerns for their children's welfare and both fathers had supervised contact orders.

In sum, the combination of tactics of control, combined with the individual issues associated with each tactic for each of the mothers, may have influenced their decision not to return to mediation. With the exception of Hilda and Harold, there is no clear reason why they did not return to mediation in the other cases.

## **6.6 Summary and Conclusion**

In this chapter, the findings for studies two and three have been discussed. Analysis of this data sample using the DDAIP tactics of control yielded a high level of incidents of domestic violence.

The mediators conducted routine screening for domestic violence and managed emotional comments as they occurred, but it is unclear from the data whether the mediator was responding to an allegation of abuse. What is clear is that the mediators, when presented with negative emotions, responded to them.

The next chapter will shed more light on the existence or absence of domestic abuse in the relationships of the clients that attended JMs (n=11) and will seek to identify ongoing screening for domestic violence.

## **6.7 References – chapter six**

WAFE. (2009) *The Survivors Handbook*, Bristol: Womens Aid Federation of England.

### 7.1 Introduction

Chapter 6 presented the analysis relating to the Duluth Domestic Abuse Intervention Programme (DDAIP) themes in the MIAMs. This chapter presents the analysis and research findings, considering the eleven cases discussed in Chapter six, where, using the DDAIP identifiers,<sup>112</sup> there was evidence during the ‘intake’ meeting of domestic abuse. This chapter focuses on what happened in the joint meetings attended by these parents. Of these eleven cases, there was no indication in four cases that the post-separation relationship was abusive. But in the remaining seven there were indications of domestic abuse.

The presentation of the research findings falls into two studies, with the first (Study four),<sup>113</sup> focusing on the four cases where domestic abuse was not evident in the JMs. The second (Study five),<sup>114</sup> focused on the seven cases where evidence of domestic abuse was also found in the JMs. Both studies begin by introducing the participants, and Study four identifies the commonalities and divergences in the cases under discussion, which may explain why the abusive behaviours were not introduced in the JM. Study five uses the DDAIP themes to identify abusive behaviours in the remaining seven cases.

Each recording was listened to fully a number of times, and verbatim quotations were transcribed in context, where the data related to the research questions. These transcribed extracts were then imported into NVIVO™ CAQDAS software, and each partial transcript was coded using the DDAIP identifiers outlined in 4.6.6 above.

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<sup>112</sup> Full detail of each DDAIP identifier is to be found in section 4.6.7 above

<sup>113</sup> The 4 cases where domestic abuse was not ‘identified’ in the joint meetings

<sup>114</sup> The 7 cases where domestic abuse was ‘identified’ in the joint meetings

## **7.2 Study Four: The 4 cases where domestic abuse was not 'identified' in the joint meetings - Introducing the participants**

In this section I present the profiles of each of the four cases where domestic abuse was not evident in the JM. Each profile reflects the situation presented at the time of attending a pre-mediation meeting, and details the number of JMs attended and the outcome of the mediation. The participants in this study were Trisha and Paul (C020), Tasha and Adrian (C026), Karen and Karl (C032), and Salome and Steve (C053).

### **7.2.1 Trisha and Paul (C020)**

These parents separated after Paul decided that he no longer wanted to be with Trisha and also that he did not want the child that they had planned together; they already had one child Paris who had just started school. Trisha decided to have a termination and she found the experience extremely upsetting. They attended a joint 'intake' meeting (JIM), but the mediator conducted the meeting as two single intake meetings (SIMs) possibly because of Trisha's distress. Trisha was assessed as eligible for legal aid and Paul was not eligible. The issues for mediation fell into the category of All issues mediation (AIM), but the focus for the first meeting was financial disclosure. One JM took place after which the mediator suggested that they both take legal advice, as there was a dispute relating to the accuracy of the joint financial disclosure. Seven of the eight DDAIP identifiers, were present in this case when they attended their JIM.

### **7.2.2 Tasha and Adrian (C026)**

These parents separated after Tasha decided that she had had enough of Adrian's selfish ways; Adrian was upset at the timing of her decision as his father had recently passed away. They had three children, Sage, Tyne and Taylor, who were all at school. The last child (Taylor) was unplanned and Adrian withdrew emotionally from Tasha during the pregnancy, and continued that withdrawal for a few months after Taylor was born.

Both parents attended a SIM during which Tasha was assessed as eligible for legal aid and Adrian was not eligible. Their issues for mediation fell into the category of AIM, and their primary focus was financial during the three JMs that took place. They reached an agreement in mediation and the mediator gathered the content for a

memorandum of understanding (MOU) as well as an open statement of financial information (OSFI). Six of the eight DDAIP identifiers were found to be present in this case when they attended their SIMs.

### **7.2.3 Karen and Karl (C032)**

These parents had separated some months after the birth of their only child Ira. Karen initiated the separation because she felt that Karl had lost interest in her and also that he showed more interest in his children from a previous relationship than the child they had together. Both parents attended a JIM, during which Karen was assessed as eligible for legal aid and Karl was not. Their issues for mediation fell into the category of AIM and their primary focus during the two JMs they attended was financial. They reached agreement in mediation and the mediator gathered the information necessary for a MOU as well as an OSFI. Six of the eight DDAIP identifiers were found to be present in this case, when they attended their JIM.

### **7.2.4 Salome and Steve (C049)**

These parents were living separately in the family home with their child Nevada at the time that they attended mediation. Salome initiated the separation because she was unhappy in the marriage and citing cultural differences. Like Tasha, Salome was very emotional during the early part of the JIM; she was sobbing and was almost silent whilst she and her partner in the room together. The mediator conducted the JIM as two SIMs, during which both parents were assessed as eligible for legal aid. They subsequently attended one JM, during which the focus of mediation was on finance. They completed their financial disclosure, and following on from that disclosure, the mediator gathered information from them both and was able to develop an interim agreement. Four of the eight DDAIP identifiers were found to be present in this case, when they attended their JIM.



### **7.3 Study Four: The 4 cases where domestic abuse was not 'identified' in the joint meetings - Findings**

In this section, I will identify the commonalities and divergences of these four cases with a view to determining why the domestic abuse mentioned in the MIAMs, was not carried forward to the JMs.

#### **7.3.1 Arrangements for children**

One significant finding in this study is the fact that, in all four of these cases, When they attended their MIAM there were current arrangements for the children to spend time with each of the parents. Tasha was pleased with the agreed contact arrangements, because she was finally getting time for herself (see 6.2.5 above for further detail relating to this).

Salome and Steve were living separately in the family home and sharing the care of their child Nevada, based on their work schedules. During her MIAM Trisha expressed concerns for Paris's welfare when she spent time with Paul. She chose to discuss finances at the first meeting. Karen and Karl also had established arrangements for contact that were working well.

#### **7.3.2 Focus of the meetings**

At the beginning of each JM, both parents were asked what they wanted to discuss during the meeting. In all four cases, and at each meeting that they attended, the focus for the meeting was on finances. The very nature of financial mediation is that the first meeting focuses on financial disclosure, where the mediator gathers financial and personal information that mirrors the ancillary relief form 'Form E'.

As mentioned in 7.2.1 above, Trisha and Paul disputed the accuracy of the disclosure and where clients are unable to agree that the financial disclosure is accurate, the mediator is unable to continue working with them on financial matters. This may be why they were advised to speak with their lawyers.

In the other three cases the focus on finances enabled them all to reach a level of agreement, generating two MOU's and an interim mediation agreement. All of these

agreements included arrangements for their children and included contact, residence and maintenance.

### **7.3.3 External influences**

The overall MIAM analysis identified a number of cases where external influences for example 'extended family' such as grandparents and siblings, and external agencies contributed in a negative way to the outcome of mediation. Whilst some of the parents mentioned an involvement with some of these agencies during their MIAM, no mention was made during the JMJs.

### **7.3.4 Acceptance**

All of the parents in this sample presented as 'ready to move on'. In the case of Karen and Karl, Karen had accepted the fact that the relationship was over, (see 6.2.3 above). Both parents were living in separate accommodation when they attended mediation, as were Trisha and Paul and Tasha and Adrian. In fact all had done so for some time before they attended their MIAM. Salome and Steve were living separately in the former family home.

Each of these couples had made a decision to move on and the content of their MIAMs makes it clear that the passage of time had brought them to a place emotionally where they needed to discuss their outstanding financial issues.

### **7.3.5 Conclusion**

Whilst each of the mothers in this study alleged or inferred abusive behaviours during their MIAM, no such disclosure was made in any of the JMJs attended by them. This appears to be due to the financial focus of the meeting and, as will be revealed in Study five, the fact that these parents had already reached agreement on issues relating to their children spending time with both parents. This enhanced their ability to focus on other issues. However, this non-disclosure of abuse does not mean that the abusive behaviours ceased to exist after the parents separated.

Prior to presenting the findings for Study five,<sup>115</sup> the next section provides a thumbnail profile of the participants in each case.

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<sup>115</sup> The 7 cases where domestic abuse was 'identified' in the joint meetings

## **7.4 Study Five: The 7 cases where domestic abuse was 'identified' in the JMs - Introducing the participants**

In this section I present the profiles of the cases where a) domestic abuse was either alleged or inferred during the 'intake' session, and b) the cases progressed to mediation and domestic abuse was evidenced in the JMs (n=7). Each profile reflects the situation presented at the time of the MIAM, indicating the number of JMs attended and the final outcome of mediation, as far as is known.

### **7.4.1 Alice and Clive (C003)**

These parents had recently separated when they attended their individual intake meetings. Alice initiated the separation and suggested that Clive's regular use of cannabis was the main reason for the breakdown in their relationship. Clive found it difficult to accept the breakdown of the relationship and refuted Alice's reason for that breakdown. They had one child Glenn who at the time of separation was of pre-school age and due to start school in the next few months. At the time of separation Alice resided in the former family home with Glenn. Clive was of 'no fixed abode' and seeking permanent accommodation. Issues for mediation fell into the category of AIM. This included issues with contact, accommodation, finance, communication, and parenting. Neither client was assessed as eligible for legal aid. Alice and Clive attended one JM; a second meeting was arranged which did not take place and no agreement was reached in mediation. All eight DDAIP identifiers were found to be present in this case.

### **7.4.2 Jane and Alex (C004)**

These parents separated after Alex had an affair and decided that he no longer wanted to be with Jane. Jane found out that she was pregnant with their first child shortly after the separation and hoped for reconciliation. Alex's affair subsequently ended. However, he had no wish to reconcile with Jane, even though she was expecting their child. Blaine was born prematurely with health issues that needed ongoing specialist monitoring and care; the child was under a year old when the participants first attended mediation. Additionally, both parents lived in different counties; Alex lived in rented accommodation and Jane lived with a close female relative who provided both financial and emotional support to her. Issues for mediation focused on managing

Blaine's health in relation to contact as well as other issues associated with contact. Both participants attended a JIM and both were assessed as eligible for legal aid. Three JMs took place and some agreement was reached in mediation. All eight DDAIP identifiers were found to be present in this case.

#### **7.4.3 Sheryl and Terry (C014)**

These parents had never lived together and were no longer in a relationship when their child Kelly was born. Sheryl had decided that their relationship had no future and as a consequence of this, Terry was not present at Kelly's birth. As a consequence of this they never worked together as parents. Kelly was in the final year of primary school and Sheryl was now married and had one child from her relationship. Terry was not in a relationship and did not have any other children. These participants attended SIMs and neither client was assessed as eligible for legal aid. Issues for mediation were 'contact' and issues associated with contact. Terry's solicitor continued to send letters to Sheryl during mediation and after two JMs, Terry decided to pursue the issue of contact legally and submitted a pre-prepared court application. Seven of the eight DDAIP identifiers were found to be present in this case.<sup>116</sup>

#### **7.4.4 June and David (C019)**

This couple married when they were both in their early twenties and had two children, Addison and Harley who were both at secondary school. June initiated the separation because of David's 'unacceptable' behaviour which she referred to as 'some fetishes'. At the time they attended a JIM, June was living in the matrimonial home with their children, and David was living in rented accommodation. At the JIM, June was assessed as eligible for legal aid, David was not eligible. The main issues for mediation were finance and property as arrangements for the children were already established and working well. Two JMs took place and options were identified for division of their assets, after which the mediator suggested that the participants seek further legal advice. No agreement was reached in mediation. Six of the eight DDAIP identifiers were found to be present in this case.<sup>117</sup>

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<sup>116</sup> The DDAIP identifier absent from this case was using male privilege.

<sup>117</sup> The DDAIP identifiers absent from this case were using isolation and using children

#### **7.4.5 Paula and Peter (C028)**

This couple had already been granted a decree nisi when they attended mediation. Paula initiated the separation because she was unable to cope with the varying health and social issues that Peter had, along with his abusive behaviours brought about by substance abuse. They had one child Wallace who was at primary school and the main issues for mediation were contact and other issues associated with contact. Both participants were assessed as eligible for legal aid. Three JMs took place during which the parents focused on the issues associated with contact; they eventually agreed a parenting plan. Seven of the eight DDAIP identifiers were found to be present in this case.<sup>118</sup>

#### **7.4.6 Nina and Neville (C030)**

These parents had recently separated following a deep- rooted conflict that arose from a combination of Neville's ill health and the birth of their first child Mallory, who was less than a year old at the time of separation. When they attended their first meeting, Neville was hoping for reconciliation and was not clear that Nina's decision to separate was final. During mediation Nina lived with her parents and Neville resided with his parents in another county. Nina initiated separation because she found being a first-time mother with husband who was unwell really difficult to cope with; she felt oppressed by his constant presence. Nina was assessed as eligible for legal aid, Neville was not. The main issues for mediation were contact and other issues associated with contact, finance and property. Two JMs took place after which the mediator decided that mediation was no longer suitable for their emerging issues. No agreement was made in mediation. All eight DDAIP identifiers were found to be present in this case.

#### **7.4.7 Linda and Billy (C056)**

These parents were already divorced when they came to mediation and they had been directed by the court to use mediation to sort out the details of their contact order. The focus for mediation was contact and other issues associated with contact; they had one child together, Shelby, who was currently at primary school. Linda initiated separation after what she described as a 'possessive and controlling marriage'. Linda

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<sup>118</sup> The DDAIP identifier absent from this case was 'using isolation'

was in a new relationship and had a young child with her new partner although she was not living with him. Linda was assessed as eligible for legal aid, Billy was not eligible. One JM took place and a second meeting was arranged which did not go ahead. Seven of the eight DDAIP identifiers were found to be present in this case.<sup>119</sup>

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<sup>119</sup> The DDAIP identifier absent from this case was 'male privilege'

## 7.5 Study five: The 7 cases where domestic abuse was 'identified' in the joint meetings - Findings

In this section extracts evidencing each theme are provided and, to avoid repetition, where more than one theme exists within an extract this will be identified either within the text, or referenced in a footnote.

### 7.5.1 Coercion and threats

This theme featured in all of the cases in this study and as with the other DDAIP themes, other abusive behaviours will be found in the following extracts. Accordingly, this theme will contain extracts from a number of the dominant abusive cases in this sample.

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#### 7.5.1.1 Sheryl and Terry

Prior to this extract, the parents had been receiving feedback from the mediator, following a meeting that she had had with their daughter Kelly the previous week. When Kelly met with the mediator one of the things that she was very clear about was that she did not want to be in a position where her (Kelly's) time was defined as 'dad's time' and 'mum's time'. This information was shared with both parents at the same time and whilst Sheryl was accepting of the feedback, Terry opted not to consider it, maintaining that their inter-parent communication was the problem, in terms of Kelly not wanting to spend time with him. He felt that 'she was being given a choice' as to whether to spend time with him or not, and that they should work on their communication as parents, in an attempt to resolve Kelly's choices. He stated that his door was always open and Sheryl responded that his statement was untrue, as Terry had insisted that all communication should go through his solicitor:

*Terry communication was something that you mentioned earlier. When Sheryl and I and George sat down in June, that was what it was Sheryl, you felt you couldn't communicate with me. How are you and I going to work on that so that we can? My door is wide open 24 hours a day to talk to you about anything she wants.*

*Sheryl but it hasn't been because the solicitor told us back in July, do not contact him. Don't contact him if you've got anything to say, you go through us.*

*Terry yes well I wanted that as I just felt just well after not being able to, go on my holiday.*

Despite saying that his door is always open, Terry's actions portray an open door which Sheryl can only enter if she says the things that Terry wants to hear in terms of future arrangements for contact. This extract presents a good example of the DDAIP identifier 'using coercion and threats'. Terry used his solicitor as a threat and as his focus at that time was on himself and not on his child, this was also an example of 'using children'. Sheryl continued by expressing her concerns for Kelly's welfare, if she were abroad with Terry:

*Sheryl but you know! Why you were drinking and you promised you wouldn't be drinking? There were several incidents where you couldn't take Kelly to hospital because you'd had a drink and I had valid concerns, you said I was an overprotective mother, but I think that's my job. I did not want Kelly going for 17 days to 2 foreign countries where (Kelly) doesn't speak the language and if anything happened to you, I didn't trust you. (Terry interrupts)*

*Terry that's your opinion, is not in your hands to make that opinion Sheryl, it's not*

*Sheryl but you were drinking*

*Terry I was not drinking*

Terry, by interrupting Sheryl, changed the focus to himself, totally disregarding her concerns for Kelly's welfare and totally minimising the incidents voiced, suggesting that Sheryl's concerns for Kelly were extreme.<sup>120</sup>

After the first JM, Terry continued to use his solicitor for communication and he instructed her to send a further letter to Sheryl. Sheryl brought this up as a major issue at the beginning of the second JM in response to a question posed by Med 3:

*Med 3 So where have you got to with things...*

*Sheryl well I'd like to start, I got another letter from Terence's solicitor*

*Med 3 right*

*Sheryl before Christmas*

*Med 3 ok*

*Sheryl and the way I feel at the moment, I am not prepared to do both.*

*Med 3 right*

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<sup>120</sup> This extract also suggests the behaviour of 'minimisation, denial and blame'



*Sheryl I want to do mediation or court. I'm not spending money doing this and doing court. I don't have the money to do this and I see it as a pointless exercise if we are going to go to mediation that I get a letter from his solicitor.*

*Med 3 okay*

*Sheryl I've just reached the point that I'm not prepared to do it*

*Med 3 right*

*Sheryl I want to get this resolved, but I'm not prepared to do it this way*

*Med 3 what with both?*

*Sheryl yes*

*Med 3 okay, which is fair enough. What are your observations about that Terry?*

*Terry Well the reason I felt the need to get Bethel involved again, well literally the day before Christmas Eve was that we didn't hear about Christmas until the Wednesday before Christmas, and the email was to tell me what , when I would see Kelly over Christmas.*

*Med 3 okay*

Terry went on to explain that he did not feel that any compromise had been made and that he had been given no choice as to when he and his family might see Kelly. He felt aggrieved that his family had had to rearrange their plans for Christmas. He felt that they had not achieved anything and he was hoping that Sheryl would have some proposals 'today' in terms of getting things resolved; if not, then he would submit his application to court. Terry again threatened court action if things were not resolved by the end of the meeting.

An interesting point to note here is that the content of this recording makes it clear that the parents had a previous JM arranged which had been scheduled to take place less than a week before Christmas. This meeting had not gone ahead as planned as the and the mediator apologised at the very beginning of this JM for the meeting not taking place, as she had been delayed by traffic. Notwithstanding the fact that any arrangements made at that meeting would have been agreed at short notice, Terry felt 'compelled' to contact his solicitor.

#### 7.5.1.2 Jane and Alex

During the JIM attended by Jane and Alex, Jane spoke about the constant demands that Alex made for the amount of time that he spent with Blaine and she also said that Alex had originally offered to be flexible in terms of seeing Blaine at short notice. When he was invited to come and visit he often declined for various reasons and

would then call at his own convenience to say he was coming. At the beginning of the first JM, in keeping with stage 2 of the mediation process,<sup>121</sup> Med 3 asked the parents what they wanted to focus on during that session:

*Med 3 now um what do you want to do with today? What were you hoping to get out of today?*

*Alex um, well I've got a few things I'd like to say and um err*

*Med 3 you've got things you want to say?*

*Alex yes um generally I think, last time was a bit of fact finding thing*

*Med 3 yes*

*Alex yes well, um I'm I'd like to talk um more seriously about Blaine's time with me the access I think we should really focus on that that's what we're here to sort out really*

*Med 3 mmm*

*Alex I'd rather not discuss anything else I'd rather not because this is what we are here to discuss<sup>122</sup>*

The mediator immediately acknowledged his request, and explained to Alex that Jane was yet to speak, that she may have additional things that she wanted to discuss, and that it was the mediator's responsibility to balance the session so that they both got equal time to discuss the issues that each of them wanted to cover. She then continued speaking to Alex:

*Med 3 was there anything else that you wanted to discuss?*

*Alex well just that I've got a lot to say about that to be honest*

The mediator then turned her focus to Jane, who initially wanted to respond to what Alex had said and, unusually during the agenda-setting stage, the mediator gave her the opportunity to do so:

*Jane I'd like to get some sense of understanding or what I hope to get Alex to understand, um certain boundaries and grounds of consideration, things, work out things that are acceptable, and things that are unacceptable*

*Med 3 mmm*

*Jane um behaviour wise and (long pause) action wise and things like that*

*Med 3 right*

*Jane just so we can make*

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<sup>121</sup> See 2.6 above

<sup>122</sup> This extract also suggests the behaviour of 'using children'

The mediator interjected at that point to clarify what Jane meant, asking her if what she was referring to was their relationship as parents Jane agreed that it was very much to do with that. Jane went on to explain, that Alex needed to appreciate and accept and try to understand, how some of his behaviour impacted on her in a negative way. She needed him to understand what she found to be acceptable behaviour, and what was unacceptable and she wanted him to accept and respect her views and take the answer that she gave in response to his questions, even though he may not like that answer. She finished by saying that this was the current problem that they had as parents. The mediator acknowledged what Jane had said and then asked the following question:

*Med 3 I'm sorry if I'm sounding a bit thick, I'm not really and truly understanding what you're saying, I'm really sorry.*

Jane went on to explain that what she actually meant, was that she was concerned about all of the extra visits Alex requested, sometimes demanding. She said he often wouldn't accept her response if the answer was not what he wanted to hear. She expressed her concerns about the lack of agreement and felt that his view was that his requests had to be accommodated and that she should '*shove her life to one side*' to make room for him. The mediator again asked a further question for clarification:

*Med 3 are you saying you want to establish a routine?*

*Jane yes I am but I also want him to appreciate me that if it's not convenient, it's not convenient and to not badger me and hound me and harass me until I give in until, I don't want this nagging and bullying and constant harassment.*

*Med 3 Okay, right, you're actually feeling quite fragile at the moment in terms of the way contact is organised.*

*Jane totally<sup>123</sup>*

In this short exchange, the mediator reframed Jane's concerns in a way that reapportioned responsibility for the way she was currently feeling.

When Jane finally felt able to voice her real area of concern, her delivery accelerated suggesting that she wanted to say what she needed to as quickly as possible, avoiding

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<sup>123</sup> This extract also suggests the behaviours of 'intimidation' and 'emotional abuse'

interruption by any other person in the room. Directly after this exchange between Jane and Med 3, Alex requested that he be allowed to respond to what Jane had said, to which the mediator replied:

*Med 3 I'm trying to gather your thoughts in terms of what your agenda items are. I want to write something on the board that reflects that and I will come back to you.*

In keeping with the mediation process and in dealing with Jane's agenda items in the same way that Alex's agenda items were dealt with, the mediator continued with the agenda and wrote the items on the board. She did indeed return to Alex's request, once the agenda items had been introduced by both parents.

During this JM, Alex made repeated coercive efforts to establish contact, based on what he felt he was entitled to, refusing to acknowledge Jane's concerns about his lack of experience in dealing with Blaine. The following extract contains Alex's first coercive statement:

*Med 3 In terms of contact, were there specific areas of contact that you had in mind?*  
*Alex yes*  
*Med 3 could you sort of give me an idea as to what they might be?*  
*Alex my time, Blaine's time with me, the quality time that I have with him*  
*Med 3 right*  
*Alex where about that is and the rules and restrictions that are always in place in what I, what Blaine has to do with me.*

He then continued to speak about his right to spend time with Blaine, to Blaine's time with him mentioning rules and restrictions on a number of occasions. Eventually the mediator reframed the phrase 'rules and restrictions', aligning them with an existing agenda item that had been requested by Jane:

*Med 3 so do these rules and restrictions come into boundaries also?*  
*Alex they come into all of it. Everything.*  
*Med 3 yes, but really it's where the boundaries, something about understanding, having a mutual understanding of what the boundaries might be. The thing is rules and restrictions is not a phrase that I can work with.*

In reframing the term 'rules and restrictions' using a neutral descriptor the mediator was able to bring both parties into the conversation about boundaries, as Jane responded positively to the 'reframed' way the issue was described.

The meeting continued in this vein and culminated with Alex threatening to contact his solicitor, as will become clear in the coming extracts. Coercive speech took the forms of 'justification' about why Alex should have increased contact time with Blaine. This ignored the fact that their child needed a rigorous routine because of his poor health and the coercive behaviour manifested itself with Alex making a number of requests in relatively quick succession.

One request focused on the fact that Alex did not 'get on' with Jane's mother and felt that their poor relationship was sufficient justification for taking Blaine to his home. This meant a seventy-five minute car journey each way. The next extract shows the mediator acknowledging the difficulties and reflects the exchange that occurs when the mediator asks both parents about options for contact, explaining the mediation process:

*Med 3: It's unfortunate that that's how the relationship has developed and it's one of those things that you have to work sort of work around I suppose. Essentially in the short-term how this is going to continue to work, sort of medium-term sort of what plans you've got in terms of accommodation, and long-term how things have been established, but what I'm going to say to you is this. In mediation it's very much a step-by-step approach it is very much one step at a time*

*Jane yes*

*Med 3 and trying to establish each step, what the idea is that you can establish something, get that working so that both parents concerned are happy with it and then move on. We have just found over a period of time that that's the way it works for many parents.*

The mediator went on to explain in detail how their contact arrangements might look, during which Jane explained again that they did not yet have a routine. Alex sought to contradict Jane and her response was that he always pushed for more time, which he promptly denied. This in itself was a denial of Jane's feeling of 'fragility' that the mediator had spoken about at the beginning of the meeting, and was potentially

emotionally abusive.<sup>124</sup> Alex went on to describe how he felt that contact should be arranged:<sup>125</sup>

*Alex I've got this temp job and I now work Monday to Friday*

*Med 3 right*

*Alex So I would like to see him Saturday and Sunday and sometimes on both days and sometimes just one day. And that is fine 'cos obviously I work and I can't make it down during the week, because by the time I get here he's in bed. So that's the situation either both days or one day*

*Med 3 Right*

*Alex which is fine*

Following Alex's statement, the mediator asked a question that 'reality tested'<sup>126</sup> Alex's suggested option for contact. The following extract poses that question and shows the client response:

*Med 3 and how does that work practically?*

*Alex practically, I would aim to be here at 9 o'clock just because, it's his time and I can be here and Jane usually, it depends on what Jane's mum is doing because I'm not welcome in the house when she's there.*

*Jane she goes out most of the time*

*Alex she goes out most of the time or Jane will come out and spend the morning in the café round the corner*

*Jane you're always pushing for more time,*

*Alex I'm not pushing for more time, no it's Saturday and Sunday I work during the week and I'd like to see Blaine and Blaine would like to see me*

*Jane I work during the week as well Alex*

*Alex But you see him during the week, it's not about quantity, you said it's about quality*

*Med 3 But quality time with a mum – she may have quantity of time, but she has to deal with sleepless nights and everything else so you know*

*Jane it's double-edged sword for me, thank you.*

*Alex that's why I can take him for the day and look after him for the day in my home for the day it's going to be his 2nd home.*

At this point Alex applied extreme pressure to his suggestion by raising his tone of voice and emphasising his words. The mediator continued by explaining that the weekend represents the opportunity of 'quality time' for both parents, explaining that

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<sup>124</sup> This extract also suggests the behaviours of 'minimisation, denial and blame' and 'emotional abuse'

<sup>125</sup> This extract also suggests the behaviour of 'using children'

<sup>126</sup> Please see 2.7.4.14 above for further detail of this strategy

during the working week, both parents have responsibilities, inside and outside the home. She further explained 'quality time' in terms of activities such as football and tennis. Again Jane reiterated some of the challenges that she had faced looking after Blaine since his birth, and became emotional when she thought that she would not have any 'quality time' with Blaine if Alex took him away for two days<sup>127</sup>. The mediator normalised their situation by explaining that parents that live together also have to organise their weekends.

What is interesting to note here is that as this exchange continued, it became clear that Alex's idea of 'quality time' was if Blaine was with him that would provide 'quality time' for Jane, whereas Jane's understanding of 'quality time', was the time that Blaine spent with each parent. As will be revealed during this chapter, Alex was not the only father having distorted view of the meaning of 'quality time'.

Alex's demands continued, and the aggression in Alex's voice increased as the meeting progressed. The next extract reveals Alex's increasing demands, the mediator 'reality testing'<sup>128</sup> the proposal along with Jane's response to those demands:<sup>129</sup>

*Alex at weekends Blaine gets a quality day with me and then he gets a quality day with you and me, with Blaine that's what that's all I'm asking*  
*Med 3 so when does he get a quality day with mum*  
*(Alex immediately repeats what he said previously)*  
*Med 3 when will he get a quality day with mum at the weekend?*  
*Alex well.*

It would appear at this point that the mediator decided to outline to Alex what his current proposal actually meant:

*Med 3 we are focusing on Saturday and Sunday, there are 2 days in the weekend you know and both parents need to spend time with their children at the weekend. So if you're not together, then it has to be something that actually work so that you each get some quality time with Blaine.*  
*Jane at the moment Alex keeps asking, like for instance this weekend and he always does it when his parents come down, every time his parents come down, he comes the 2 days because his parents are here. He always has the whole*

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<sup>127</sup> This extract also suggests the behaviours of 'isolation', 'emotional abuse' and 'using children'

<sup>128</sup> Please see 2.7.4 above

<sup>129</sup> This extract also suggests the behaviour of 'using children'

*weekend when his parents come; he comes with them both days  
Saturday and Sunday, which is difficult, obviously because I never get a  
rest*

Jane acknowledges the fact that it was her decision that she wanted Alex to look after Blaine in her home because she felt that because of his current poor health, Blaine would cope better in that environment. Alex again minimised Jane's experience, suggesting that Blaine was happy and relaxed wherever he and he continued throughout the meeting to push for more time. The mediator 'mutualised'<sup>130</sup> the current disparity in their thinking by explaining how establishing a routine would benefit all three of them. She encouraged the parents to use mediation as an opportunity to organise and agree their own arrangements, allowing some flexibility - as opposed to going to court, where the arrangements would be decided by the judge. As the next extract will show, Alex's demands continue with him attempting to justify why Blaine should come to his home and suggesting that he had previously stayed away from home:

*Jane he's not been away to stay anywhere, that was the only place that he stayed at  
the hospital hotel  
Alex he's been out to a lot of Jane's friends and Jane mums friends for the day  
Jane not for the entire day*

The mediator 'refocused'<sup>131</sup> the parents on the question relating to their child that had been asked by her earlier:

*Med 3 I'm not asking about that, I'm actually asking about staying away from home  
Jane no, he's never stayed away from home  
Med 3 you actually having a battle at the moment about the whole thing and  
something you need to do before someone comes to harm, and is not about  
someone giving in, it's about a level of compromise  
Jane yes  
Med 3 somewhere along the line and I don't know what that might be in terms of  
what you want to do apart from the fact that it needs to be one step at a time*

Again, Alex repeated his suggestions for contact, drawing on the mediator input but ignoring Jane's ongoing concern for his lack of experience of dealing with Blaine's

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<sup>130</sup> Please see 2.5.4.9 above for further detail of this strategy

<sup>131</sup> Please see 2.5.4.14 above for further detail of this strategy



medical condition. Again, the mediator explained that they were working towards establishing a routine, and there needed to be a starting point. Jane continued to express concern about Blaine's health and Alex's ability to look after him.

As mentioned at the beginning of the findings for Jane and Alex, Alex eventually threatened to contact his solicitors. For detail of the exchanges that took place just prior to that threat see 7.5.5.1 below. The mediator intervened in their exchange, with a view to determining if they were likely to reach any level of agreement, by asking a question:

*Med 3 okay where do you want to take this?*

Both parents restated their individual position in terms of contact. With the meeting near closure, the mediator 'summarised' the current situation, and ended the meeting as follows:

*Med 3 I'm going to stop you because if there is no sort of starting point mediation wise. That's the offer and if that is not acceptable then that is fine it's not a problem. So really the options are stay as you are, or do absolutely nothing at all or as I say go to court. That's the choices that you have at that point in time. I do think you should talk to the health visitor to get a better understanding about Blaine's condition.*

The mediator then 'summarised'<sup>132</sup> the actions that they needed to take after the meeting, and explained to them both that there was currently no point in offering them another meeting as there was no mutual agreement to take a step-by-step approach. She offered the parents the opportunity to return to mediation if there was any change in their current way of thinking. She also explained that she would keep their case open for two months to allow them both time to reassess the situation.

In this instance the mediator was working within the Legal Services Commission (LSC)<sup>133</sup> timeframes for case closure but it is interesting to note that the mediator said that the case would be kept open for only two months, when in actual fact, the time

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<sup>132</sup> Please see 2.5.4.17 above for further detail of this strategy and 2.5.4.5 above for details relating to clarification

<sup>133</sup> The LSC is now known as the Legal Aid Agency (LAA)

span is four months. This suggests a strategy of focusing both parents on the needs of their son, rather than ignorance of the LSC guidance.

Further evidence of coercion by Alex can be found in 7.5.7.1 below.

### 7.5.1.3 *Alice and Clive*

As in the case of Jane and Alex, the threat of using solicitors occurred in a number of the other cases under discussion as can be seen in the following exchanges between Alice, Clive and the mediator. It can also be seen that as the case progresses, that the majority of 'negative' input comes from Clive.

Unlike Alex, at the beginning of the mediation session when asked by the mediator what he wanted to discuss in mediation, Clive initially agreed with the agenda that Alice proposed but, as the meeting progressed, he started to narrow the focus of the discussion to what he (Clive) wanted to achieve. The following substantial extract took place after a conversation between Alice and Clive about some recent negative changes in Glenn's behaviour, which came about after a recent telephone conversation that Clive had with Glenn' (More of this can be found in 7.5.6.3 below). In the following extract, Clive denies that the telephone conversation with Glenn took place as described by Alice and offered the following justification:<sup>134</sup>

*Clive I literally write verbatim, what I say to Glenn and*

*Med 3 mmm*

*Clive what Glenn says to me for this very reason*

*Med 3 mmm*

*Clive in case we did go to mediation, or end up going to court and stuff*

*Med 3 yes that's fine but from my perspective*

*Clive and also I've had to start recording conversations, because again the obvious, obvious aspect of things, um I'm not saying accusations ,but you know I want to be absolutely clear and transparent about what I say to Glenn in a very very difficult situation. Often I don't have a lot of privileges, that's the wrong word but if Glenn said something quite often I'm at a loss of what to say , it seems to me that if I just slightly kind of you know say slightly the wrong thing, or its seen as the wrong thing, then we seem to have a major major problem, and I think as I say I want a perspective check on this, because I could very easily say exactly the same thing because if I get stuck in any kind of*

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<sup>134</sup> This extract also suggests the behaviour of 'minimisation denial and blame'

*Med 3 Yes, but the thing is a perspective check is individual so you can do your perspective check and Alice can do hers,*

*Clive Well*

*Med 3 it doesn't mean that they are going to agree.*

*Clive no I understand that*

*Med 3 it means that you've both got a different perspective on what's going on and as a mediator I say you're both right in what you say. So therefore if your perspective and your perspective, you can't say one's right or the others right, If that's how you feel's happened that's what's happened. So we are future focused and we're not here to sort of witch-hunt and sort of interrogate and sort of look at things in terms of recording etc. There's one thing I just wanted to ask about is in terms of recordings are you actually using a recorder to record things*

*Clive my calls with Alice are recorded*

*Med 3 right and is Alice aware that you are recording them?*

*Clive and I have told you that I've recorded the calls.*

*Med 3 were you aware before they were recorded?*

*Alice you said that you were going to start recording the our conversations*

*Med 3 right*

*Alice Well can I just say to both of you, you have to tell somebody, every time you're going to record something.*

*Clive yes*

*Med 3 it's not legal, okay*

*Clive I want to tell you why*

*Med 3 I don't need to know why*

*Clive okay*

*Med 3 actually I don't want to know why, because actually if you're going to do your recording it's entirely up to you*

The mediator went on to say that the person whose conversation was recorded, had a right to have a copy of the recording. It is unclear what the mediator was referring to when she spoke about recording of conversations not being legal, it may well be a conflation of OFCOM guidance on the matter of recording telephone calls.<sup>135</sup>

This extract suggests that Clive was gathering evidence to support his story, and, by insisting that he tell the mediator why he started to record conversations, he may well have been seeking validation for the recordings, even though the mediator had been very clear in explaining recording guidelines as she understood them. Also worthy of note is the fact that the only time that Alice contributed to this exchange was when

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<sup>135</sup> For further detail relating to this please see <http://www.ofcom.org.uk/static/archive/oftel/consumer/advice/faqs/prvfaq3.htm> 14012014

the mediator asked her if she was aware that their calls were being recorded by Clive. Finally, in this extract, although it was clear that the negative behaviour was being conducted by Clive only, the subsequent advice was directed at both Alice and Clive and 'so mutualised' the issue of recorded conversations.

The spotlight was then placed on focusing both parents on the future;<sup>136</sup> the Cafcass parenting booklet was introduced, and both parents agreed that they would be guided by the checklist in the booklet. Five minutes into the discussion, which came across initially as constructive, the 'elephant entered the room' when the mediator suggested some short-term planning:

*Med 3 I suppose it would be useful really for you to look at short-term plan until we review in the New Year*

*Clive I guess we will have to discuss Christmas*

*Med 3 well that's what I'm talking about*

The mediator outlined specifically what she meant by short-term and Alice made some generous suggestions of future contact which included Christmas and holidays, she then made her statement of reticence.<sup>137</sup>

*Alice the only reason that I'm holding out on this because we were in disagreement over where Glenn lived, and as long as we agree that Glenn does live with me, then I'm happy to you know agree visits basically*

*Clive in the short term obviously I wouldn't want to change Glenn living with you but I need to make it clear that I think that obviously my long term goal would be joint custody*

At this point, the mediator asked Clive what he meant by 'joint custody' and explained that they would both need to agree to joint residence in mediation, for an agreement to be recorded.<sup>138</sup> Clive then started to build his case for joint custody, citing the work of Families Need Fathers to support his statement. He continued:

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<sup>136</sup> Please see 2.5.4.7 above for further detail of this strategy

<sup>137</sup> This extract also suggests the behaviour of 'using children'

<sup>138</sup> Clive used old terminology for what was known as 'residence' when this data was collected; since April 2014 arrangements for children are dealt with under s12 of the Children and Families Act 2014 and are part of the child arrangements program

*Clive one of the things that I wrote down is that I felt that I want to redress the balance of the last couple of months and I'll come to that.*

The mediator sought immediate clarification of the above statement:

*Med 3 what does that mean?*

*Clive well*

*Med 3 the whole sentence, what does it mean? The whole thing that you said about address the*

*Clive redress the balance of the last couple of months, to make up a*

*Med 3 yes, what does that mean*

*Clive Well, to make up for the time that I haven't spent with Glenn*

*Med 3 so how would that*

*Clive Well in the short term, I think obviously that this whole process is working towards that*

*Med 3 right*

*Clive and to be fair, and I don't want to get bogged down in some sort of contention,*

*Med 3 it's not contentious I actually didn't understand what you were saying.*

*Clive but you know obviously, you know 50 min of phone contact in the first month and a couple of hours here and there and double that in the second month, most of which I organised you know. I felt you haven't been very happy with it and you kind of haven't had a lot of choice in the matter because I'm going to Laura's whether or you like it or not you know that I've done.*

In this extract Clive made it clear that his expectation from mediation was that the process would be working toward increasing the amount of contact time that he had with Glenn. In addition to this it was clear from Clive's commentary, that he had decided when contact would take place without discussing this with Alice. He had also of the view that Alice's opinion did not matter. He had quantified the total time he had spent with Glenn and compared that with the time Alice had spent with Glenn. He offered his view on how things had been before they separated, claiming that Glenn's care was 'split down the middle'. Rather worryingly, Alice remained silent during and after this exchange between Clive and the mediator. He ended by saying that he wanted to get back to the 50:50 arrangement and that he would have a fairly good case in court for custody. The mediator's response to this was:

*Med 3 right, if you wanted to go for joint custody then you would need to take that to a court of law, we'll put that to one side because obviously that's probably something you'll need to go and do there. We understand that something that you're looking for. I am coming from the point of view of when to start*

*in terms contact, how to start and with the current situation regards housing and finance has there been any consensus about what happens in the family home long-term?*

Clive used 'coercion and threat' to establish a justification for joint custody, during which he initially spoke about keeping contact the same. As the meeting progressed he spoke about '*redressing the balance*' and later he stated his plan to 'return' to 50-50 shared residence.

This extract illustrates the fact that the mediator had taken on board Alice's original concern relating to their disagreement as to where Glenn might live. Although it might not be clear from the extract, Alice's silence may well have spoken volumes to the mediator, in terms of her views on 'joint custody'. The mediator did not make any assumptions on the basis of Alice's silence, as she mutualised the problem into one relating to both of them. Immediately following this exchange, Clive voiced some concerns in a way that suggested both 'male privilege' and 'economic abuse', more of which can be found in 7.5.7.2 and 7.5.8.2 below.

The parents had started to outline the content of their agreement, when Clive brought up the subject of a solicitor's letter that had been sent to Alice, even though she had asked him not to send any more solicitors' letters. Alice said she had not received this letter. This became the 'new elephant in the room,' which the mediator dealt with as shown in the following extract:

*Med 3 when was it sent?*

*Clive I don't know, I did check yesterday and she said that she had sent it*

*Med 3 could you explain the content*

*Clive well it was to follow on from your last solicitor's letter and to answer that*

*Alice My last solicitors letter said not to send any more solicitors letters and that we were going to mediation and discuss things there*

*Clive it did, but it also said it made certain points and my solicitors letter is to answer those points so.*

*Med 3 have you got it with you*

*Clive, I haven't actually*

*Med 3 one thing I've got a concern about is, if mediation is going to be given a chance to work and the solicitors are sending letters to and fro, then it's going to make mediation quite difficult.*

*Clive I understand that unfortunately this was a process that was already going forward*

*Med 3 right okay so I think at this point I'm going to ask you to ask your solicitor to give mediation some time to actually see how things work because solicitors letters tend to um, not scupper exactly, that's not the right word they tend to sort of get in the way*

*Clive I can understand that but obviously my whole approach to this was to talk about contact with Glenn and I've already discussed what I came to discuss*

*Med 3 I understand that*

*Clive and the solicitors letter attends to another situation rather than the contact*

*Med 3 right*

*Clive and it's answering your questions, even though you said you didn't want any more correspondence because of the cost, it answers your letter, it also because there is an ongoing situation with Muriel in the house, which I am really very concerned and very unhappy about, it is asking you to clarify that situation I already asked you to do that, you didn't seem willing to do that so I had no choice but I had no choice but to ask my solicitor to ask you to do it.*

Despite the fact that Clive was aware that Alice had requested that no further solicitor's letters be sent to her, he had instructed his solicitor to send a further letter, his excuse being that the matter under discussion was not a matter that was being discussed in mediation. Alice was of a different view, as she felt that mediation could be used to discuss and resolve all of their issues and, again, behaviours relating to 'male privilege' and 'economic abuse' were raised during the JM. From Clive's description of the contents of the letter, these issues were also raised by the solicitor. The mediator restated her views on the use of solicitors during mediation.

#### *7.5.1.4 Linda and Billy*

As detailed in 6.2.2 above, Linda and Billy had been advised to go to mediation following a court order specifying that contact for Billy with their son Shelby would take place bi-monthly for two hours on a Saturday at a contact centre. Cafcass recommended that this should take place for a minimum of 12 months. Billy advised that the judge had suggested that they use mediation as a 'joint-venture' and Linda added that they were told to keep an open mind and to compromise. As will become clear from extracts presented in this section, these were the only things that the couple agreed on, more specifically, Billy challenged everything that emerged during the meeting. With a focus on the contact centre, the mediator made the following observation:

*Med 1 I'm trying to find a starting point that actually helps you move forward right, doing something slightly different. So if there are things that you might do like football or puzzles or teaching him (native language) or PlayStation or whatever*

*Billy yes but that's at Haddonfield you don't get that in public places*

*Med 1 can the PlayStation not go too, is it not transportable then?*

*Billy I can get him a portable one*

*Linda sorry I didn't understand*

*Med 1 have they got PlayStation at*

*Linda yes they've got it there (mediator repeats)*

*Med 1 okay so it's all available okay so that all of these facilities*

*Billy I'm not doing that*

Immediately following this comment the mediator spoke directly to Billy and explained that this was a serious matter, *'it's not a game'*, and that if he was not really interested in following the judge's recommendation, then there was no point in any of them being there. She went on to explain that if they could find a starting point and get things working, they would be in a position to move on. She suggested that there was a need to 'stop the fight' which had been going on for a long time and had got them almost nowhere:

*Billy I'm against one thing she's made accusations accusations, accusations which are all false well that's my opinion she has a right. If she's negative and I'm being positive it's hard to compromise*

*Med 1 okay equally I've heard some compelling arguments for the contact centre on the basis that there's very few people there so you get quite a large space.*

The mediator explained that by making the order the court expected that, in mediation, the parents would make arrangements so that the order worked for the best benefit of their son. She also explained that the contact centre was less busy than a soft play area, which would give Billy the opportunity to have more quality time with their son. She then expressed concern about their poor communication and made it clear that at this point in time it would be difficult for them to make these arrangements themselves. She then asked both parents to take a 'leap of faith':

*Med 1 you need to say 'let's get going we need to move on' and when Linda was saying three months doing this and three months doing that, I stopped her because actually I don't know what's going to happen in eight weeks*



The mediator's response was to focus on how mediators often asked parents to 'take one step at a time'; to get started all they need is one small step. However, Linda reverted to discussing communication:

*Linda I've tried to communicate but because he doesn't get his own way through example like Saturday he wanted to swap and he went mental, you should see the messages he sent*

*Med 1 I'll take your word for it. It's really clear that communication is very poor between you.*

The mediator 'normalised' the breakdown in communication as common to many parents, explaining that it evolved from a breakdown in trust. She asked both parents their current attitude in terms of sorting something out for their child. Linda then suggested a 'communication book' and the mediator asked Billy what he thought about that option. After some discussion he said he would think about that option, and then introduced another concern that he had:

*Billy we both want the best for the kid yes. I'm willing to compromise but there's one thing that you know right, my parents have not seen my son, our son*

*Med 1 mmm*

*Billy for more than four years*

*Med 1 this is all working towards*

*Billy my my father is going to apply for an application, my grandmother was 95 years old she's lost her memory and the last thing she only asks how Shelby is. I have to apply for an application if she doesn't compromise.*

The mediator explained to Billy that s8 of the Children Act makes provision for a child to spend time with parents, not their grandparents, or other extended family. She also explained that such an application could disrupt what Linda and Billy were trying to work on. She described what they were trying to do as, 'run a marathon in a couple of minutes'.

An interesting point to note here is Billy's use of the word 'compromise.' As will be revealed during this chapter, this word was misunderstood by many of the men in this study.

#### 7.5.1.5 *Nina and Neville*

Nina and Neville's matrimonial home was in Felpersham, and when they separated, they both returned to their parents' family homes. Nina decided that she wanted to sell the matrimonial home and that she would stay with her parents until she and Neville were able to resolve their financial issues. The following extract describes, in Nina's words, Neville's reaction to her proposal:

*Med 1 can I just ask you to talk me through how you've been managing and what's been happening*

*Nina I said Neville that he can see her whenever he chooses originally when we separated he went his family home in Holby and I went to my parents in Penny Hasset. I had intended to stay there a while longer but I was thinking for the future you know when I approached Neville about it he didn't want to speak for several days and when I did speak to him I told him that I'd handed in my notice at work because I was due to start in three weeks and I couldn't with all this going on fortunately they've given me a career break I spoke to him about selling up in Felpersham he was incredibly angry about it and said he wanted 50-50 legal rights I couldn't take his daughter away that way and he wanted 50-50 he wanted things set up a week on week off that kind of percentage. When he said that he meant that Penny Hasset was unacceptable to him because it wasn't his territory, it was far from where he was in Holby.*

Nina continued by speaking about how, during a phone call. Neville had threatened to contact his lawyers if she did not agree to his suggestions. She also spoke about the fact that he was aggressive and angry during the conversation.

Neville's reaction suggests that he felt that he had the right to make future decisions for them both and his focus was on what suited him as a first option, rather than considering the best interests of all concerned<sup>139</sup>

There were other abusive behaviours in this extract. These included 'intimidation' by refusing to speak with Nina about her plans for the short-term future. When doing so Neville spoke aggressively and appeared to suggest 'economic abuse' and 'using children' by demanding equal parenting in return for selling the matrimonial home.

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<sup>139</sup> This extract also suggests the behaviour of 'male privilege'

During the second JM, prior to which Nina had received a letter from Neville's solicitor making a number of demands, the conflict escalated between Nina and Neville:

*Nina I had a letter from Neville's solicitor last week with his suggestions (Neville interrupted Nina)*

*Neville they weren't suggestions, there is two houses you are welcome to stay in the family home, you know there's no issue with that I'm staying with my parents... That is my home at the moment because Nina told us our relationship was over, that's where it made my home. I am her co-parent she is both our child we are both in a position to look after her. I'm not asking for anything unreasonable. I'm asking to be involved in my daughter's life in a meaningful way, rather than having to have only certain nights contact in the last 10 weeks.*

Neville went on to explain that he'd been with Mallory almost every day since she was born. He went on to describe how he had been an equal parent and now he felt he had been removed from that role and ended with the following:

*Neville she will not listen to anything else.*

This extract is particularly interesting because the letter to Nina from Neville's solicitor repeated the previous demands for contact that he had made verbally and during her separate (JIM) meeting, Nina spoke about being 'submissive in their marriage' for a quiet life. The above suggests that Neville may well have been used to 'getting his own way' during their relationship. Nina continued by restating what she had previously said:

*Nina I'm not going to agree to that it's not a solution, four days on and off four days off. I'm not going to agree a split of our daughter in half. She's not you can just sever in two, our marriage is over she needs to have a relationship with both of us. Her being in Southold half the time it's unfavourable it's untenable, I'm not going to going to agree to it, I'm not going to agree to it.*

*Neville I'm offering a solution, the solution is right there*

Nina went on to explain that there were many ways that Neville could be Mallory's father, without her having to travel up and down the motorway on a regular basis, divided by two households, with two different routines and suffering prolonged separation from both parents. She felt that Neville had chosen to live over 100

kilometres away from their former matrimonial home and she did not see why Mallory should suffer a result. Neville's response was:

*Neville I'm going to warn you one more time if you keep talking to me like this I will leave and not come back*

*Nina that's your choice*

*Neville am I being unreasonable?*

Neville's tone of voice was much clipped and he sounded 'edgy' with anger. The mediator intervened, and gave her interpretation of the exchange that had just taken place thus avoiding the direct question that Neville posed:

*Med 1 it's difficult she's trying to get her point across and you're trying to get your point across you've got different ways of communicating. I'm not feeling it is particularly aggressive, but you know each other better, so you know what you're hearing.*

Neville described Nina's tone as 'harsh' and yet it did not sound harsh to the researcher as a researcher or professionally as a mediator. However, listening to earlier recordings, it was clear that Nina had become more assertive in her responses since the JIM and first JM. It is, therefore, possible that Neville was not used to hearing her respond to him in that way.

Nina restated her views and added that, '*no judge in the country would make her do something like that*'. As will become clear, in section 7.5.4.1 Neville would later attempt to isolate Mallory from her mother, on a planned trip to Atlantis. Section 7.5.6.2 explains how Neville attempted to disrupt Nina's regular routine, and section 7.5.8.1 describes the 'economic abuse' that had developed since they separated.

#### *7.5.1.6 June and David*

David became coercive during the second JM that he and June attended, when he suggested an option which meant that he would retain financial control. For further detail please see 7.5.8.4 below.

## 7.5.2 Intimidation

This behaviour was evidenced in all of the cases in this study. The intimidation alleged or inferred occurred in conjunction with other behaviours during the JM. As these events are detailed in other sections of this chapter, this section provides cross-reference information.

### 7.5.2.1 *Alice and Clive*

In this case intimidation occurred in a situation where coercion and threat also were present; (see 7.5.1.3 above for further detail). It also happened in a situation relating to 'economical abuse,' more of which is detailed in 7.5.7.2 below.

### 7.5.2.2 *Jane and Alex*

As with Alice and Clive, 'intimidation' also occurred in a situation where, Alex was also being coercive and threatening. This related to the 'setting and accepting of boundaries'. This left Jane feeling hounded and harassed, which she found to be emotionally draining; full details of this is evidenced in 7.5.3.2 below.

### 7.5.2.3 *Nina and Neville*

Similarly, Nina's response to Neville's demands as detailed in 7.5.1.5, above suggested that she felt intimidated by the combination of behaviours she experienced at that time. Further detail of intimidation is to be found in 7.5.8.1 below (economic abuse).

### 7.5.2.4 *June and David*

Detail of the relevant extract is in 7.5.8.4 below (economic abuse).

### 7.5.2.5 *Paula and Peter*

Detail of the relevant extract is to be found in 7.5.3.4 (emotional abuse), where Peter verbally abused Paula.

### 7.5.2.6 *Linda and Billy*

Similarly to Paula and Peter, Billy verbally abused Linda; detail of this is located in 7.5.3.1 below.

#### 7.5.2.7 *Sheryl and Terry*

As detailed in 7.5.1.1 above, Sheryl continued to receive letters from Terry's solicitor, the content of which she found intimidating.

### 7.5.3 Emotional abuse

This manifested itself in many different ways, and in all cases was a response to a negative behaviour from the other parent, which had an impact on either the child, the mother, or in some cases both mother and child.

#### 7.5.3.1 *Linda and Billy*

As mentioned in 7.5.1.4, the JM between Linda and Billy was a challenging meeting, because the parents were unable to find a starting point for their contact arrangements. This was possibly because they had spent a number of years 'in and out' of court. The following extract gives an insight to the verbal abuse that Linda experienced during the meeting:

*Linda the last three sessions Shelby has been coming home upset because he says to daddy "Daddy can we talk and mingle and he's been upset and he says 'no go and play and he's on his phone or newspaper or eating his lunch there. Basically, he's not playing. Every time he comes home I say you have a good time? He says I had a good time I made friends and I had a good play and then he says daddy didn't sit with me or talk to me talk to me. This is why we are here today*

*Billy That's a lie! That is a lie! I pay for the kid to play games there.*

Linda went on to explain that there was no interaction between Shelby and Billy when they visit the play centre; Billy continued to say that she was lying and made the accusation a number of times. The mediator intervened at this point and asked Billy to use respectful language during the meeting. She then refocused both parents on the specific content of the Cafcass report, which offered some suggestions for activities that Billy and Shelby could do together. Linda spoke about the options as discussed in court. Billy again accused Linda of lying. The mediator asked Billy to stop using the word 'lying' and suggested that he should use the word 'disagree'. By 'reframing' the word 'lying', the mediator was trying to ensure that his concerns would be heard, using less 'blaming' language.

### 7.5.3.2 *Jane and Alex*

In JM1, Jane spoke about the constant pressure that Alex placed her under, because she and Blaine lived with her mother (see 7.5.1.2 above). She mentioned the pressure again in the second JM, which she put down to Alex's expectation that she should accommodate his work commitments:

*Med 3 is it two and a half weeks work that you've taken on?*

*Alex basically it's the whole week including Saturday and Sunday*

*Med 3 mmm*

*Alex and other bits and bobs*

*Jane and that's another thing that at you know at times when it works out I'm happy for it to happen but you know Alex is always asking for a little extra time when he can.*

She went on to explain that, because he had taken time off from his day job, he expected her to change her plans at short notice. The example she gave was because he had travelled to mediation that day. He expected her to reorganise her plans so that he could see Blaine. The mediator 'empathised' as follows:

*Med 3 it's sounding at the moment is that you're trying to be as accommodating as possible*

*Jane where possible*

*Med 3 and the practicality of it is at some point, you will have to establish a regular routine for Blaine's benefit*

Jane went on to say that she was happy to be flexible on the 'odd occasion,' but that she didn't want to be put under pressure because Alex was having time off. To which Alex responded very curtly:

*Alex 'I want to see my son'.*

The mediator intervened at this point and stated that Jane has a life as well, and that he couldn't expect her to keep changing her plans to suit him. Alex appeared not to grasp the message that Jane was giving him, and suggested that all he wanted was to come and see Blaine and stating that '*she doesn't have to be there*'. The mediator said at this point:

*Med 3 I think the bit that has to be taken into consideration is maybe she wants to be there, or she already has something planned.*

In the third JM, Alex continued the pressure and suggested that both Jane and Blaine should come to his house for the day that weekend, as opposed to him going to visit Blaine. At this point Jane likened Alex to 'a steam train that just runs away.' Rather than letting things settle and seeing how their plans were working, as soon as she agreed to something he immediately sought to make additional plans. The mediator 'summarised' this as follows:

*Med 3 I think what's important here is that Jane hasn't said no as opposed to everything else ...that idea is not being kicked out its there is an option.*

*Jane I'd just like to point out that I never said no to anything*

*Med 3 and I'm reinforcing it again*

*Jane Thank you*

*Med 3 that's based on what I've been sitting here listening to and whilst you were both speaking I was actually trying to think back to when you first came in and I've never heard you say no*

The pressure continued and Jane eventually became very emotional. The mediator stopped the conversation relating to increasing contact time, because both parents were now repeating themselves. She summarised what they had achieved in terms of regular contact. She then suggested 'separate meetings.' Jane expressed a deep-rooted fear that Alex was collecting evidence 'for the court'. More of this extract is to be found in 7.5.6.5 below, and other evidence of emotional abuse is to be found in 7.5.1.2 above.

### *7.5.3.3 Nina and Neville*

Prior to the next extract, the mediator had been speaking with Nina and Neville about an unusual option for implementing contact, which was based on Mallory staying in the family home, whilst Nina and Neville alternated in providing care. This arose because Neville expressed a concern about Mallory leaving the family home and going to live in a strange place. He then insisted that Nina stay in the family home:

*Med 3 you've both got different ideas as to contact might work if she stays in the home, she gets to spend time with each of you separately and more importantly, time with you both together as time goes on.*

*Nina We have got a spare room and I have offered that, but he doesn't want me to be in the house when he's there with her. His parents don't want me to be in the house when they are there with her*



Nina went on to say that she had been told to leave the family home and that she had slept on friends floors'; The arrangement was not sustainable and she was being treated badly. She was also concerned for Mallory, in terms of when daddy appeared, mummy had to go. Neville responded that he did not want to be in the same place as Nina, because she could not control herself.<sup>140</sup>

The mediator intervened at this point and said:

*Med 3 I think you're both struggling with communication with each other which, is something else that adds to the difficulties*

At this point Nina became emotional and spoke about Neville's constant 'chipping away' at her. (One example she gave was about Neville ordering her to put salt in the dishwasher). She finished by saying that she had been 'keeping a lid' on the whole situation, that she felt that Neville and his parents treated her disdainfully, and that he was distorting the truth. The mediator commented:

*Med 3 from what I'm hearing you're both really angry with each other and that you have been since you separated.*

Nina acknowledged that she was getting angrier because she wanted a solution. She also said that she felt she was 'going mad'. The mediator then 'normalised' their current situation:

*Med 3 I think what I'd like to say at this point, it's not unusual to be angry at this stage of your separation. You're not going mad, people go through these stages*

She went on to summarise the current situation, 'mutualising' it as a joint problem - and then focused them both on the future:

*Med 3 It's really about finding a way of breaking that vicious circle that you have got into so that you can move forward... It's a question of how to find a way of breaking this*

Near the end of this meeting, they both agreed that they would investigate the option of Mallory staying in the family home. As the meeting was coming to a close Neville raised the issue of taking Mallory to Atlantis. The outcome of this request is to be found in 7.5.4.1 below.

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<sup>140</sup> This extract also suggests the behaviours of 'isolation', 'minimisation denial and blame' and 'using children'

#### 7.5.3.4 Paula and Peter

Paula introduced the subject of Peter's drinking as a concern, because Peter had a drink problem and had agreed with his support worker that he would not drink when Wallace was with him. He then said Wallace had told him that her uncle drinks at Paula's home, as does her new partner. The mediator stopped the conversation:

*Med 1 what I will say is Peter that you did say that you wouldn't drink alcohol whilst Wallace was with you to be fair*

*Peter why am I under rules all the time?*

*Med 1 I'm not calling it a rule you agreed*

*Peter she's calling it a rule saying 'you've got to do this, you've got to do that...'*

Peter then got extremely upset and started to speak about the past, suggesting that Paula had run away to a refuge, and told lies about his violent behaviour:

*Peter I raped you and beat you up, you're a liar...*

*Med 1 I'm going to stop you I'm not here to judge blame or take sides I'm here*

*Peter but I'm not opening my legs for a car am I?*

*Med 1 that's enough! That is outrageous,*

*Peter that's what she's doing*

*Med 1 you don't say that in front of me! What you just said goes way past the line.*

Peter interrupted the mediator re-iterating the fact that Paula was saying bad things about him to which the mediator responded:

*Med 1 that much might be the case, I'm not judging you, but when you say something like that I'm not impressed with that sort of comment. I hear most things and not judge them but something like that is really inappropriate.*

*Peter all I want is to see my daughter*

*Med 1 you need to sort out your communication as parents as well. I'm a complete stranger! If you say that in front of me I'm concerned you could say that in front of your daughter*

*Paula that's what he does.*

Peter apologised very quickly for the inappropriate comments that he had made, in fact he did so before the mediator had finished her first sentence! His apology was not heard or acknowledged by either the mediator or Paula. Peter continued trying to justify his negative comment and offered a second apology, which was not heard either! The mediator refocused both parents on Wallace, and things eventually calmed down. The situation might have become calmer sooner, had Peter's apologies

been noticed by the mediator as they occurred. The mediator could then have restated Peter's apology to Paula and used it to calm the situation.<sup>141</sup>

#### 7.5.4 Isolation

##### 7.5.4.1 *Nina and Neville*

As detailed in 7.4.6 above, Nina and Neville had recently separated and Neville was struggling to come to terms with Nina's decision for them to separate. Their first JM was very fraught and took place within a week of their JIM. Towards the end of the session, Neville announced that he wanted to take Mallory to Atlantis for a family occasion (a wedding) but did not want Nina to be in the country at the same time. Just prior to this they had been discussing the option of a rental accommodation locally, and had agreed that Nina should look for something appropriate. In the second JM, the subject of Atlantis was raised again (after the event) and the subject of negative emotions for both parents was discussed:

*Nina With Atlantis, I tried to set up an emergency mediation because you wanted to take Mallory without me escorting her. I tried to set the emergency mediation up as soon as you told me that's what you wanted to do. You declined to do this.*

Nina went on to explain that they could have used mediation to discuss a mutually agreeable way, for Mallory to travel to Atlantis. Neville attributed his refusal to attend mediation as, '*wishing to avoid stress for Mallory*'; Nina felt that attending mediation would not actually have been stressful for Mallory at all, as he had only given her three days' notice of his request:<sup>142</sup>

*Nina you decided at the 11<sup>th</sup> hour that you wanted me to escort Mallory to Atlantis. You set up a scenario that was so degrading to me as her mother; he wanted me to be in a hotel miles away from the family. He was going to collect her or a member of his family was going to come and collect her from me in the hotel, first thing in the morning and bring her back in the evening when she's asleep. And he wanted to do that for the whole eight days or potentially even stay there for two weeks with her with me not seeing her during waking hours at all.*

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<sup>141</sup> The extracts in this section also suggest the behaviour of 'minimisation, denial and blame'

<sup>142</sup> This extract also suggests the behaviour of 'using children'

Nina went on to explain that Neville was upset that she wanted to travel on the same plane as him and his family and stated that she had been '*set up for a fall*'

In the sense that she could not agree to travelling on those terms and retain any self-respect as Mallory's mother, Neville's (former) wife, and a member of the family:

*Nina whatever else has happened between us, I'm your daughter's mother and I'm not going to be just treated like, how was that respectful.*

*Neville I have it in writing that she said 'I'll do anything possible to get Mallory to that wedding'.*

*Med 1 I'm just wondering how we can move forward if you don't get through some of the issues that you've got, we are going to struggle to agree on anything. It's not so much struggle to agree, it's about the trust to allow something to happen. You do need to get Mallory's care to a point where you can both work with it.*

The mediator spoke with them about compromise and what they needed to consider by way of compromise. The mediator then decided to have 'separate meetings' with each client to determine whether mediation remained suitable.

#### 7.5.4.2 *Sheryl and Terry'*

As mentioned in 7.5.1.1, 7.5.2, above, Sheryl was deeply concerned about Terry drinking when Kelly was with him and her concerns were based on her knowledge of his past history of alcohol and drug misuse:

*Sheryl Kelly had to go to A & E a couple of months beforehand and Terry had had too much to drink and could not drive her there because it's a drink.*

Sheryl spoke about her concerns for Kelly's safety when she was with Terry and repeated some of the incidents detailed earlier. The mediator asked Sheryl what reassurances she needed from Terry to make her feel better in terms of Kelly spending time with him. Sheryl stated that she wanted to know that Terry was not drunk when Kelly was with him and that neither of them had an accident as result of his inebriation. She expressed concern about Kelly having to deal with Terry 'if *he knocked himself out*'. Terry refused to provide any reassurances and like Peter in 7.5.3.4 above, he mentioned the fact that others drank when Kelly was present. The mediator summarised:

*Med 3 the reassurances that you want you're not prepared to give there is no compromise here is there?*

*Sheryl there is no compromise! He phoned me and Kelly were screaming in the background it was 11:30 at night I mean she was screaming and he wouldn't let me speak to her. He said she's got a terrible pain in her chest and under her arm I don't know what to do. I said let me speak with her and he wouldn't I was beside myself.<sup>143</sup>*

Because she was so concerned about her daughter's welfare, Sheryl had to ask a neighbour to look after her younger child and she had to travel to A&E to find out what was happening with Kelly. The mediator's response to Terry's refusal to provide the necessary reassurances because he found Sheryl's request unrealistic was:

*Med 3 I don't know that it's unrealistic, either you're able to do it or you're not*

Terry did not provide the reassurances that Sheryl required and Terry decided that he would take the matter to court. The mediator spent the rest of the session outlining what they could expect when they attended the first hearing in court.

### **7.5.5 Minimisation, denial and blame**

There was a general lack of consideration for the other parent in all seven cases and this ranged from disregarding the other parent's thoughts through making the other parent uncomfortable and 'minimising' any concerns that they raised, to 'blaming' the other parent for the outcomes of various situations. Each of these is additionally and intrinsically emotionally abusive.

#### **7.5.5.1 Jane and Alex**

As mentioned in 7.4.2, Jane and Alex's child Blaine had a congenital heart condition, and Jane was concerned that Alex was not yet fully aware of his needs, as he had never spent a whole day looking after him. The following extract illustrates Alex, 'minimising' the seriousness of Blaine's condition, after Jane had offered to leave him with Blaine on his own, so that he, could gain more experience of looking after the child. Jane's offer contained a word that appeared to offend Alex:

*Alex to get practice? He's not a toy! Practice looking after my own son?*

*Med you've got a child that needs specific care*

*Alex he has got a hole in his heart and I think is being painted out to be a lot more poorly than he actually is to be honest.*

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<sup>143</sup> This extract also suggests the behaviour of 'using children'

*Jane that's the point you don't know what he's like*

The mediator intervened at this point and summarised the compromise that Alex had been offered as a starting point and gave him the choice as to whether he found the offer acceptable or not, reminding him that this might not be what he wanted.

Alex took exception to Jane's use of the word 'practice' and rather than seeing that Jane leaving them alone was an opportunity to spend some 'quality time' with his son, opted to 'minimise' the seriousness of Blaine's condition and also made a comment that could be 'constructed as emotional abuse' to Jane.

#### 7.5.5.2 *Sheryl and Terry*

As mentioned in 7.5.1.1 above, Sheryl's main concern was the fact that Kelly's father Terry had previously been unable to care for Kelly effectively, because he had been under the influence of drink. In the next extract, Sheryl tried again to encourage Terry to acknowledge that there had been drink related incidents in the past that had caused concern:

*Sheryl Kelly came home and told us you had been drinking, when I had asked you not to and then you sat in front of George and I and said I can't make that promise,*  
*Terry yes, I'm not promising that is not your decision Sheryl, is not your decision*  
*Sheryl it is my decision you have a drink problem, I've known you for years*  
*Terry that's your personal opinion Sheryl, I don't have a drink problem*  
*Sheryl you have said in the past you know 'I know I have a drink problem'...*

There is a focus in this extract on 'age-inappropriate activities' and a lack of concern, on Terry's part for Kelly's welfare while she is with him. Terry again 'minimised' Sheryl's concerns and decided that he had a right to make the decision as to when he might drink, still denying that his drinking was a cause for concern. He then indirectly acknowledges that he has had a drink problem in the past:

*Terry and as I have said to you as I said to you (the mediator) the work I've done on myself that's gone that was two years ago Sheryl, I've got the letter.*  
*Sheryl I spoke to a couple of months ago you were inebriated, you couldn't even tell me what time it was.*  
*Terry that's nothing to do with you what I do my personal time*  
*Sheryl that just proves show that you are drinking heavily to be in that situation*

Sheryl once again expressed concern about Terry's drinking and he still did not take her concerns seriously. The exchange at this point had become repetitive and the mediator attempted to intervene:

*Med 3 'Can I just'*

But the mediator was ignored and the conversation became what can be best described as a 'power struggle'. Sheryl expressed concerns for Kelly's welfare; Terry dismisses her concerns as nothing to do with her:

*Sheryl I can*

*Terry but isn't in your hands Sheryl you can't*

*Sheryl it is in my hands*

*Terry it's not, I'm equal parent to Kelly it doesn't matter what you think of me*

*Sheryl you want to be an equal parent but you need to behave like one because you don't take Kelly to a hotel get drunk and leave her to walk up stairs on their own. You don't get drunk and leave Kelly to go to A&E because you can't drive*

*Terry I wasn't drunk*

*Sheryl Terry, you couldn't drive a car to take Kelly to hospital*

*Terry yes, I'd had a couple of drinks I'd been at a bloody barbecue.*

*Sheryl this has happened so many times*

*Terry it hasn't happened so many times*

The 'power struggle' continued, with Sheryl expressing her concerns for the age-inappropriate activities that Kelly has been exposed to in the past - also her concern for the child's welfare when she was with Terry. Terry denied that he had been drinking even though Kelly had said that he had, again 'minimising' Sheryl's concerns. This extract is also an example of "using children" as Terry was unable to look after Kelly's immediate needs because he had had been drinking.

### 7.5.6 Using children

This theme was present in the six children cases previously mentioned. Examples of welfare concerns included age-inappropriate activities such as having adult conversations with the child, taking the child to adult parties and sending messages through the child. There were also concerns about neglecting the child's health/hygiene needs, disrupting the child's routine, not speaking with the child during contact, and playing sad songs to the child. Finally, there were a number of situations in which the father undermined the mother.

As will become clear, in each of these cases the father put his own needs before the needs of the child and the former partner. Additionally, all of them measured the quantity of time that they spent with their children in days, hour's and minutes. In five of the six cases, there was a notion by the father, that 'shared care' meant an equal division of time i.e. 50:50.

#### 7.5.6.1 Paula and Peter

As detailed in 7.5.3.4, above Peter had verbally abused Paula during their first JM and at the second JM, the issue of communication was raised by Paula.

Both parents were struggling to communicate with each other and as a consequence were using Wallace to pass messages between them. This was highlighted when the mediator asked the following question:

*Med 1 how have things being since we last met?*

*Paula I dunno what to say to be honest, I'm not very happy*

*Med 1 Okay*

*Paula I'm not happy to coming here as well today, I just, I'm still having problems with communicate with him you know*

*Med 1 right*

*Paula there is 1,000 million people out there in the same situation as us, you know*

*Med mmm*

*Paula and get to the point and I'm thinking we're never going to get back together you know*

*Med 1 mmm*

*Paula but at the end of the day we've got a child you know, between us were going to have to communicate*

*Med 1 mmm, what do you think is the problem with communication?*



Paula continued by telling the mediator that Peter would not make eye contact with her when he spoke and that he often spoke to her with a lack of respect. The poor communication had resulted in a number of misunderstandings between them. The mediator allowed them both enough time to air their grievances before she intervened:

*Med 1 okay so your communication isn't working*

*Paula it doesn't work at all (long pause)*

*Med 1 okay, has the contact been continuing*

*Paula yes I'm trying so hard...*

Paula went on to explain that she had been trying to help Peter out, by providing food for them both when Wallace stayed with him. She had telephoned Peter to explain this but he had not answered her call. Nonetheless, when Peter came to collect Wallace she packed the food in Wallace's bag; Peter returned the food unused. She had asked Wallace to explain to Peter that he should keep the food at his home. The mediator responded very directly to her comments:

*Med 1 you should be telling him about the food, not Wallace*

*Paula but he's not communicating with me*

*Med 1 no*

*Peter I just want to see Wallace that's all, but she won't tell the truth*

As in 7.5.3.4 above, the mediator restated her role in the meeting and also explained their duties as parents in reference to communicating about Wallace. She 'affirmed' them for having established regular contact and explained that positive communication between them would help things to work better than they were at that time. She also explained that just wanting to see Wallace was not enough, there was a need to communicate with the other parent.

Another example from Paula and Peter emerged in the same meeting. Paula was concerned about Peter's lack of focus on Wallace's hygiene, and believed that was the reason why Wallace was developing bad breath, which in turn was causing her problems at school:

*Paula Wallace came home and her breath you could smell it miles away, I said to Wallace, don't lie to me have you brushed your teeth all day? She said no.*

*Peter she's at that age you know*

*Peter Saturday night she did*

*Paula I'm not talking about Saturday night*  
*Peter and then Sunday she wanted to do something else*  
*Paula it doesn't matter, you wake up the first thing you do is wash Wallace's face and brush Wallace's teeth Wallace does that at mine. It's your responsibility. If I don't tell her she'll be the same. I tell her every morning all her life*  
*Med 1 it's all part of a routine*  
*Paula she's got problems they're bullying her at school because of her breath*

At this point the mediator took the opportunity to intervene and asked Paula and Peter a direct question:

*Med 1 would it help if you wrote a checklist of what needs to be done?*

Both parents agreed that the checklist would be useful, and the mediator then guided the parents through the checklist, ensuring that both contributed to the content by asking them both for suggestions, seeking agreement from them both and recording each item on a flipchart. At the end of the meeting the mediator 'affirmed' them for their achievements during mediation, and advised them that she would send a parenting plan to them, which would provide details of the agreements they had reached.

#### *7.5.6.2 Nina and Neville*

Many concerns for Mallory's welfare were raised by both parents and Neville had been expressing concerns about Mallory missing him and not wanting him to leave when he was with her. Nina suggested that if Neville had concerns and was seeing behaviour that Nina had not witnessed, they should take Mallory to see a child psychologist together. The mediator sought to clarify the situation that Nina and Neville were discussing and explored the options with them, by asking questions, summarising and reflecting.

Neville again suggested that they have a shared parenting arrangement where Mallory spent a week with each of them. They were currently living 100+km apart and Nina expressed concern that Mallory would go a whole week without seeing the other parent, citing a recent stay that she had with Neville:

*Nina she's already suffering from the long period she has been away from me we don't know what effect that will have on her. I don't want her*

*in a situation where one minute she is 100% with Daddy and then all of a sudden Daddy's gone having been there for a long period of time and now here's Mummy who's been away for a week.*

Nina went on to say that she had spoken with various health professionals, who recommended against this style of arrangement at such a young age. The mediator then reiterated the suggestion that they seek joint advice about their concerns relating to the way that Mallory was responding to them.

Additionally, Nina had a regular arrangement to take Mallory to a 'mother and toddler group locally'; Neville then made arrangements to take her to a group in a different county on the same day, at conflicting times. Prior to this being raised as an issue, they had been discussing the option of meeting with a Relate counsellor, using private health options provided by Neville's employer, The mediator had checked availability locally for them and had arranged for them to be 'fast tracked' into the system. Neville then made a negative remark about the opportunity that was being offered to them:

*Neville I'm not sure whether there is any point you don't seem to be willing to*

*Nina No, I'm absolutely willing to go to Relate and I was willing at the last meeting*

*Neville you're expecting her to go to something and you're not respecting the fact that Mallory is my flesh and blood, that she's my daughter, that I'm off work as well, I'm willing and able and capable of looking after her.*

In common with Jane's views on seeing Blaine with Alex, Nina shared her positive feelings about seeing Mallory with Neville. Seeing them together '*filled her with joy*' and she wanted her to have her father in her life, but Neville interjected with:

*Neville 'As long as it's on your terms... As soon as I ask to take her somewhere you won't let me'.*

The mediator asked Neville why he had booked the other 'group' for the same day and he repeated the fact that he was off work as well, and that he had a right to take her to a group as well. He was not prepared to compromise and leave an hour later. The mediator then decided to speak to Nina and Neville separately, during which, Nina expressed a deep rooted fear that Neville was building a case to take Mallory away from her. At the end of the meeting the mediator spoke with both parents together and advised them that their opposing views on Mallory's 'best interests' meant that mediation was not suitable for their current situation.

### 7.5.6.3 *Alice and Clive*

Alice was concerned about a conversation on the phone between Clive and his pre-school daughter, Glenn, which upset her. Alice recounted Glenn's words as follows:

*Alice ...that Sunday when she came away from speaking to you she was really upset and she said that you said that I didn't want you to go to church, that you couldn't go to church; mummy said that daddy's not allowed to go to church. So I don't know what was said or what the conversation was, and because I'm not sure what's been said, I think because that trust is broken, I don't know whether she's playing us a little bit, I'm sure she is a bit she's very smart.*

Alice went on to describe Glenn's behaviour following that conversation, stating that the content of the conversation was not appropriate for her age:

*Alice She had a huge tantrum at home, then another tantrum in the church and I just felt it was unfair that something was said to her if it was said because not only 'cos it's not true but again it's a grown up thing and it just*

*Clive All I can say that I did not say that daddy couldn't go to church, what Glenn was in fact saying was that she didn't want to go to church. She said that to me about half a dozen times.*

Clive went on to minimise Alice's concerns suggesting that she should take Glenn's comments '*with a pinch of salt*'. The mediator's interventions and responses are detailed in 7.5.1.3 above.

### 7.5.6.4 *Linda and Billy*

Since their divorce, Linda had formed a new relationship and also had another child. Contact had been taking place in a soft-play centre and this was now going to be changed to a contact centre, following a court hearing and Cafcass recommendation. The centre recommended by the court was close to Linda's home, and Billy objected to this, as it was 35km from his home.

Based on the Cafcass report, the court had ordered that contact should take place at a contact centre for a minimum of 12 months. It was suggested that the mother recommend activities for father and son to do together:

*Linda At the moment he is having contact at the soft play centre and he seems to be questioning Shelby about things about my private life which is none of his*

*business. He comes home and says daddy asked me about you again and about the baby*

*Billy I see my son every two weeks, the son is with the mother for the whole weeks and weeks yea. I'm not his tutor so he comes to me and I must teach him I'm not his teacher, I'm his father*

Billy went on to speak about spending time with his son and was adamant that teaching him was not spending 'quality time' with Shelby. The mediator responded:

*Med 3 To be honest with you, parents do this with their children all the time and that is very much considered quality time, spending time with children whether it's doing maths or English or it's reading a book or doing a puzzle...*

The mediator continued by explaining that the purpose of mediation was to establish regular contact and not to discuss the past. She then focused both parents on Shelby's need to have a good relationship with both his parents.

#### 7.5.6.5 Jane and Alex

Prior to the next extract Jane and Alex had been discussing Blaine's forthcoming medical appointment, Jane spoke about wanting time to allow Blaine to get stronger, before travelling to Alex's home. The conversation became entrenched, with Alex wanting additional time with Blaine. The mediator asked the following question:

*Med 3 let's just establish what we've got going on at the moment*

*Jane it's got to happen gradually Alex. One thing that isn't going to happen I will tell you this right now, next Sunday or whenever you've got this in your head, I will parcel up Blaine and off he goes to the whole day. You have never looked after him for the whole day*

*Alex I've not been allowed to look after him for the whole day*

*Jane but consequently the reason for that is that you are good but I prompt you at every turn*

*Alex because you won't let me have that time to be on my own*

*Jane I'd be a madman (sic) to hand over my baby to somebody who didn't know what they were doing*

The mediator opted to intervene at this point, reminding Alex that the whole development process is based on a 'step-by-step approach'. Jane suggested that she could get go out and allow Alex to get a bit more practice with looking after Blaine's to which Alex responded and, as detailed in 7.5.5.1 above, Alex 'minimised' her concerns.

The next extract adds a further dimension to 'using children'. The mediator expressed her discomfort about the suggested option of Blaine travelling to Alex's home:

*Med 3 in terms of um Blaine, I'm starting to become a bit uncomfortable about the whole thing if that makes sense (long pause) have you got a health visitor or a specialist worker that will sort of work with you regarding Blaine?*

*Jane we did have yes um*

*Med 3 somebody that sort of specialises in children/child issues and their development, like a health visitor*

*Jane yes, yes, we had a health visitor she came to visit us for the 1<sup>st</sup> 3 months*

*Med 3 right*

*Jane when he came home and then it was at the clinic*

*Med 3 right*

The mediator went on to suggest that they consider speaking with the health visitor about their ideas and any concerns relating to those ideas together essentially, asking both parents to 'reality test' the proposed travel and other aspects of Blaine's health.

The mediator left the room, and went to find a copy of the SPIP handbook for each of them. On her return she explained a bit about the purpose of the program, which focuses on encouraging parents to work together in a business-like way, for the best interests of the children. Jane reverted to the issue of Blaine's care:

*Jane I was going to say that before Blaine left the hospital, they did what's called you know, when leaving SCBU, the special care baby unit they do what's called rooming in.*

*Med 3 right*

*Jane where you go and live at the hospital, and they basically give you your baby and the nurses are all still there and everything if you need them, and they come and give the medicines and everything that they need*

*Med 3 mmm*

*Jane that you go and live there for a few days so you can do it on your own so that you feel confident you can do it,*

*Med 3 mmm*

*Jane because obviously he was in hospital and I was doing a bit of child care, I mean it sounds simple enough to anyone that had them and just took them straight home but, but it was a very strange one flew over the Cuckoo's nest-type of existence, when your baby has been in hospital for such a long time. I used to ask them 'can I pick him up please', and they would chuckle...*

Jane went on to explain that she had found it difficult to take up the role of primary carer, as Blaine had spent eight weeks in SCBU being cared for by the specialist nursing

team. She explained the fear that she felt when she realised she would soon be on her own caring for Blaine. Her reason for raising this was that Alex had declined the offer of 'rooming in' when it was offered to him. Alex dismissed this concern as 'not important now' and repeated that statement a number of times in quick succession. The mediator intervened at this point:

*Med 3 it's a model that you could follow.*  
*Jane yes that's what I am trying to say*  
*Med 3 yes*  
*Jane In the beginning I was being acutely tuned into*  
*Med 3 Okay so you had a model that you followed that*  
*Jane yes*  
*Alex it's important for Jane but I mean*

The mediator opted to intervene after this comment, which was again dismissive of Jane's concerns relating to Blaine's needs. Alex's comment also suggested that he was not prepared to work toward spending a day with Blaine, preferring to force the issue in the hope that Jane would eventually acquiesce to his demands. Her response was:

*Med 3 It's also important for you because usually*  
*Alex (interrupts mediator) I was there quite late, I was there 'til quite late I'd say about 10 o'clock*  
*Med 3 yes but please let me finish, I think though it is about looking after a child, looking after a baby, and getting to know that child*  
*Jane and understanding what his needs are*  
*Med 3 so one option could be trying to find a way of following that model so that you get to the point where you sort of takeover each week*

The mediator continued to expand on this option with the parents and, rather than focus on the future, Alex opted to recount what he considered to be a past opportunity:

*Alex well we had the option this week in the hospital you know there was two single beds and*  
*Med 3 it probably was the wrong time it really was the wrong time*  
*Jane I agree it was inappropriate*  
*Alex for me it is far from the wrong time*  
*Med 3 no but I think*  
*Alex our child was having an operation why could we not both be there for him?*  
*Med 3 I just think it just wouldn't have worked.*

The mediator acknowledged what Alex been trying to achieve at that juncture as poorly timed, (being together as Blaine's parents). It would have been for one night only and Blaine would have been predominantly cared for by the medical team. This discussion continued and a further example of 'using children' emerged, as Alex continued to focus on spending a day with Blaine as soon as possible. This appears in the following extract, before which the mediator had been focusing Jane and Alex on the future:

*Jane I'm sorry to interrupt, but I don't understand why I feel that sometimes Alex puts himself first in his desperate need, and I know it comes from love to see Blaine so much I think you you want it so much you think this is what he wants. He wants quality time with Blaine when at the moment Blaine isn't five years old, he doesn't need to play football he's effectively a seven-month-old baby,*

*Med 3 right*

*Jane who does need time with his father but what I'm asking, what I'm saying I don't understand why you can't see that it's all going to happen in time, I'm just asking for a little bit of patience because I don't think at the moment, I think Blaine is just a little bit too fractious, is just a case of a few months and then this will all start to form. If you just have a bit of patience...*

The mediator opted to intervene at this point, using Jane's suggestions to build on the option:

*Med 3 that's sort of where I'm coming from in terms of speaking with the health visitor in terms of how to manage the next steps*

Alex again argued against seeing the health visitor and justified this by stating that while they were waiting to see the health visitor, he would have to continue to leave Jane's home for an hour when her mum returned home to lunch. The mediator 'acknowledged' his frustration and 'normalised' the current situation and went on to explain that things would progress over time. The mediator also expressed concern that she was unclear about aspects of Blaine's health, which she felt could be dealt with more appropriately by the health visitor.

#### 7.5.6.6 *Sheryl and Terry*

Terry was using mediation in conjunction with his solicitor and was clear that if he did not get what he wanted then he would go to court as detailed in 7.5.1.1 above:

*Sheryl it has*



*Terry I've not got a drink problem, this is the issue this is why she would not let me take Kelly on holiday and Sheryl feels that, and this is why contact has reduced since January, is all because of Sheryl's opinion of me. I'm not prepared to allow that to affect my child and my relationship that's why I've gone to the court.*

*Sheryl but why the last 10 years I've allowed you to take Kelly*

*Terry you haven't allowed me to Sheryl*

*Sheryl I have*

*Terry you haven't you've dictated!*

This conversation continued in the same vein with the voice of the mediator silent but for three words which were 'can I just'. The mediator finally intervened:

*Med 3 let me stop you right there*

*Terry I need say one more thing because if I was that bad and if it was that much of a concern to you, then what is the difference between 17 days and 14 days in this country? What is the difference?*

*Sheryl because I knew exactly where she was, you agreed not to drink and you gave us a contact number whereas you wanted to go on holiday to a campsite with a friend who takes drugs. I've known him for an awful long time he had a problem then and he has a problem now.*

*Terry That's nothing to do with you Sheryl*

*Sheryl But you want to put in Kelly into that environment*

*Terry I'm not putting her into that environment...*

Terry's tone of voice suggested that he needed to 'win this argument' and his concern for missing his holiday, was once again raised as an issue. Sheryl outlined the different circumstances between the previous holiday and the suggested forthcoming holiday and again Terry dismissed them. The mediator intervened and summarised the situation, mutualising the issues under discussion by focusing on Kelly and acknowledging Terry's seemingly repetitive demands as his need for structure, as is shown in the following extract:

*Med 3 right I am going to stop you because actually is not just about communication there's a huge lack of trust here, there's a lot of blaming going on and you know I imagine that, whether you recognise it or realise it or not I would suggest it's possible that Kelly may have picked up on many of these thing, even though you think they're not aware of them, you both suggest is highly possible that has picked up on quite a lot of it, and that might have quite a lot to do with the way she currently feels.*

*Terry In August Kelly was talking to my mum her grandmother about why she couldn't go abroad and I said I calmed down and said to Kelly, the three of us were just sitting there chatting about it and I said well it doesn't matter with thinking somewhere where we can go in England where mummy feels more safe. I didn't attack it or anything like that and said oh Kelly made a very clear*

*from her comments and said well that'll be somewhere in Borcetshire and laughed. With that we cut the conversation.*

*Med 3 That doesn't help the situation we are in now. That's all happened and I think what we're trying to do is look forward and see how things can be changed. But one thing I'm hearing is that there's a lot of concerns that are going on. I also hear from you Terry that you want things to be structured.*

Earlier in this exchange Terry spoke about being an 'equal parent' and the above extract suggests that Terry was seeking to assert his right to being an 'equal parent' by speaking in a way that suggests that Kelly too was minimising Sheryl's concerns.

## 7.5.7 Male Privilege

This behaviour is described by the Duluth programme as 'men doing things because they are men'. This is recognised as a simplistic view and the phrase is better linked to the patriarchal history of marriage and divorce as detailed in section 1.5 above.

### 7.5.7.1 Jane and Alex

Notwithstanding Jane's suggestions and reassurances in 7.5.6.5 above, coupled with the mediators concerns and suggestions for expert guidance, Alex made it clear that he was not prepared to wait until they had seen a health visitor, stating Blaine's time is with him and '*he has never had that time alone with him*' – he repeated this several times. Alex then decided what was needed, as the following extract reveals:

*Alex he can come to my house and have the same routine or if that's the case, whenever your mum comes back, another compromise tell her for Blaine, 'I know you don't like Alex, but this is his day with his son your gonna have to get used to it.' This is what needs to happen.*

This was another repeated request made by Alex, but this time not only was it coercive and threatening, his tone of voice was intimidating, In making that demand, he was attempting to exercise male privilege on the basis that he was Blaine is father. Jane responded to this demand by explaining that her loyalties would always lie with her mum. She would not stop him from seeing his son, but would not tell her mum what to do in her own home. Alex again mentioned 'rules and restrictions. 'Jane responded, and the exchange became extremely negative. At this point the mediator intervened:

*Med 3 right, I'm going to stop you no, (both parents continue speaking both at the same time), I'm going to stop you because what I'm seeing is that you want it now and there's no compromise*

*Alex there is no compromise from me*

*Med 3 so we can't do anything to help you, we really can't because there is no compromise. You need to take some time*

*Jane yes*

*Med 3 right. You want it now*

*Alex yes*

*Med 3 and you're not prepared to sort of try and find a middle ground, this isn't going to work! This absolutely cannot work. You decided that that's what you want and you can't compromise. There's nothing we can do*

*Alex where is the compromise?*

Jane again explained that the compromise was patience and time, a compromise Alex dismissed, insisting that she makes his option happen at once, at which point Jane blamed Alex for the current situation. The mediator then responded as follows:

*Med 3 if we leave fault and blame out of this (applied two principles of mediation) you have to accept that if Jane's mother wants to come home for lunch she comes home for lunch and you have to accept that. Putting pressure on Jane to sort of change that won't help. If she decides that she doesn't want to go out at all she can stay.*

*Alex If Sam stays there then I should stay there for the day surely I should be having the day with my son it's my day with my son*

*Med 3 equally, it's right that might be the case but you have to compromise around that and Jane's mother has a choice. If she wants to come home for lunch she comes home for lunch. That's a compromise it's not unacceptable, you know it might be not exactly what you want, you can't always get exactly what you want.*

*Jane I don't exactly want to be living with my mum, I wanted a happy family unit but that didn't happen so this is where we are. I've had to compromise.*

*Med 3 really if the only thing you are going to accept is that Blaine comes and spends time with you*

At this point, Alex interrupted the mediator mid-sentence making the following demand:

*Alex offer me a compromise a whole day with son so I never leave his side offer me a compromise (Alex becomes aggressive), from 9 o'clock 'til six I don't leave his side*

*Med 3 I don't think there is one because Jane lives with her mother – at this point in time there is not a compromise to be offered.*

*Alex so really there is no change then*

*Med 3 well there isn't because actually there is nothing that can be changed.*

It is interesting to note here, that during this JM Alex became increasingly aggressive and yet whilst Jane responded in an emotional way, the mediator's level of voice, did not change, but the tone did, in keeping with the behaviours that were presented. The mediator deployed a number of 'tools' from the mediators tool bag (see 2.7.4 above, including 'appropriate language', 'focusing on the child' and 'managing conflict.'

### 7.5.7.2 Alice and 'Clive

As detailed in 7.5.1.3 above, Clive had asked his solicitor to send a letter to Alice regarding some issues that did not relate to contact. Alice had not received the letter and Clive first of all spoke about changes that might be made to the family home:

*Clive I'm talking about the principle of actually making changes to the house without any agreement, it's.*

*Med 3 but it's a practical reason for the change*

*Clive well whatever the reason for it*

*Alice I can't get into the loft or put anything up there because I can't balance with the ladder and can't get anything up there*

*Clive I know the loft*

The mediator refocused the parents on recording some level of interim agreement regarding contact at which point, Clive introduced another question that had been asked in the letter, which he introduced as 'a situation in the house'. Alice responded:

*Alice what situation?*

*Clive the ongoing presence of Muriel living in our home*

*Alice she's not living in our home she is a guest, she is a friend*

*Clive how long does that, she's been there almost a month already*

*Alice it's actually been a couple of weeks Clive*

Alice went on to explain that the Muriel worked as a live-in carer and would be starting her new job imminently. Alice then questioned why a guest should not stay and Clive suggested that the reality might be that Muriel was staying as some form of security:

*Alice why would I need security Clive?*

*Clive I wondered why you might need security.*

The mediator allowed this conversation to continue until the point when she asked a question to clarify the aim of the conversation:

*Med 3 can you tell me where this is going? You're the one that brought this up in the first place, where is it you're going with it?*

Rather unusually in this sample the mediator's voice seemed to be slightly irritated with the way the subject had been introduced. Clive went on to suggest that he was being replaced by Muriel and went on to state that he was paying the mortgage on a house and was not paying for Muriel to live in his house. The mediator responded:

*Med 3 you've actually lost me here because if as Alice says she is a guest, and she's going to be starting her job soon*  
*Clive well that's the first I've heard of it.*  
*Med 3 okay*  
*Clive and she hasn't just been there for a couple of weeks*  
*Med 3 I'm not interested about time we are getting diverted (Clive attempted to interrupt) can I do it the mediation way, one step at a time! Because what I'm trying to do is work out what contact is going to start.*

By reminding the parents of the mediation process, the mediator refocused them on the subject under discussion, which was re-establishing contact. She reminded Clive that he was the one that wanted to specifically discuss contact and reach some initial agreement.

#### 7.5.7.3 Paula and Peter

There had been a long gap between their SIMs and the first JM and during that time the parents had managed to establish some contact, but Paula was not happy with some of the situations in which Peter was putting Wallace. The mediator asked Paula to explain her concerns:

*Paula I'm not very happy because she told me that he had a drink , he broke one rule, he told me that he broke the rule and he made her walk from Ambridge to Felpersham something like that she said. You know that's not exercise that is too much for a child, I'm sorry you know she was complaining.*

Paula went on to explain that Wallace was already experiencing growing pains and that she was being treated by the doctor for them:

*Med 1 you did say you wanted her to go out didn't you?*  
*Peter yes.*

The mediator said they needed to establish what Wallace could cope with, but Peter responded by introducing a new concern:

*Peter she doesn't need to be thinking about moving abroad*

Peter went on to explain that Wallace was saying she was worried about it and that wasn't nice. He said he didn't want to hear about her personal life and that she shouldn't be discussing her personal life with Wallace. He then said that Wallace was scared to tell him things, which suggests that he may have questioned the child:

*Peter what I'm trying to explain is Wallace doesn't need to know these things*

*Paula she does she's in my life and John's life and she's got every right to know.*

He continued to reiterate what he had said and also stated that Wallace was crying and saying that she didn't want to leave him and that she didn't want to go abroad:

*Peter 'I'm trying to explain this to you and it's going through one ear and out the other'.*

The mediator stopped the conversation and said:

*Med 1 it seems to me in normal family life you have conversations you know conversations happen. So you can't say don't have a conversation which is what it sounded like.*

Peter continued to demand that Paula did not discuss her personal life with Wallace and Paula repeated that Wallace was part of her life. At that point the mediator eventually mediator succeeded in focusing them both on planning for the future by suggesting that they needed to move on, as they were not going to agree on the matter under discussion.

#### 7.5.7.4 June and David

There was also evidence that suggested 'male privilege' in this case, detail of which can be found in 7.5.8.4 below.

## 7.5.8 Economic abuse

### 7.5.8.1 *Nina and Neville*

At the beginning of their second JM, the mediator asked Nina and Neville what had been going on since the last meeting:

*Nina* After the last time, I started looking quite extensively for a flat that met our requirements

*Med 1* mmm

*Nina* Neville had left it up to me in terms of finding a place and I found, I didn't mention it for quite a few days and when I had three possible places I said to him, I'd like to possibly secure one today, things are moving quickly this time of year with students. I said what sort of input do you want? Do you want to them or are you just happy for me to just make the decision. At that point he said I don't want to talk about it. I don't want to talk outside mediation. I said we've already agreed this in mediation...

Nina carried on the story, by saying that Neville's response was that they could not afford the flat as there was not enough money; when she checked, she found that he had withdrawn all of their money from the joint account. She ended by saying:

*Nina* He left me with nothing

The mediator listened to Neville's explanation, which was that he was waiting to hear what contact he would get. She then referred to the outcome summary that had been sent to them both and read the content that related to care, which stated that details of contact were to be agreed after they had secured the flat.

### 7.5.8.2 *Alice and Clive*

When Alice and Clive separated, Clive started to deposit, what Alice described as '*an excessive amount of money.*' into the joint bank account and continued to do so after Alice asked him to stop. She raised the finances as an agenda item at the beginning of the meeting and Clive said that he had come to mediation to discuss contact only. The mediator explained the purpose of the agenda for the meeting as allowing both parents to identify any concerns that they wanted to discuss. The mediator added 'finances' to the agenda and later introduced the subject:

*Med 3* what were you thinking about financially long-term?



*Alice well at the moment you're paying a lot of money into our joint account and um you probably need to look at reducing that so that you can afford to pay the rent for your new place and pay for other expenses.*

*Clive yes*

*Alice and you're also paying childcare as well*

*Med 3 okay so you're saying that there is quite a lot of money going into the joint account and you want to be sure that Glenn has got a roof over her head etc. um you've also got rent to pay now so there will be some need to look at the finances to see what your income and outgoings are. ...that is something that needs to be looked at*

The parents discussed finances in terms of the mortgage and other outgoings and Clive expressed concern about Alice being able to afford all of the expenses, as she only worked part time. Alice made it clear that with the benefits she was eligible to claim, she would be able to manage financially.

Clive then advised that he had spoken with the child-minder to arrange for him to collect Glenn from school, which might mean a reduction in the amount of childcare that needed to be paid in the future. This came as a surprise to Alice who felt that Clive was disrupting Glenn's social networks. The mediator commented:

*Med 3 You'll obviously need to have a conversation about that to see if you can agree*

This extract also presented the behaviour of 'isolation'. Glenn had been looked after by the child-minder for a number of years and was friends with the children in that family. Essentially, their relationship had become akin to that of siblings. Clive, by deciding that he would collect Glenn from school, was also presenting the behaviour of 'using children.' By not discussing the option with Alice, he had also exercised 'male privilege'.

### 7.5.8.3 Linda and Billy

In 7.5.3.1 above, Billy accused Linda of lying. Following on from that accusation, she became upset about the contact he wanted, which fell outside of terms of their court order. Billy wanted to take Shelby to his parents' house. Linda used this opportunity to introduce another outcome that she wanted:

*Linda all we want to do is for him (Billy) to own up to his responsibilities such as showing an interest in his well-being and education, ensuring that Shelby gets his educational needs books pencils whatever he can supply really. And all you have to do is cut down on his own expenses...*

She explained that he spent money on designer clothes, a fast car, and brand-new phones and she then expressed another clear concern that she had previously raised with the mediator during her SIM:

*Linda At the end of the day all we want is for you to show that you're his dad. He doesn't pay maintenance he hasn't paid maintenance since 2009... We just want him to do his bit.*

*Med 1 you've not mentioned maintenance at all*

*Billy I'll pay it when I get to take the kid to my parents.*

The mediator added this item to the agenda explaining that contact and maintenance are not linked.

#### 7.5.8.4 June and David

June and David spent the majority of the first JM providing information for their OSFI, which was recorded on a flipchart by the mediator. During the disclosure, the mediator asked June about the outstanding balance on her personal credit card and how she used that card:

*June if I go out and get food shopping then I put it on the joint account, then say if I go out with my friends then I'll put it on the credit card because I can't put that on the joint account.*

The mediator then asked her about future expenses for the children, as June had not made provision for that. Jane explained that she liked the children to have nice things and that their daughter had purchased some clothes at the weekend that she had also paid for on her credit card. David's response to this was:

*David 'I have told you that I'm not paying for clothes from Next she can get them from Primark'.<sup>144</sup>*

Once their financial disclosure was complete the mediator asked them what ideas they had for dividing their assets:

*David looking at mine at the moment it's saying that I'm going to have to find more money than I've actually got, I'm paying household bills at the moment and*

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<sup>144</sup> This extract also presents the behaviour of 'using children'

*June is going to have to take them on. She'll have to get a proper job so that she can get a mortgage.*

The mediator asked June what ideas she had for division of their assets:

*June I thought it would be a good idea if the mortgage is paid off so that the kids are secure I would then be put on as the owner of it, but there would be chargeback so that whatever comes first whether it is my death or remarriage or the youngest gets to 16/18 then when the house is sold that David and I would get half each. And also I get money to put towards supporting the kids each month from David.*

She went on to explain that she would apply for all the benefits that she could get, so that she could pay the bills but David responded:

*David 'If I pay off the mortgage then and won't have enough money then I might not have enough money for a deposit on a house myself'.*

However, at this point David agreed that he would consider the option presented by June although he was concerned about relinquishing the financial security that he currently had.

At the next JM, David offered a completely different proposal and during the conversation June became very emotional. During the marriage they had agreed that she looked after the children. The option that David was suggesting meant that he kept financial control by leaving a mortgage on the home that she was living in with their children:

*June that's my major thing I've got kids to look after I've got to be there to make sure that the kids are okay*

*David it's your decision to get divorced.<sup>145</sup>*

The mediator explained that, on separation there was a requirement to consider a fair division of their assets and that the financial arrangements that they had had as a couple living together, would need to change, to which David responded:

*David that's why we came here we came to mediation to sort things out that way we wanted them to work and that's why this current mortgage I'd continue to pay that, that would be my preference. What I'm also saying I would need a percentage of the money from the house when it sold so that I can pay off my mortgage.*

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<sup>145</sup> The extract also presents the behaviour of 'minimisation, denial and blame'

He went on to justify why he should retain the mortgage and why he should get enough money out of the sale of the family home to pay off his new mortgage. He continued:

*David this is the only sensible way to make this work, and when I tell people they are not going to say you 'got a block on your head mate what the hell are you doing', which is all I've been getting for the last two months. Even my solicitor has said that I should not pay the mortgage off and I should not continue to pay it.*

The mediator decided to explore the avenue of 'not paying off the mortgage':

*Med 4 if you didn't pay off your mortgage what things look like in the end*

*David June could get a mortgage for the £30,000 but it would be over 25 years*

*June I'm not in a position to get a mortgage, (she raised her voice) I can't even get a credit card on a part time job. How am I supposed to afford all the other bills as well?*

Eventually the mediator enquired about the savings that were in David's sole name:

*Med 4 what would happen with the savings would let that be shared?*

*Dad I would keep that because I'm paying mortgages. If I give you half and my job disappears*

*June it doesn't give me any leeway with benefits and that what if the washing machine blows up?*

*David I've got money I will not see you suffering*

June then reflected on the past when she had to find the money herself to pay for repairs because he had refused to give her the money. Again the mediator asked about the savings, in a slightly different way:

*Med 4 taking that into account what would happen with the savings would you share it?*

*David No! That's the only safety net that I've got and I'm keeping it (raises voice) because I'm paying both mortgages and if my job disappears*

*June just have one mortgage and one set of bills*

By the way David handled the discussion relating to the division of assets it would appear that he had already decided what would happen. He would keep all of the available cash as a safety net for himself and possibly also to retain a level of control. He didn't see the need for June to have any savings at all and June was clearly concerned that she was going to struggle financially. In keeping with commentary in 6.2.8 above (using economic abuse), he knew what he thought was right financially and he expected mediation to work that way.

## 7.6 Conclusion

This chapter presented the findings relating to the JMs by seeking to identify the existence of domestic abuse in those meetings, using the DDAIP tactics of control as themes representative of abusive behaviours. It was found that DA domestic abuse was not identified in four of the cases and these were discussed in section 7.4 above. In the remaining seven cases the findings relating to the DDAIP tactics of control were presented in 7.5 above.

The next chapter will therefore discuss the findings relating to the tactics of control identified in both MIAMS and JMs and conclude by answering the secondary research questions ii to v. These are:

- ii. What types of abusive behaviours are alleged or inferred during mediation sessions?
- iii. How do mediators manage disclosure of abuse and any client responses to such management during mediation?
- iv. How do mediators manage expressions of emotions by clients?
- v. Where a parent expressed concern about the welfare of a child, how was this managed?

## Chapter 8 Discussion of Findings

### 8.1 Introduction

Chapters six and seven presented the research findings categorised in relation to aspects of the tactics of control developed by the Duluth Domestic Abuse Intervention Programme (DDAIP), a programme targeted at male perpetrators of domestic violence.<sup>146</sup> This chapter is a discussion of those findings and, where possible it seeks to locate the findings within the process, principles, and practice of mediation outlined in Chapter two, as well as the previous research and existing knowledge detailed in Chapter three.

The primary research question of this thesis has been:

*‘Do mediators screen for domestic abuse and, if and when they do, how do they manage the process and client responses?’*

This question was underpinned by five secondary research questions aiming to elicit relevant data to answer the primary question. The findings relating to the first of these sub-questions - *‘is there initial screening for abuse, and if so, how is it done?’* - were presented and analysed in Chapter five. The significant finding is that mediators do screen for domestic violence in line with the guidelines published by National Family Mediation (NFM) and the Legal Aid Agency (LAA). However, as concluded in Chapter five, the process of screening is not sufficient to identify all cases of domestic abuse for three reasons. The first is the woefully inadequate amount of time afforded to this part of the Mediation Information Assessment Meeting (MIAM). The second is that the screening process lacks investigative depth and is therefore unable to ascertain the presence of domestic abuse in the relationships. The third reason is that the NFM policy and guidance on the screening process focuses on the client’s *perception* of the abuse, as opposed to the mediator’s *interpretation* of the abuse.

This chapter will, therefore, first summarise the significant findings for each of the DDAIP themes. It will then discuss the most important insights arising from the data presented in chapters six and seven and it assesses their significance in relation to

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<sup>146</sup> For further detail of this programme please see sections 1.5 and 4.6.8 above

process and policy. In order to do this I will recapitulate the secondary research questions and review the answers suggested by the data.

This summary in section 8.3 below, therefore, relates to the secondary research question '*What types of abusive behaviours are alleged or inferred during mediation sessions?*' and so summarises the most prevalent abusive behaviours alleged or inferred. Section 8.4 then summarises the mediator strategies and techniques used by mediators to manage disclosure of abuse and also summarises any client responses to such management. Section 8.5 provides findings relevant to the secondary question '*How do mediators manage expressions of emotion by clients?*'

Section 8.6, responds to the research question, '*Where a parent expressed concern about the welfare of a child, how was this managed?*' Section 8.7 provides a summary of the findings in sections 8.3 to 8.6 and the references for this chapter are in section 8.8.

## **8.2 Summary of DDAIP themes**

The extensive analysis in Chapters six and seven makes it clear that analysing the data was an iterative process, which was conducted on a case-by-case basis and then applied to each theme by way of further detail, in two ways. The first was to indicate the father's primary abusive behaviours within the 'theme under discussion', and then other behaviours were identified, either within the theme or detailed in a footnote.

Additionally, whilst there has been previous research relating to domestic abuse in mediation, none of the studies has focused on the abusive behaviours that the DDAIP programme seeks to change. To this end, each of the behaviour summaries that follow provides significant conclusions in each theme.

### **8.2.1 Theme 1: Coercion and Threats**

This theme was found in 12 of the cases during the MIAM and all of the cases (n=7) in which domestic abuse was evident during the joint meetings (JMs). In all of these cases the data suggests that the fathers were attempting to reach a conclusion that

fulfilled their own needs without considering the needs of their child/ren, or those of their former partners. Coercive behaviour was evident in the MIAM but the full extent and impact of the behaviour did not become clear until both parents attended a joint meeting (JM).

The pattern of the use of coercion and threat was complex and has not been previously explored in existing mediation commentary. The father would make a suggestion, for example, for contact, and if that suggestion was not immediately accepted by the mother, the father, offering justification, would repeat the request. The repetition would soon become a demand and then a threat would follow, which was designed to 'encourage' the mother to acquiesce. This pattern became a 'power struggle' wherein, if the mother eventually agreed to the original request, the father would then make a further demand within a very short space of time. If the mother did not agree, the threat would be repeated until the mediator intervened in the exchange.

One of the mothers likened this behaviour to a 'runaway steam train' where the father continued to make demands relentlessly. 'No' seemed to be the wrong answer and any compromise suggested was not an acceptable option. This invoked a high level of concern from the mothers and left them with some negative thoughts as to where their husband's demands might lead. Indeed, a number of mothers expressed a serious concern based on what might be described as a tactic of 'progressive coercion' being employed by the other parent, that their husband might be gathering evidence to make an application to the court, for either joint or sole residence.

The effect of this on the mothers was extremely disquieting. One mother, who was a member of a professional membership organisation, had invested many years of training and employment to attain and retain her status and she was so worried that her husband would apply for residence of their daughter, that she took the decision to resign from her job. Fortunately, her employer was sympathetic to her current position and offered her a career break. The perceived threat from her husband made her feel that she was left with no option but to 'fight' to keep her daughter and the



best way to fight was to ensure that she was constantly available to look after the child.

### **8.2.2 Theme 2: Intimidation**

This theme was identified in all 15 cases during the MIAM and, subsequently, in all of the cases in which domestic abuse was evident during the JM, with harassment being prevalent in the majority of these cases.

One particular theme which the current mediation literature has not explored previously is the use of technology to communicate at a speed that becomes abusive by virtue of the number of messages that can be exchanged in a short space of time. Trinder et al. (2002) conducted research on divorced parents making court applications for contact and noted that parents resorted to communication either through their lawyers or by fax, text message or email. At the time that research study was conducted, technology did not allow easy access to these communications; indeed, it could take some days before a text message was delivered. Not so now.

This new phenomenon of almost instant intimidation by text message and email was disclosed by parents during both MIAMs and JMs. Where text messages were used to harass the mother, at least one solicitor - in the case of Alvira, took this behaviour seriously and suggested an application to court for a non-molestation order. Similarly, emails were also used to harass many of the mothers and in some cases these were in addition to the text messages that had been received.

Many of the mothers described the content of these messages as upsetting and distressing and a number of mothers used the word 'bombarded' to describe the number of messages that they received. It is also important to note that the content of these messages was often threatening, repetitive, demanding and, as a consequence, emotionally abusive.

Further, the fathers continued to send the messages even though in some cases they had been asked to refrain from doing so. This suggests that the content may reflect a pattern of behaviour used by the fathers over many years. The prevalent use of this

type of communication, with its very negative and intrusive nature, is one of the significant findings to emerge from this study.

The data for this study was collected in 2010 and since that time I have witnessed as a mediator an increased use of the social media website Facebook for negative comment by parents who are in dispute about arrangements for their children. These disputes include both welfare and contact issues and one significant effect that this has on the mothers concerned is an 'invasion of privacy'. The nature of such websites means that a negative message can be spread to many people in a matter of minutes and mothers who have experienced this intrusion, find the experience emotionally draining. This requires further research and discussion of appropriate policy and practice responses. [The practice of online abuse has become known as trolling (Nicol, 2012)]

### **8.2.3 Theme 3: Emotional abuse**

This theme was evident in all of the cases during the MIAM and subsequently in JMIs relating to these cases. Each mother had a different experience of emotional abuse, and their experience depended on the nature and extent of other abuses present in the relationship.

Previous research by Greatbatch and Dingwall (1999) considered how mediators managed the disclosure of domestic violence in family mediation, but their main focus was on reports of physical violence made predominantly by mothers. As a consequence of this focus, they did not deal with emotional or psychological abuse unless it directly related to acts or threats of physical violence.

In assessing the findings from chapters six and seven, it is not unreasonable to deduce from the various behaviours described three distinct issues. These are 'physical health', 'mental health' and 'spoken word'.

#### 8.2.3.1 Physical health

Some mothers experienced challenges to their physical and emotional health and these challenges were linked to the breakdown of their relationship. For the majority of the mothers in this group the challenge related to pregnancy.

One needed an operation and was hospitalised for a week. During that time, her former partner harassed her constantly.

Of the mothers that attended JMs. this particular abusive behaviour was not mentioned, although other emotional abusive behaviours were inferred in the analysis. Notwithstanding this abuse, one mother reached agreement in mediation (C028).

#### 8.2.3.2 Mental health

All of the mothers alleged or inferred psychological abuse during their MIAM and of the seven mothers in study five,<sup>147</sup> all of the mothers experienced emotional abuse and each of their experiences varied. Some mothers described feelings of loss of confidence and self-esteem, whilst, others spoke about their former partner 'playing with their mind' and of feeling humiliated. This behaviour was linked to the significance of the spoken word described in 8.2.3.3 below.

#### 8.2.3.3 Spoken word

Each of the mothers in study five experienced some verbal abuse during the JMs that they attended and in some cases the fathers became progressively persistent and aggressive during the meetings. In some cases this led to the mediator deciding that mediation was no longer suitable for the parents' issues. Yet in one case, despite the fact that the father was overtly abusive, the parents reached agreement.

Whilst the emotional abuse detailed in 8.2.3.1 above became historical, the impact of that abuse remained with the mother after separation. On the other hand, the abuses

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<sup>147</sup> The 4 cases where domestic abuse was not 'identified' in the joint meetings

detailed in 8.2.3.2 and 8.2.3.3 continued during the JMs in study 5.<sup>148</sup> They did not continue in the four cases in study four.<sup>149</sup>

#### **8.2.4 Theme 4: Isolation**

This theme was found in eight of the cases during the MIAM. Six of the cases related to a child being isolated from their support system, one case related to both mother and child experiencing isolation, and once case related to the mother being isolated from her immediate family. In the JMs, some of the current arrangements for contact suggested isolation, as did some of the suggestions for future contact made by some of the fathers; the mothers experiencing this displayed increasing distress.

The prevalent form of 'isolation' was the father withholding information from the mother relating to the child's wellbeing or location. All cases had the additional element of 'emotional abuse,' which was exacerbated by the mother's fears and concerns for their child's wellbeing.

All of the mothers in this sample experienced negative emotions and the words 'fear' and 'stressed' were used by many of them to describe how they felt when their child was away from them. Where a child was younger or had health problems, some mothers spoke about the anxiety that was brought about by attachment issues.

Even basic information about the child during contact visits was withheld from the mother, as described by one of the mothers during her single information meeting (SIM) when she explained that - even though she had asked her former partner on many occasions to let her know if their child had 'eaten, drank and pooped' - she regularly had to ask him for that information as he never volunteered it. None of the mothers seemed able to use the time that their child was away from them constructively as they spent all of that time worrying.

Indeed isolation became more alarming from the child's perspective as in the majority of cases, the mothers reported negative behaviours from their children after they had spent time with their father. Examples of these behaviours included regression, sleep

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<sup>148</sup> The 7 cases where domestic abuse was 'identified' in the joint meetings

<sup>149</sup> This does not mean that there was no post separation abuse; it simply states that it was not evident during the JMs

disruption and temper tantrums. This finding is supported by the literature provided by agencies that support women who are experiencing domestic abuse,<sup>150</sup> as well as in literature that relates to the subject under discussion.<sup>151</sup>

The prevalent use of ‘withholding information,’ suggests that the fathers were seeking to be in ‘control of parenting’ when the child was with them, and that they may have had little regard for the child’s regular needs or routine. This concern about isolation is highlighted in the case where a father would not let a child take his favourite game with him after contact; neither would he allow the mother to collect personal effects from the family home for her and their children.

Whilst this phenomenon was identified in only one case in this sample, I have witnessed as a mediator, many cases where personal belongings are either withheld, or the access to those belongings is restricted. Usually in those cases, the mother left the family home and the father uses the fact that the mother chose to leave, to justify many actions; justification for the case in this sample related to items that the mother and her children depended on for day-to-day living.

### **8.2.5 Theme 5: Minimisation, denial and blame**

This theme was identified in all 15 of the cases during the MIAM and five of the cases in which domestic abuse was evident during the JM; each mothers’ experience was different.

#### **8.2.5.1 Minimisation**

A number of fathers’ minimised concerns raised by the mothers and in the majority of these cases, those concerns were related to the welfare of the children, as will become clear in 8.6 below.

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<sup>150</sup> Women’s Aid Federation of England (WAFE), Co-ordinated Action Against Domestic Abuse (CAADA), and Refuge

<sup>151</sup> See for example Hanmer et al. (2000) and Harne and Radford (2008)

#### 8.2.5.2 Denial

A number of fathers denied that certain events had taken place, even when the child had raised this as a concern with the mother as something that occurred when they were with the father. Five of the fathers in the final JM study<sup>152</sup> were involved with substance use or abuse, specifically drinking excess alcohol, taking prescribed medication and/or smoking illegal substances<sup>153</sup>. In these cases each denial was defended by finding a related fault with the mother or a member of her family, and as a consequence, where the child had shared a concern with the mother, the father, by denying the act was implying that the child was telling untruths.

#### 8.2.5.3 Blame

When the parents attended their MIAM a number of fathers blamed the mothers for making it difficult to spend time with their children. This blame continued during the majority of the JMs in study five<sup>154</sup> and was used as justification for other abusive behaviours as detailed in 8.3.1 below. In the majority of cases in this sample, the decision to separate had been made by the mother and they were all blamed for the separation. Where the father initiated the separation, the level of blame did not differ but was focused on different issues.

### 8.2.6 Theme 6: Using children

This theme was evident during the MIAM in 12 of the cases, and whilst there were many examples of 'using children' evidenced in the data, the most prevalent abuse relating to this theme was poor communication. This behaviour is not mentioned specifically in the DDAIP but manifested itself by way of negative conversations between the parents and this poor communication was alleged or inferred in all of the cases in Study two<sup>155</sup> (n=15). One mother described these conversations as 'cross words' and whilst the other 14 cases did not offer any specific evidence of arguments, the content of each case suggests that this behaviour existed in all of the cases in the data sample.

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<sup>152</sup> The 4 cases where domestic abuse was not 'identified' in the joint meetings

<sup>153</sup> Or indeed a combination of these

<sup>154</sup> The 7 cases where domestic abuse was 'identified' in the joint meetings

<sup>155</sup> The 15 MIAMs where domestic violence was alleged or inferred

Whilst this finding is significant it is not unexpected, as the topic under discussion for these parents was a breakdown in either the relationship, previous parenting arrangements made for the children, or a combination of both. This impacted on parents' ability to work collaboratively, to agree future arrangements about children, as well as in some cases, their ability to reach agreement on financial matters.

The mothers expressed a plethora of emotions in describing how these events impacted on them, all of these were negative and denoted various levels of fear, confusion, sadness, anger, hurt and depression. Many mothers explained the experience in a way that suggested that they were constantly 'walking on eggshells' when their former partner was in the same place as them, or when they were speaking over the telephone. Only one mother inferred that the abuse did not start until after the decision to separate was made, (and that decision was made by the father).

Earlier mediation literature discussed the impact that arguments in the presence of children could have on them in terms of distress; more recent commentary (post-2011) goes further and focuses on the psychological impact that this phenomenon invokes (Parkinson, 2011 pp 48-62; Roberts, 2015 pp 88-89). Additionally, the UK government funds an information programme for separated parents that focuses them on their children's needs 'post-separation,' as well as their communication as parents.<sup>156</sup> At present, access to this programme is problematical because currently the only way a parent can attend without cost is by order of the court.

Other prevalent forms of 'using children', were 'disregarding a child's needs' and 'disrupting their routines,' more of which can be found in 8.6.4 below.

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<sup>156</sup> Detail of this programme can be accessed on this website <https://www.cafcass.gov.uk/about-cafcass/commissioned-services-and-contact-activities/spip.aspx>

### 8.2.7 Theme 7: Male privilege

This theme was evident in 14 of the cases during the MIAM and six of the cases in study five;<sup>157</sup> each mother had a different experience of this behaviour. As detailed extensively in section 1.5 above, women historically became their husband's chattels when they married and any wealth that they brought to the marriage became their husband's property. Whilst the status of wives has substantially changed for the better in recent years, there are still elements of male dominance present in intimate relationships.

The term 'male privilege' does not appear in mediation literature, but falls into the realms of power balance/imbalance, which is discussed in the books published by three key mediation commentators, Haynes (1995), Parkinson(2011), and Roberts (2014). These authors refer to power issues such as finance, gender, and emotional power and offer strategies for working with such issues in mediation. These issues reflect what is known as 'male privilege', and are used by the father as 'decision making' tools.

There was evidence in this study of fathers making major decisions that related to finance, accommodation and gender-specific roles without discussing them with their wives. What was interesting about the gender roles was the fact that a number of the fathers challenged the mother's historic and traditional role as a child's primary carer. The challenge made was based on their perceived entitlement to spend equal time with their child. Worryingly, in many cases assertion of the 'perceived right' was coupled with a demand for what could best be described as 'mutually exclusive' parenting, wherein the mother's established routines for the child were disregarded.

There were some cases where a husband forced sex on their wife whilst they were still living together, but this did not prevent one mother from reaching agreement in mediation.<sup>158</sup>

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<sup>157</sup> The 7 cases where domestic abuse was 'identified' in the joint meetings

<sup>158</sup> This couple had separate some time previously and the mother had a new partner (C028)



### **8.2.8 Theme 8: Economic abuse**

This theme was found in all of the cases during the MIAM and, subsequently, all of the cases during the JM; each mother's experience differed and often depended on the other specific abusive behaviours present in the relationship. Three key areas of abuse were identified and these were 'maintenance', 'housekeeping' and 'withholding information.'

#### **8.2.8.1 Maintenance**

A number of fathers linked the payment of maintenance to establishing and maintaining contact and some of those fathers refused to discuss this in mediation. Some were not paying any maintenance at all and others refused to review the amount of maintenance that they paid until they had established what they deemed to be appropriate contact.

#### **8.2.8.2 Housekeeping**

A number of mothers were given a monthly allowance for food and other household expenses and they did not have further access to the family funds. Many of these mothers struggled to make ends meet and as a consequence accrued debt on personal credit cards. These mothers were then blamed by the fathers for getting into debt.

#### **8.2.8.3 Withholding information**

In addition to not having access to family funds, some mothers were unaware of the extent of the family finances until they started their financial disclosure in mediation. One of the mothers, who had used her credit card to make ends meet, was astonished to learn how much her husband had saved in his sole name. In another case, the father withdrew all of the funds from the joint account, leaving the mother with no access to funds, suggesting an attempt to regain a level of control. As a practising mediator I have witnessed this excessive level of control and such control, as in this case, often leads to the breakdown of the mediation process.

Whilst the specific challenges of maintenance are not discussed in mediation literature, much has been written by academics on such maintenance disputes during divorce.<sup>159</sup>

### **8.2.9 Summary**

The fathers in this study used a broad range of abusive behaviours and in study five,<sup>160</sup> five or more of the eight behaviours in the DDAIP were evident. The mothers' response to these behaviours consisted of a combination of multiple emotions and also a notable emotional shift emerged as the meetings progressed. One example of this involved Nina who described how, during their marriage she had been submissive; as mediation progressed, she became more assertive in her thoughts and responses. However, these shifts appeared to increase the level of conflict, (in some cases).

Another interesting finding emerged as this section progressed and relating to actual physical attacks, which is how many people define domestic violence. There were a few incidents of physical violence where the father actually hit the mother. These all took place *before* the parents separated. There were also a number of physical, violent actions where the father lost his temper and hit inanimate objects, usually causing damage. Whilst we cannot draw a broad conclusion and say definitively that other abuses are now recognised as more prevalent than physical violence, the evidence from this data suggests that this may be the case.

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<sup>159</sup> See for example Hitchings E, Miles J and Woodward H. (2013) *Assembling the jigsaw puzzle - Understanding financial settlement on divorce*. Bristol: University of Bristol

<sup>160</sup> The 7 cases where domestic abuse was 'identified' in the joint meetings

### **8.3 What types of abusive behaviours are alleged or inferred during mediation sessions?**

In order to focus on how the mediators managed disclosures of abuse, it was necessary to initially identify the abusive behaviours that were alleged or inferred. There was no clear, common pattern in the way abuse was disclosed; as all the information relating to the abuse was spread across the meeting, which meant that the individual comments had to be collated by way of content analysis before any interpretation could be made of the story that unfolded during the session. The following sections categorise the prevalent abusive behaviours, by way of reference to the 'event' that triggered the behaviour.

#### **8.3.1 Justification**

This behaviour was intrinsically linked with 'blame' and in circumstances where the mother had initiated the separation and the father had not accepted the fact that the relationship was over. The father blamed the mother for ending the relationship and used that blame as justification for some of the unreasonable demands that were made. This also suggests that those fathers who used such justification might not yet have come to terms with the breakdown of their relationship.

#### **8.3.2 Repetition**

There were repetitive demands from fathers for more contact time with their children, irrespective of any concerns that the mothers articulated. In the majority of cases the demands became more aggressive as the mediation session progressed,<sup>161</sup> with some of the fathers tones of voice becoming almost menacing. This behaviour was consistent in nature, with very little change in the words used when the repeated demands were made. (This behaviour suggested a total disregard for the mother's viewpoint.)

#### **8.3.3 'I will compromise as long as it goes my way'**

Many fathers interpreted the term 'compromise,' as an action that the mother needed to undertake, as opposed to a need for concessions to be made on both sides. On this basis, some fathers insisted that the mother **offer** them a compromise, which often

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<sup>161</sup> Joint meetings averaged 90 minutes

related to their right to spend time with their child. They also expected that the contact time would fit around their own diaries, which meant that there was an expectation that the mother would change any plans she had already made. Again these demands became aggressive in nature as the JMs progressed.

#### **8.3.4 Rules and restrictions**

A number of fathers in this sample continually challenged daily routines that a mother had established with the child and referred to them as 'rules and restrictions'. This was often done in the context of demanding contact with their children when it suited the father - and often at short notice. Couched as an expectation of 'flexibility', these challenges also took the form of seeking to change, often at short notice, contact arrangements that had been previously agreed. Interestingly, the mothers who attended JMs wanted the children to have a good relationship with their father and were seeking to encourage 'co-parenting.' However, the fathers saw the need for routine as 'having no choice', and felt dictated to; this may have meant a perceived loss of control for the fathers.

#### **8.3.5 Upsetting children**

The majority of children in study five<sup>162</sup> were under school-age, but the three who were at school, complained to their mothers that their father had upset them during contact. Their reaction to this upset was a reluctance or refusal to go to contact. The dominant thread here was the fact that the father was saying bad things about the mother, as well as questioning the child about their home life, and other personal family information.

This may have been an attempt to get the child to the fathers' side. Where the child was questioned, those questions may have been totally innocent and the father merely showing an interest in the child's life. However, one father went as far as saying that he was checking to see if his former partner had formed a relationship with someone who was abusing the child.

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<sup>162</sup> The 7 cases where domestic abuse was 'identified' in the joint meetings

Notwithstanding the father's intention when questioning the child, the action upset some children to the point where the mothers too became upset. The intrusion into their privacy, as well as the change in behaviour that they witnessed in their children, contributed to this.

### **8.3.6 Gathering evidence**

Some of the fathers appeared to be apprising their solicitors of their former partner's misdemeanours. This was evident from the discourse during the JMs, where it was made clear by those fathers that they would do whatever they felt was necessary to achieve the outcome they felt they were entitled to. They were of the view that seeking a judgement might be the best way forward and as one father put it '*once the judge decides, she will have to make the child come to contact.*'

This led to some of the mothers articulating a fear that the father was building a case against them as mothers, with a concern in some cases that the father was planning to take the child away.

What is of interest here is the lack of understanding of the justice system on the part the fathers. The fathers wielded the system as a weapon and felt that their way to justice was proving the mother to be a bad mother. They made their interpretation of the law clear to the mothers. The mothers were fearful of this interpretation. One mother went as far as saying that even though no judge in the country would make her do what the father was asking for by way of contact, she still felt that her best option was to leave her job.

### **8.3.7 Stating expectations**

The mediators explained the principles of mediation and the mediation process to all of the parents involved in this study during the MIAM. It was on the basis that these principles were understood that a JM was arranged. As a mediator, I found the explanations made by each mediator clear, but all of the fathers in study five<sup>163</sup> started the process by stating their expectation of what the appropriate outcome of mediation

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<sup>163</sup> The 7 cases where domestic abuse was 'identified' in the joint meetings

would be for them. Only one of the fathers in this study changed his thinking during mediation.

### **8.3.8 Restricting the agenda**

One of the main purposes of mediation is to enable both parents to discuss any issues that are of concern to them. This was explained to all of the parents during the MIAM, and again at the first JM. With one exception, the fathers were very clear that the main focus for mediation was to be 'contact'. Conversely the mothers were clear that they needed 'financial issues' to be discussed as well.

### **8.3.9 Focus on self**

A number of fathers were so focused on getting the outcome that they wanted, that their child became a secondary instrument in the negotiation. The needs to have equal rights as a father, and to be fully recognised as an equal parent, became more important at times than spending quality time with the child. Whilst each mother's experience was different, all of them experienced a power struggle in terms of trying to find a way forward that both parents found agreeable. The fathers determined that spending quality time with their children meant that it was about the amount of hours that they spent with them, and not what they did with their children whilst they were together. The fathers concentration on time, coupled with the dismissal of the mothers concerns and suggestions, meant that the need to consider their children's 'best interests' was not considered. This also meant that the fathers felt that their own needs were more important.

### **8.3.10 Not listening**

The mothers in this study struggled to be heard and felt that it did not matter what they said if it was not the 'right' answer. They also felt that if a topic was something the father did not want to discuss he would quickly let both her and the mediator know. In the final study, all of the fathers 'second-guessed' what the mother was going to say and responded before they had finished speaking. This response related to what they thought the mother was about to say. This increased the levels of frustration in the meeting. Additionally fathers often interrupted the mother mid-sentence, in order to make a point, threat or demand.

Hargie (2011 p 182), writes that *'we often listen with the goal of responding, rather than listening with the goal of understanding'* and this statement is borne out in the way the fathers responded to the mothers in this study. Many mediation disciplines require that ground rules are established and agreed at the start of the mediation process, but in 'family mediation' there are no such standard rules. Family mediation clients sign an 'agreement to mediate' which focuses on the principles of mediation. However the practice of 'community mediation' has established ground rules, to which participants are asked to agree. These include the rule that 'listening does not mean you agree.'

### **8.3.11 Summary**

The behaviours summarised above represent an overwhelmingly self-centred viewpoint by the fathers, to the point where the discussions in mediation started to become a challenge, from the father's perspective to 'win the battle'. In the majority of cases, as the JMs progressed, the dominant nature of many of the behaviours emerged. They became a 'power struggle' to regain or retain a level of control. It also appeared that this 'power struggle' was worse, in the cases where the father had not fully accepted the end of the relationship.

The next section will give some insight into some of the techniques and strategies utilised by the mediators when these abusive behaviours were occurring.

## **8.4 How do mediators manage disclosure of abuse and any client responses to such management during mediation?**

This section summarises the strategies and techniques used by mediators when clients disclose abuse. There was no consistent strategy deployed in dealing with disclosure and the mediator response was dependent on the client. The content of the disclosure and the emotions the clients expressed during the disclosure, were also significant. As will emerge, some of the tools in the mediator tool bag are not used to screen for domestic violence. The evidence suggests that in joint meetings, screening does not take place and the tools are used by mediators to manage abusive behaviours.

### **8.4.1 Listening**

The mediators in this study listened a great deal, particularly when parents were sharing information on some of the difficult situations that they found themselves in. (This goes some way to explain the length of the extracts needed to illustrate the points made in Chapters five, six and seven). But the 'type' of listening used depended on what had been disclosed by the client.

One example was where a client was telling a story and became emotional; the mediator used 'empathic listening,' where it would appear that she took time to try and understand the feelings and emotions that the client was experiencing. There was evidence of this type of listening being used in many of the recordings where the mediators were non-judgemental, did not offer advice, and encouraged the parent to explain and add substance to their story.

There was also evidence of 'active listening,' which involved verbal cues. These tended to be monosyllabic such as 'yes', 'mmm', 'okay' and 'right' and there were many examples of these specific words being used by the mediators. These cues also could take the form of asking questions that seemed to encourage the client to either continue with their story or to refocus the client.

Verbal cues tend to be accompanied by 'non-verbal' cues such as posture, nodding, smiling and eye contact, but because of the nature of the data, I cannot provide specific evidence that this took place. As a practising mediator, through listening to



the data, I would suspect that non-verbal cues were displayed to the parents, one example being 'eye contact'. If there was no eye contact the conversation would cease very quickly.

The use of 'active listening' encouraged the parents to continue their story, by giving them enough space to think and speak; it also allowed the mediator time to gather the salient points together, in order to get to a position where she was able to effectively summarise what the parents had said.

What was really extraordinary for me as a mediator and researcher was to find that 'listening' is not included in the NFM mediator tool bag, as the data makes it clear that listening is in widespread use amongst mediators.

#### **8.4.2 Use of questions**

There are many examples of the mediators asking questions for understanding and clarification and different types of questions were used. Where a parent made a comment that the mediator found unclear, questions were asked that helped the mediator to clarify and understand what the client meant.

The mediator tool bag espouses the use of 'open questions'<sup>164</sup> but during their foundation training, mediators are advised to avoid using questions that start with word 'why'.

*'Open questions are broad in nature and require more than one or two words for an adequate answer. In general they had the effect of encouraging clients to talk longer more deeply about their concerns (Hill, 2004 p 118 cited in Hargie (2011) p 126).*

The mediators used 'open questions' extensively when they were gathering information from the parents. The use of this type of question, coupled with 'listening', meant that the parents were able to effectively share details of events with the mediator.

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<sup>164</sup> Questions that start with the words who, what, where, when, why and how

Conversely, where the mediators wanted a short answer that would clarify a certain piece of information, they used 'closed questions', which generally elicited very short answers, usually 'yes' or 'no'.

There were occasions, particularly when conflict was increasing during the meeting, where mediator would break the NFM 'rule' about direct questions and ask the question 'why'. This direct question was used partly to stop negative behaviours, for example where voices were raised. Direct questions were used less often than open and closed questions.

#### **8.4.3. Summarising**

This strategy was used regularly by the mediators in both the MIAMs and JMs. It was used to ensure that the mediator had understood what the parents had said and also to ensure that the parents were given the opportunity to clarify the summary if necessary. The mediators sought this clarification by asking parents, at the end of each summary, if what had been said was a fair reflection of the earlier discussion.

Where parents were in conflict and the topic of concern was raised in the JM, the mediators tended to 'mutualise' the summary thus recreating the problem as a joint issue that both parents needed to resolve. The mode of summarising in separate meetings (either during the MIAM or JM) was different, in that the mediators often included the parents' feelings in the summary.

#### **8.4.4 Focus**

This strategy was used regularly throughout both MIAMs and JMs and had a number of subtle variances, as will become clear below.

##### **8.4.4.1 Future focus**

With one exception, refocusing the parents from what had happened in the past to considering how they would like things to be in the future was used in both MIAMs and during JMs. It was used particularly where the parents were having difficulties making decisions about contact. This strategy was often used where a father was focusing on what the mother was doing wrong, now or had done wrong in the past,

from his point of view. Mediators were often heard speaking about being unable to change the past, but using the past to help 'frame the future'.

#### 8.4.4.2 Child focus

The mediators regularly asked parents to consider their children's needs and used the words 'best interests' to encourage both parents to focus on their child. In all cases the mediator 'included' the child in mediation. Where a child was of an appropriate age,<sup>165</sup> the mediator discussed the option of her meeting with that child on the understanding that the parents would hear the child's views from the mediator as a neutral third party. Where the child was younger the mediator 'brought the child into the room' by asking each parent to tell her a bit about their child. Once both parents had been given the opportunity to speak about the child the mediator mutualised their story by giving a joint summary to both parents. This strategy, when used, substantially reduced the tension in the room.

#### 8.4.4.3 Change of focus

This was used in different ways and depended on what the parents were saying or doing at the time. During a MIAM, where a parent had been sharing a negative story with the mediator and had become emotional, or where a parent started to repeat themselves, it was not unusual for the mediator to change the parent's focus by introducing another topic for discussion. Although dealt with seamlessly the suggestion appeared to be made suddenly, and generally was a substantial departure from the issue under discussion. It was often used when a parent had directly or indirectly disclosed abusive behaviours. This strategy was also used in JMs, particularly where the conversation became repetitive and where the topic under discussion was increasing the level of tension in the room.

#### 8.4.4.4 Direct focus/reality checking

The step-by-step nature of mediation means that the mediator will work with the parents on a single agenda item at a time. Where parents tried to add an extra item to a discussion, the mediator acknowledged their request, explain that they would

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<sup>165</sup> Consultation with children is not generally conducted with children under the age of seven.

discuss that separately and would then refocus both parents on the agenda item under discussion. Additionally, where a parent suggested an option that the other parent was unsure of, the mediator would, by way of 'reality checking,' focus the parent on the detailed practicalities of that option.

#### **8.4.5 Use of metaphor**

This was often used in conjunction with 'focus' where parents wanted to resolve all of their issues at the same time. Mediators offered the parents a vision of the journey that they were undertaking and this appeared to reduce any tension that had built up. One example of this was where the mediator told parents that they were '*trying to run a marathon in a couple of minutes*'.

#### **8.4.6 Use of silence**

Where a parent was emotional after sharing their story with the mediator, or where a parent had made a provocative comment, some mediators used a long pause before they responded. This use of the pause was quite interesting, because it allowed both mediator and parents some breathing space, after which a definitive statement could be made. (This statement was often made by the mediator).

Specifically the use of silence was more prevalent in MIAMs when the parents had separate time with the mediator. Interestingly silence was used in the JMs where the mediator had separate meetings with each parent to assess the current situation, and to determine whether they might make any progress in mediation. Taking into account the parents' subsequent response to the mediator), it appears that in these cases the parents took the silent time to reflect on the current situation and make definite decisions as to what to do next.

#### **8.4.7. Tone of voice**

Generally, the mediators had a relatively gentle way of speaking, even when challenging behaviours were presented. There were, however, a few exceptions to this, which I note specifically, because this style of intervention runs counter to mediation training. There are occasions where a father 'overstepped the mark' in

terms of the way he spoke with either the mediator or his former partner, which meant that the abuse was present in the room.

The mediators dealt with these occasional incidents in different ways. In one case the mediator raised her voice and gave the father a veritable 'ticking-off'. In another case she the mediator responded to the father in the same tone of voice as he had used when speaking to her. A further situation arose when a father referred to the mediator as 'my love' and the mediator, eventually realising what the father had said, commented, 'don't call me my love' mid-sentence without changing her tone of voice, and then completed the sentence she had originally started!

These responses are interesting for two reasons. Firstly, mediators are trained to not respond to parents in this way, particularly when both parents are in the same room. Such practice is frowned upon as it is considered unprofessional and in breach of the principle of 'impartiality'. Should such difficulties arise, mediators are expected to take a break, meet with each parent separately. In the separate meetings they explain the concern to each parent and, once both parents were together, make a joint decision as to whether to continue or whether mediation should terminate. Secondly, the notable change in the mediator's voice meant that each father heard what the mediator said, and eventually responded positively.

Speaking as a professional practice consultant to mediators, had I received a complaint from a client following such an incident, I would have had to consider whether the mediator had the necessary expertise to deal with such cases. That said, the intervention worked, so it would appear that a firm hand might be needed in some cases, to dissipate negative behaviours. More importantly, one father reached agreement in mediation despite the unusual mediator intervention at a previous meeting.<sup>166</sup>

#### **8.4.8 Mediator use of self**

Where parents struggled to agree on the child's ability to undertake certain tasks, such as travelling long distances in a car, mediators', on occasion used their own suggested

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<sup>166</sup> The mediator told the father off for an inappropriate comment that he made about the mother

lack of knowledge, to encourage both parents to jointly seek further help and clarification from a professional such as a health visitor. The mediator referred to this lack of knowledge as *'not being her area of expertise.'*

This strategy was used where parents had different ideas of the child's capacity in various situations. The mediators suggesting that the parents speak with a professional meant that parents were achieving two things. Firstly, they were working together as parents, and, secondly, in doing this, they were jointly considering what was best for their child.

#### **8.4.9 Empathy**

The data contained many examples of the mediators empathising with parents and was used extensively during the MIAM. This was to be expected, as this meeting is designed (in part) for the parents to tell their individual stories. It was used in many different situations, and the empathic intervention by the mediator always ended with a summary.

#### **8.4.10 Managing conflict**

Parents came to mediation because they were unable to agree issues relating to children, finance and property. With this conflict already an entrenched part of their everyday life, the mediator had to manage a number of conflict situations, which included parents making demands, expressing anger (and other emotions) plus all of the behaviours detailed in 8.2 above.

The mediators used all of the strategies detailed in this section and, in addition to these, they also intervened when a conversation became negative, 'normalising' their current situation, 'mutualising' their current problems, and 'acknowledging' each parents' positions. Also, where one parent wanted to discuss something and the other parent either expressed reluctance or immediately refused to discuss that issue, the topic was still added to the agenda for the meeting, by the mediator.

#### 8.4.11 Summary

The strategies and techniques summarised above, represent those that appeared to be the most dominant in the data collected. When compared to the 17 strategies in the NFM mediator tool bag, it is noteworthy that, with the exception of 'co-mediating', all of the strategies were used during the mediation sessions. In 2.8 above, the extant literature identified the fact that two key skills from community and peer mediation were missing from the tool bag; these were empathy and listening.

The literature also identified the differences in the training provided to family and community mediators and noted that community mediators received extensive skills development during training (Crawley, 1995). The introduction focuses on general skills,<sup>167</sup> and then goes on to centre on specific practise areas that are designed to effectively manage the mediation process. This is achieved by 'clustering' a number of skills together.<sup>168169170171</sup> However, of the ten prevalent strategies detailed in this discussion seven of them do not appear in the NFM tool bag at all and three are included in part.

##### 8.4.11.1 Three tools from the NFM tool bag evidenced in part

The tools evidenced in part are the *use of questions* where open questions are in the tool bag and were used, but the data revealed that mediators also used closed and direct questions. *Child focus and future focus* are both in the tool bag, but the mediators also used *focus* to change the direction of the meeting, where a client was becoming emotional or repetitive, as well as direct focus on a situation where further clarification or reality checking was needed. Finally the mediators regularly *summarised* what their clients had said and there was evidence, particularly in the MIAMs that these summaries also included the client's feelings.

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<sup>167</sup> Handout 2.9: Skill and qualities of a mediator - listening and general communication, summarising, building rapport, assertiveness, facilitation, problem solving, conflict management, presentation skills and managing the process

<sup>168</sup> Handout 3.11: Active listening skills – encouraging, acknowledging, checking, clarification, affirmation, empathy, asking a variety of questions, reflecting and summarising. Also important is timing, balance, tone of voice and volume

<sup>169</sup> Handout 5.1.3: Questioning skills (focusing) – open, closed, focused, specifying, clarifying, challenging

<sup>170</sup> Handout 5.5.3: Facilitation skills include attending, modelling, responding, questioning, keep silent, being concrete, boundaries, power, monitoring, solve problems, process and confronting

<sup>171</sup> Handout 5.5.8: Balancing power - facilitation, reframing, listening, probing, use of neutral language and assertive communication can all contribute to redressing imbalance of power

#### 8.4.11.2 The seven tools not included in the NFM tool bag

As mentioned in chapter 2, listening was not included in the NFM tool bag, yet throughout data analysis, substantial evidence was found to support the fact that mediators spend a great deal of time listening. Furthermore the evidence identified the fact that the mediators listened actively.

The use of metaphor appeared to be prevalent in these high conflict cases and was used to refocus the clients, often in conjunction with the use of silence. Similarly the tone of voice used by some of the mediators was adjusted to reflect the dynamics of the room.

Borrowing from the community mediation handouts, the mediators sometimes 'modelled' the client's tone of voice and on occasion, raised their voice to manage conflict between the parents. In one meeting (C028), the father was 'told off' by the mediator for making an inappropriate comment about his former partner. The types of conflict varied and included making demands (C004), expressions of anger (C003) and appropriating fault and blame (C056).

Some mediators used self-deprecation in an attempt to encourage parents to collaborate on a 'joint investigation relating to their child's future (C030). Whilst this did not always work in terms of collaboration, it was an extremely effective strategy for encouraging the parents to focus on their child and the future.

The use of empathy was widespread and was often used independently during separate meetings (C021). It was also used during joint meetings along with other skills such as 'mutualising' and 'affirmation.'

#### 8.4.11.3 The NFM tools and screening for domestic violence

In section 2.7.4 above the 17 tools in the NFM tool bag that were offered in family mediation training were identified. These were compared with the prevalent 'tools' (skills) that Community and Peer mediation develop during their core training courses. Comparison is drawn above with tools that are included and excluded from the NFM tool bag.



Three tools from the NFM tool bag (although effective in some situations) were regularly used to manage bad behaviour. These are 'reframing', 'mutualising' and 'normalising'. There is evidence within the data that clearly suggests that these tools were also used to silence domestic violence. Specifically, there was evidence that economic abuse was normalised (see 6.2.8 above), as was differences in parenting styles (see 7.5.1.2 and 7.5.3.3) and disagreements relating to contact (see 7.5.1.4 and 7.5.6.6).

Reframing was used to calm aggressive language, often related to rules and restrictions as detailed in 8.4 above (see also 7.5.1.2 and 7.5.3.4). In some instances it was used to dilute inflammatory language (see for example 7.5.3.2).

Mutualising was used to discourage some couples from seeking to allocate blame (see 6.2.1.1 above), divert emotionally abusive comment (see 7.5.3.3 above) as well as manage disagreements (see 7.5.6.6 above).

What appears to be a common factor in many of these cases is that the management of bad behaviours by mediators silenced domestic abuse.

#### **8.4.12 Conclusion**

The mediators used strategies and techniques 'on demand' and there is no uniform text book response for any given situation. This indicates some sense of the term 'tool bag'; just as a workman selects the right tool for a job, the mediator selects the strategy that will appropriately address the needs of the clients as well as manage the 'procedure' of mediation.

However, it is clear that the tools selected can, at times, silence domestic abuse. The absence of guidelines for screening for domestic violence in joint mediation meetings, leave the mediators with no option but to manage bad behaviour.

## **8.5 How do mediators manage expressions of emotion by clients?**

In this section, I summarise the range of emotions expressed during mediation and describe the strategies that mediators use to handle client's expressions of emotion during mediation. Previous research has suggested that mediators suppress the expression of emotion, for example by focusing the content of the meeting on arrangements for the child or children.<sup>172</sup>

With this in mind, it is important to note that the continuum on which the mediators dealt with expressions of emotions ranged from, doing nothing to a full exploration of the background of the emotion expressed. To avoid assigning any order of importance, these are recorded by 'group', in alphabetical order. Additionally, because emotions are based on human psychology, and that subject is not the focus of this thesis, the content will contain a brief evidenced overview of the emotion under discussion and then summarise the emotions displayed in Chapters six and seven.

### **8.5.1 Acceptance**

This emotion can be directly related to the breakdown of the relationship and indicates recognition that, although the current situation may be uncomfortable, there is a need to move on. This was expressed in many different ways by the mothers in this sample. At one end of the continuum, where the mother had made the decision to end the relationship, the level of acceptance was indicative of the fact that some of the fathers were able to put past abusive behaviours behind them. However, at the other end of the continuum, mothers were afraid of the current abusive behaviours of the fathers - in most cases, these behaviours had a detrimental effect on decision making.

### **8.5.2 Anger**

This is classified as a 'secondary emotion', since people resort to 'anger' either to cover up their vulnerability or protect them. Anger is a response to another feeling that is being experienced. In this study the levels of anger ranged from strong emotions such as 'furious' where a father's behaviours were recognised as an attempt to undermine

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<sup>172</sup> See for example Dingwall et al, (1998)

and 'resentful', where a father's behaviours made the partners feel that they were less important.

### **8.5.3 Contempt**

This emotion is a combination of disgust and anger which manifests itself as a lack of respect and an intense dislike. Contempt does not have a continuum as it is a combination of emotions. It was used in the cases being studied, to describe the way mothers felt when they were treated badly. In this context, the descriptors used were all strong and the words 'disdain', 'scorn', 'disrespect' and 'disgust' were some of the words used by the mothers to describe how they felt after experiencing extremely poor treatment.

### **8.5.4 Confusion**

This was expressed by many mothers and was often linked to a change in the father's behaviour. The depth of confusion varied from 'gobsmacked' to 'being unsure'. A typical situation where this emotion manifested itself was when a mother felt pressurised by the father. This was often accompanied by a change in the tone of the mother's voice.

### **8.5.5 Depression**

This emotion was linked with the feeling of 'loneliness' and some of the mothers used the word 'alienated' to describe the treatment they received from the father's family. Others spoke about how upsetting some of the behaviours they experienced were - and some described themselves as feeling 'low' and 'scared'.

### **8.5.6 Fear**

This emotion is experienced in anticipation of some specific potential pain or danger and is usually accompanied by a desire to either 'flee or fight'. The emotions expressed ranged from 'distressed' and 'shocked' to 'anxious' and 'worried'; the fear tended to be linked to concerns for children, as well as the mothers emotional wellbeing.

### **8.5.7 Hurt**

This is a particularly negative emotion and one that was expressed by all of the mothers in the sample. At one end of the continuum, some mothers spoke about being 'belittled' and at the other end some mothers spoke about being 'unhappy'. As part of the cycle of abuse, a situation of 'hurt' was often followed by a positive opportunity. Some mothers saw opportunity in actions that occurred when the 'hurt' had taken place.

### **8.5.8 Sadness**

'Sadness' is classified as an emotional pain that embodies many negative feelings, which include 'loss', 'disadvantage' and despair. Mothers expressed their sadness in many different ways, with the heightened emotion being 'extreme unhappiness' and in many cases the word 'sad' was used.

### **8.5.9 Mediator interventions**

Where expressions of emotions were dealt with in separate meetings, the prevalent strategy used by the mediator, as described in 8.4.1 above was 'listening' and that listening was underpinned by questioning for 'understanding' and 'clarification'. Where a parent became tearful, as well as tissues and a glass of water, the mediator offered them time and space to compose themselves.

In all of the cases where negative emotions were expressed, the mediator checked with the client to see if they had someone that they could speak with about the current difficulties. Where a parent said that they did not have anyone to speak with, the mediator encouraged them to consider 'counselling' and offered them information about services available.

Another strategy used was a softened and gentle tone of voice, which sounded as if the mediator was 'stroking' the parent. This was particularly powerful as the parents tended to respond to the change of tone in a positive way. They often offered further information and shared other feelings.

### **8.5.10 Summary**

This section identified a broad range of emotions expressed by parents during MIAMs and JMs and discussed some of the strategies used by mediators to manage these emotions. The fact that the mediators managed emotive situations, suggests that, although mediation is not therapy (Whatling, 2012 p 19), mediators did manage emotions during the sessions under scrutiny. However, the management of emotions did not include a process of screening for domestic violence.

The next section discusses how the mediators dealt with expressions of concern for a child's welfare.

## **8.6 Where a parent expressed concern about the welfare of a child, how was this managed?**

This section deals with the underlying concerns about child welfare that many mothers expressed, some of which became an inhibitor for establishing effective contact. The mediation literature is silent on this specific subject. However, other commentators have written about this, notably from an 'in court' perspective (Trinder et al., 2010).

### **8.6.1 Age inappropriate activities**

A number of mothers described events and activities that their children had been subjected to, that they felt left their children 'exposed' and 'vulnerable'. These included 'adult' activities, such as making adult videos accessible to the children and taking the children to adult parties.

A particular activity that stands out in this context, involves the father having adult conversations with the children. There were many examples of this. Most prevalent was sharing the detail of the difficulties in the parental relationship with the child also talking about the parent's separation and the subsequent (sometimes negative) activities.

Those mothers whose children experienced this, expressed deep concern for the emotional impact that these disclosures had on their children, which included, sleep disruption, crying and tantrums, and in some cases 'regression' in development - all of which, had to be dealt with by the mother.

### **8.6.2 Extended family**

The focus on the amount of time a child did or did not spend with the extended family was a problem for many of the fathers in study five.<sup>173</sup> This was aggravated by reference to the amount of time that they felt that the child should be spending with them. Many of the fathers used 'extended family' as a justification for an increase in contact time as well as a reason for or a change in the mother's established routine. There was an expectation in two cases that the paternal grandparents would visit the

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<sup>173</sup> The 7 cases where domestic abuse was 'identified' in the joint meetings

mother's home and expect the mother to leave the home whilst they spent time with their grandchild.

Indeed, some of the fathers suggested that the mothers should reduce the amount of time that the child spent with the maternal extended family or friends, thus freeing up time to enable an increase in the fathers contact time. They also saw that reduction in the time as an opportunity to establish regular contact with the paternal extended family.

### **8.6.3 Misuse of substances**

It was alleged that a number of fathers misused alcohol and drugs whilst the child was in their care, and the mothers found this extremely distressing. This was a difficult concern for mediators, as in the majority of cases fathers either denied that it had ever happened or said that it no longer happened. They were however, reluctant to offer reassurances to the mothers that such behaviours would not continue.

### **8.6.4 Disregarding children's needs**

This was a dominant concern in the majority of cases, and disregard was intrinsically linked to the father's 'focus on self', discussed in section 8.3.9 above. The 'needs' overlooked, ranged from 'health and wellbeing' to 'safety and security'. Some of the mothers concerned struggled to understand why the fathers were putting their own desires before the needs of their children.

### **8.6.5 Mediator interventions**

The concerns described above, were presented in an emotional way by all of the mothers and the focused on the fact that the child was at risk of both physical and emotional harm. Whilst each concern was different, in all cases the mediator 'listened' to the mothers and 'acknowledged' that concern, by asking questions for clarification in terms of understanding the extent and seriousness of the concern.. The questions used related to child protection issues, such as the involvement (or otherwise) of external agencies, such as social services.

A great deal of attention was given to 'parenting,' and the mediators spoke about the difficulties parents had trying to work together as parents (as opposed to parenting as

intimate partners). This inability to work together, was intrinsically linked to poor communication. The mediators spoke about the fact that the change in their relationship, meant that they needed to change the way they communicated about their children, seeking to have those discussions in a 'business like way'.<sup>174</sup>

### **8.6.6 Summary**

This section gave an overview of the major concerns expressed by mothers, and also of the ways the mediators managed them. Those concerns affected the mothers in an adverse way and reflected some of the effects that domestic violence can have on women (see 1.6.5 above). Similarly, the mothers' concerns for their children reflected some of the effects on children detailed in 1.6.6 above, one example being 'regression'.

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<sup>174</sup> This phrase is taken from the Separated Parents Information Programme <https://www.cafcass.gov.uk/about-cafcass/commissioned-services-and-contact-activities/spip.aspx> last accessed June 2013



## 8.7 Summary and conclusion

This chapter presented a discussion of the findings detailed in Chapters six and seven and sought to answer the secondary research questions. The answers to these questions are:

*vi. Is there initial screening for abuse and, if so, how is it done?*

Mediators do screen for domestic abuse and the screening follows the guidelines of NFM. However, the screening guidelines are not robust enough to identify domestic abuse in all relationships.

*vii. What types of abusive behaviours are alleged or inferred during mediation sessions?*

A broad range of abusive behaviours was alleged or inferred in mediation, all of which linked with the UK government's definition of 'domestic abuse'.

*viii. How do mediators manage disclosure of abuse and any client responses to such management during mediation?*

Mediators managed disclosures of abuse in different ways and the core mediation skills used in that management were listening, summarising and empathy.

*ix. How do mediators manage expressions of emotions by clients?*

Where the expressions of emotions were linked to the disclosure of abuse, they were managed, in the same way that the disclosure itself was managed. (Other expressions of emotions used similar strategies and in addition questions were asked for clarification and understanding).

*x. Where a parent expressed concern about the welfare of a child, how was this managed?*

The mediators handled these concerns sensitively, and allowed the parents as much time as they needed to share those concerns, whilst exploring with the parents, potential options for resolving the issues.

The next chapter will summarise the findings of this study, in light of the initial motivation, aims, and primary and secondary research questions outlined in section 1.1 above. It will also identify the contribution that this thesis makes to existing knowledge and research. It will discuss the limitations of the project and critically reflect on the research process. Finally it will make recommendations for government and family mediation policy, mediation training and future research.

## 8.8 References – chapter eight

- Dingwall R, Greatbatch D and Ruggerone L. (1988) Gender and Interaction in Divorce Mediation. *Mediation Quarterly* 15: 277-287
- Greatbatch D and Dingwall R. (1999) The Marginalization of Domestic Violence in Divorce Mediation. *International Journal of Law Policy and the Family* 13: 174-190.
- Hanmer J, Itzin C, Quaid S, et al. (2000) *Home Truths about Domestic Violence*. London: Routledge.
- Hargie O. (2011) *Skilled Interpersonal Communication - Research Theory and Practice*, East Sussex: Routledge.
- Haynes J. (1995) Fundamentals of family mediation. *Family Law*.
- Lee YO and Lee R. (2012) *Bulletin of Sociological Methodology* 114: 35.
- Nicol S. (2012) Special feature / Cyber-bullying and trolling. *Youth Studies Australia* 31: 3-4.
- Trinder L, Beek M and Connolly J. (2002) Making Contact. How Parents and Children Negotiate and Experience Contact after Divorce.
- Trinder L, Jenks C and Firth A. (2010) So presumably things have moved on since then? The management of risk allegations on child contact dispute resolution. *International Journal of Law Policy and the Family* 24: 29-53.

## Chapter 9 Conclusion

### 9.1 Introduction

This thesis has investigated the practice of family mediation, with a focus on how mediators screen parents for domestic abuse during mediation sessions. At the outset of this project, I drew attention to the fact that there was a paucity of research in this area, and pointed out that the research that did exist provided largely negative comment on this area of mediator practice. Concerns about the robustness of such screening were still being made when I began my empirical research.

### 9.2 Summarising the content

The thesis is comprised of five empirical studies: one being a quantitative analysis and the other four being analysed qualitatively, using ‘thematic analysis’.

#### 9.2.1 MIAMs

Study one: Content of the three stages of the MIAM, focused on the Mediation Information Assessment Meeting (MIAM) and deconstructed the meeting in order to determine the amount of time spent on each stage. Research of this nature has never been conducted in England and Wales and this study addressed the research question *‘is there initial screening for abuse, and if so how is it done?’* All of the 24 MIAMs in the dataset were used in this study.

Study two: The 15 MIAMs where domestic violence was alleged or inferred was designed to give a broad understanding of how the mediator conducted each of the three stages of the MIAM. These are:

- i. giving and receiving information
- ii. assessing suitability
- iii. making a decision

There were four mediator participants in this study. One of the mediators did not have a SIM in the final data set, but the other three did. Each had their own particular style that they applied to both joint (JIM) and single (SIM) MIAMs. One JIM and one SIM

conducted by each of these mediators were selected for analysis.<sup>175</sup> A specific focus was placed on stage two, - 'assessing suitability', as this stage revealed how the mediators screened for domestic abuse.

Study three analysed 'The content of the 15 MIAMs where domestic violence was alleged or inferred'. Using 'thematic analysis,' predetermined initial themes were taken from the Duluth Domestic Abuse Intervention Programme (DDAIP). The DDAIP has eight themes, which are defined as 'tactics of control', which are used on the intimate partners of male perpetrators of domestic violence. These themes are:

- i. Coercion and threats
- ii. Intimidation
- iii. Emotional abuse
- iv. Isolation
- v. Minimisation, denial and blame
- vi. Using children
- vii. Male privilege
- viii. Economic abuse

The outcome of this analysis was detailed in Chapter six and further analysis of these cases showed that four cases did not proceed to mediation for a variety of reasons, which are discussed at the conclusion of the study.

### **9.2.2 Joint Meetings (JMs)**

Eleven cases from the original dataset proceeded to JMs and these cases were thematically analysed using the Duluth indicators as detailed above, in an attempt to identify the presence or otherwise of abusive behaviours. During the initial analysis it was found that in four of these cases, the domestic violence alleged or inferred during the MIAM, was not mentioned in the subsequent JMs. Therefore Study four: The 4 cases where domestic abuse was not 'identified' in the joint meetings, is a discussion

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<sup>175</sup> A JIM for the fourth mediator was not included in this sample

of the commonalities and divergences of those cases, and these relate to the status of the relationships at the time mediation commenced.

The final study of this thesis Study 5: The 7 cases where domestic abuse was 'identified' in the joint meetings, focused on the remaining cases where, during the JMs, the themes from the DDAIP noted that domestic violence alleged or inferred in the MIAMs was repeated.

### 9.3 Restatement of research aims

The study had three research aims, which were:

- i. To contribute to the field of family mediation in England and Wales, by increasing awareness of family mediator practice in general, but with a very specific focus on 'screening for domestic violence during mediation sessions attended by parents.'
- ii. To explore and understand how mediators respond to client statement's that alleges or infers domestic abuse and how the mediator understands and responds to such statements.
- iii. In those cases where abuse was alleged or inferred, to determine whether any abuse suggested affected the continuation or outcome of mediation.

## 9.4 Summary of findings and contribution to existing knowledge

### 9.4.1 Screening for domestic violence

Previous studies had suggested that mediators did not routinely screen for domestic violence; at the time those studies were conducted, there was no specific policy or guidance (mandate)<sup>176</sup> for mediators to conduct such screening. My research drew two main conclusions from the data relating to screening. The **first finding**<sup>177</sup> is that mediators do screen for domestic violence, using the guidelines from their member organisation (NFM), but the **second finding**<sup>178</sup> is that the current screening tool does not appear to be sufficiently robust to identify violence as it is understood from the government's definition of domestic violence detailed in 1.6.1 above. This finding is of great concern.

### 9.4.2 Abusive behaviours<sup>179</sup>

This study is the first one that has used a predetermined protocol (DDAIP) to generate themes for the analysis of the data collected. This study found that the DDAIP identifiers were present during the JMs and were predominantly identified by the actions and spoken words of the father, when both parents were in the same room together. This suggests that the verbal cues were overlooked, misunderstood or possibly ignored, by the mediator. That said there is some significant evidence that the mediators attempted to manage the abusive behaviours.

Nonetheless, whatever the omission, there was a gap in mediator understanding as to what was occurring for the parents, particularly and in reference to the impact on the mother. This led to some parents withdrawing from mediation, and seeking other options for resolution.

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<sup>176</sup> Before the Family Law Act 1996 there was no specific requirement for mediators to screen for domestic violence. S29 of the proposed act required that mediators who worked within the LSC framework were required to screen all clients for domestic violence

<sup>177</sup> See 5.3 above

<sup>178</sup> See 5.3 above

<sup>179</sup> For examples of abusive behaviour please see 5.3, 5.5, 6.2.1, 6.2.2, 6.2.4, 7.5.6 and 7.5.8 above



### **9.4.3 Disclosures of abuse<sup>180</sup>**

When mediators ‘recognised’ disclosures of abuse they used a range of strategies and techniques that were known to them. In the main these were helpful, but inconsistent, and they did not lead to ongoing screening for domestic violence.

### **9.4.4 Expressions of emotions<sup>181</sup>**

Previous research had suggested that mediators suppress client’s expressions of emotion, by changing the focus of the meeting. This study supported that finding in part, but there were some cases where a mediator took extra time to speak with the parent. This tended to happen where there was an allegation of an action that was abusive. Where a parent inferred domestic abuse, there appeared to be no ‘standard’ way of dealing with those inferences although there was some evidence that mediators did respond positively to them.

Each of the mediators responded to inferences some of the time and the response was usually by way of an ‘intervention’ when the parents became repetitive. All of the mediators allowed parents time to speak and appeared to intervene when the parents were unable to consider ‘other options’, as an example.

### **9.4.5 Concerns for children<sup>182</sup>**

All mediators frequently asked parents to focus on the ‘needs of their child’ in terms of their ‘right’ to spend time with both parents. However, analysis of the seven cases in Study five suggested that the father conceptualised contact – not as a ‘welfare’ issue, – but as his ‘right and entitlement’. This finding reflects the view of many commentators on post-separation parenting posit.

### **9.4.6 Contribution to existing knowledge**

The paucity of empirical research focusing on domestic violence and mediation, means that each of the findings detailed above make a significant contribution to existing knowledge. Specifically, they dispel the concern that existed as to whether mediators initially screen for domestic violence. They also give some insight into current mediator practice when dealing with disclosures of abuse, emotions and parents’

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<sup>180</sup> For examples of disclosure of abuse please see 6.2.2, 6.3.2, 7.5.2 and 7.5.4 above

<sup>181</sup> For examples of expressions of emotion, please see 6.3.3, 6.4.1, 7.5.3 and 7.5.5 above

<sup>182</sup> For examples of concerns for children, please see 5.6.2, 6.5.3, 6.5.4, 7.5.5 and 7.5.6 above

concerns for their children. Finally, evidence was provided that made it clear that the disclosure of abuse during a MIAM does not mean that the case is not suitable for mediation. There were cases within the sample that reached agreement. This sounds worrying, but those cases that reached agreement evidenced a 'will' by both parents to move on in a positive way.

## **9.5 Limitations and critical reflection**

### **9.5.1 Limitations**

The major limitation of this study, which was also a major frustration for the researcher, was the fact that during the data collection phase, there was a change of 'gatekeeper' at the sponsoring mediation service. The new incumbent saw this research project as a lesser priority than that of managing and developing the mediation service. This change took place at a crucial stage of the project and just before the proposed next stage of the project, where the participating parents were due to be interviewed.

This was unfortunate, as it was clear from the data gathered that domestic violence was alleged or inferred in a significant number of cases in the study. Whilst the majority of those cases did not reach full agreement in mediation, some cases did. A useful addition to this study would have been the post-mediation experience of parents who had reached agreement in mediation versus those who did not. This, combined with the rest of the study, would have provided a substantial psycho-socio-legal perspective on family mediation.

### **9.5.2 Critical reflections**

The research suffered from my early optimism as a researcher, such that I assumed my primary participants – the mediators – would collect the data as explained by me, and as promised to me by them. More proactive management and regular monitoring on my part might have enabled the collection of a more pristine dataset.

Another problem caused by the incomplete dataset, was that there was a subset of data that could not be used in this study. The cases evidenced a number of the tactics of control in the DDAIP. They were excluded from the final sample, because the MIAMs had not been recorded. This is mentioned because some of these cases subsequently reached full agreement; time permitting a useful comparative study focusing on JMs only, could have been conducted, possibly to ascertain why and how these cases reached agreement

## **9.6 Implications and recommendations for policy and practice**

### **9.6.1 NFM policy**

The NFM screening policy is at odds with the practice of screening applied during JMs. The policy is clear that clients should not be in the same room together until a mediator has screened them both for domestic violence. Those that attended MIAMs together were consistently seen together at the start of the meeting, and individual screening was conducted later in the meeting. The fact that the screening was dealt with in a separate meeting was a positive move. More investigation needs to be conducted into this matter, so as to ascertain what is considered to be 'best practice.'<sup>183</sup>

Another area of policy that needs to be addressed is the lack of a process for screening for domestic violence in joint meetings. The Coogler model of mediation is used by Bromley mediation where clients are routinely seen separately before each joint meeting commences. NFM need to consider adopting this model as standard practice (see also 9.6.3 below).

### **9.6.2 The mediation model**

Whilst NFM gives guidance that focuses on the impact of abuse on the participant, the notion of 'impact' is lost on those mediators who do not recognise that the behaviours being discussed by the clients are abusive ones. To improve such 'recognition' by mediators, changes need to be made to NFM's mediation model, so that it includes extended separate time with the mediator. This should be considered, particularly where the level of conflict between the parents appears to be high, or where a mother makes excuses for her partner's abusive behaviour, - as this could mean that the abuse is ongoing. In any event due extension of time should be made available to both parents.

This change would achieve three things; it would give the mediator more time to explore the extent and the impact of the behaviours under discussion. It would also give the parent more time to reflect on their experience, tell their story, and know that

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<sup>183</sup> My research into this area provides a number of conflicting statements which I currently classify as inconclusive

their story has been heard. This would then enable the parent to make a decision to participate in mediation in a more relaxed manner.

### **9.6.3 Mediation training**

The current screening tools need to be reviewed so that they become more 'investigative' (but not interrogative). The current training received by NFM mediators is a two-hour session focusing on making mediation physically safe. What is missing from this training is a 'knowledge base' of domestic violence, and this could be developed by the creation of a 'mediation focused' training course, that would increase the mediator's understanding of domestic violence.

Also missing from mediation training is screening for domestic during JMs, as current screening guidance relates to MIAMs. But before such training is commissioned it would be useful if some research was to be conducted that would determine what mediators think they are doing, when they are managing abusive behaviours during JMs. *Do they think they are screening?*

There is also a need for skills development training to be reviewed and as a minimum, brought into line with the level of training offered to trainee community mediators. I have previously referred to this model of mediation,<sup>184</sup> and remain convinced that family mediation training can be developed using some of the training material available from community mediation training providers.

### **9.6.4 Government policy**

Such changes have an associated cost and the Legal Aid Payments for mediation do not currently cover the cost for the additional time that would be required. This would mean seeking to change the current payments made for clients who are eligible for legal aid. This could be achieved by making some changes to the payment that is made available (on application), for co-mediation in 'high conflict' cases. If 'high conflict' parents were able to spend more individual time with the mediator, there might not be the need for co-mediation.

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<sup>184</sup> Morris P. (2011) A practical guide to shuttle mediation. *Family Law* 41: 758-760

Further changes are needed relating to how parents access the Separated Parents Information Programme (SPIP). Currently this can only be accessed without charge, by court order. If parents were able to access the SPIP before a court hearing, then some of them would benefit from the focus of the programme, which is based on their children's needs and on their communication as parents.

## **9.7 Further research**

The paucity of 'sound' mediation research means that there is scope for making many recommendations, but my ideal project would be to construct a longitudinal research project, that investigates the parents' separation experience. That journey would be from attending a MIAM to the resolution (or otherwise) of their dispute. The ideal data collection method would involve video recorded sessions and interviews. I would suggest that the data be fully transcribed, with visual cues added to the transcription, aligned with the data. This data could then additionally be analysed from a number of psychological perspectives, such as Interpretative Phenomenological Analysis or Conversation Analysis. A research project structured and conducted in this way would give a rich and detailed insight into the participants' 'lived experience' of separation, divorce and negotiating arrangements for contact in mediation. A project of this kind has yet to be conducted in England and Wales.

## **Appendix A – Taxonomy of mediator skills, strategies and techniques**

The following list is in alphabetical order and shows no order of importance and is designed to provide a taxonomy of mediator's skills strategies and techniques.

- acknowledging feelings and concerns
- active listening, clarifying and defining issues
- adaptability
- alertness
- analytical abilities
- anticipating and pre-empting
- Ascertaining and encouraging both parties willingness to take part in mediation
- Appearance and demeanour
- assertiveness
- building rapport, trust, cooperation
- caucusing
- co-mediating
- communication skills: use of language, questioning, reframing
- conflicts of crisis management; managing the mediation process
- considering the circumstances in which further mediation is not appropriate
- credibility
- creativity
- developing and exploring options without being directive
- deal with emotions
- diffuse high conflict
- empathy
- encouraging clients to future focus
- engage with couples who bring varying kinds of levels of conflicts
- facilitation
- flexibility
- focusing on children's needs and feelings when working out parenting plans
- gathering, understanding and sharing information
- giving information but not advising
- identifying issues likely to be raised by legal advisers
- impasse strategies
- initiative
- managing power imbalances
- manage the mediation process
- mutualising
- negotiating, problem-solving, brainstorming
- numeracy in analysing figures, percentages, reading accounts
- normalising
- objectivity and self-control
- openness
- patience and tact
- planning and prioritising; structuring the process
- perseverance

- presentation skills
- professionalism
- refocus
- self-awareness
- sense of (appropriate) humour
- skills in involving children and consulting with children
- summarising verbally and in writing - draft mediation summaries
- terminating mediation carefully
- varying the pace to meet the needs of each party
- working with families in transition

The above list is compiled from various publications (Haynes and Charlesworth, 1996; Parkinson, 1997; Roberts, 1997), and reflect the skills and strategies I refer to during data analysis. These are discussed in more detail as they occur in in Chapters six and seven. The Kluwer Mediation Blog cites 212 qualities of a good mediator more detail can be found on this website <http://kluwermediationblog.com/2012/02/19/212-qualities-of-a-good-mediator/> (Gavrila, 2012).

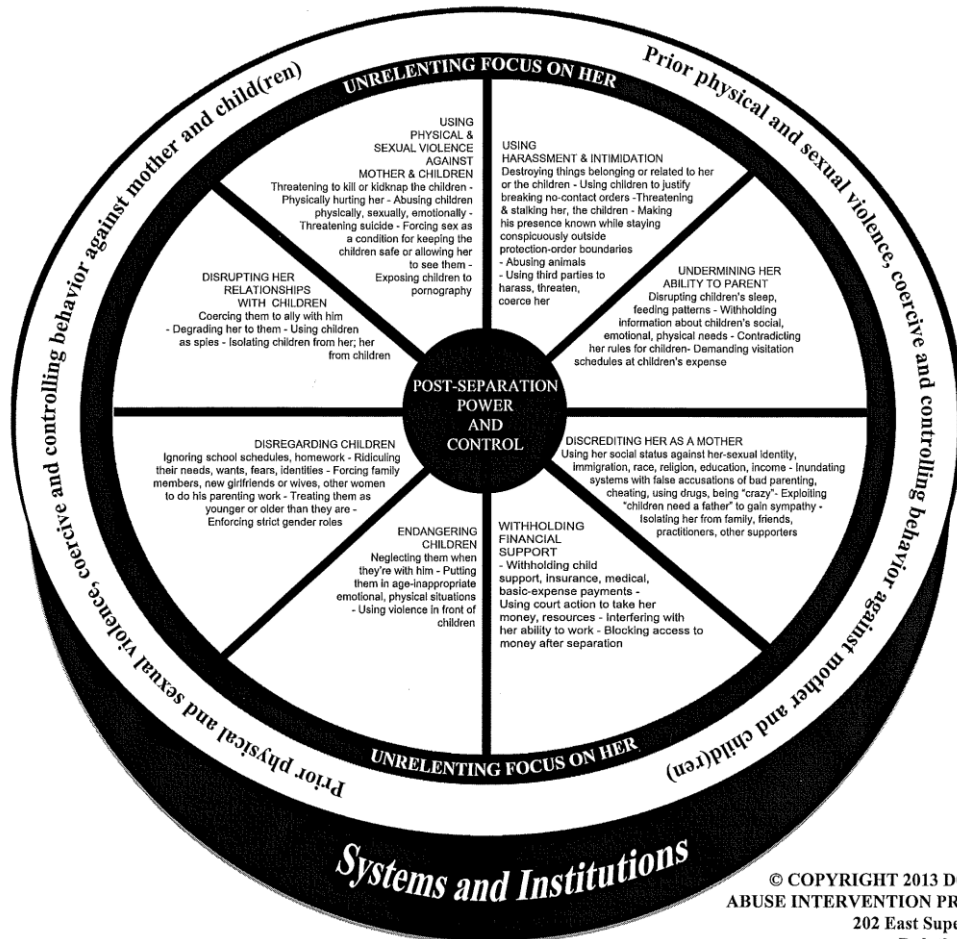




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# Appendix C: Duluth Post Separation Power and Control Wheel

Post Separation Power and Control Wheel



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## References and Bibliography

- Aston G. (2003) *From the Margins into the Centre: Women's Experiences of Domestic Violence during Pregnancy*, Thesis: University of Manchester.
- Ausberger DW. (1992) *Conflict Mediation Across Cultures (Pathways and Patterns)*, London: Westminster John Knox Press.
- Bainham A. (1994) Divorce and the Lord Chancellor: looking to the future or getting back to basics? *The Cambridge Law Journal* 53: 253-262.
- Bainham A. (1995) Contact as a fundamental right. *The Cambridge Law Journal* 54: 255-258.
- Bainham A, Lindley B, Richards M, et al. (2003) *Children and Their Families - Contact, Rights and Welfare*. Oxford: Hart Publishing.
- Bell J. (2005) *Doing Your Research Project*, Maidenhead: Open University Press.
- Bevan G. (1999) Piloting a quasi-market for family mediation amongst clients eligible for legal aid. *Civil Justice Quarterly* 18: 239-248.
- Bevan G, Davis G and Fenn P. (2001) Can mediation reduce expenditure on lawyers? *Family Law* 31: 186-190.
- Bilby C and Hatcher R. (2004) Early stages in the development of the Integrated Domestic Abuse Programme (IDAP): implementing the Duluth domestic violence pathfinder. Home office online report 29/04 downloaded from <https://mobile.worcestershire.gov.uk/cms/pdf/Early-stages-in-the-development-of-the-Integrated-Domestic-Abuse-Programme-IDAP.pdf> University of Leicester.
- Bloch A, McLeod R and Toombs B. (2014) Mediation Information and Assessment Meetings (MIAMs) and mediation in private family law disputes. *Ministry of Justice Analytical Series*. London: Ministry of Justice.
- Bond T, Bridge J, Mullender P, et al. (1996) *Blackstones Guide to the Family Law Act 1996*, London: Blackstone Press Ltd.
- Boulle L and Nestic M. (2001) *Mediation: Principles, Process, Practice*, London: Butterworths.
- Brownridge DA. (2006) Violence against women post-separation. *Aggression and Violent Behavior* 11: 514-530.
- Burton M. (2008) *Legal Responses to Domestic Violence* Abingdon: Routledge-Cavendish.
- CAFCASS. (2013) *Time for children* downloaded from <http://www.cafcass.gov.uk/media/2909/TimeforChildren.pdf>.
- Coleman L and Glenn F. (2009) *When couples part: understanding the consequences for adults and children*, London: OnePlusOne.
- Clarke K. (2011) ADR Professional: The new FPR and PD3A: the pre-application ADR protocol. *Family Law* 41: 422-426.
- Commission G. (1912) Report of the Second Royal Commission on Divorce: Cmnd.6478.
- Coogler OJ. (1978) *Structured Mediation in Divorce Settlement*, Toronto: Lexington Books.
- Corden A and Sainsbury R. (2005) *Research Participants' Views on Use of Verbatim Quotations*: University of York.
- Coy M, Perks K, Scott E, et al. (2012) *Picking up the pieces: domestic violence and child contact*. London: Rights of Women.
- Cretney DS. (2000) *Family Law: Essays for the New Millennium*, Bristol: Jordans Publishing Limited.
- Davis G. (1980) Research to Monitor Bristol Courts Family Conciliation Service. Department of Social Administration: University of Bristol.
- Davis G. (1983) The inter-departmental committee on conciliation: a negative report in every sense. *Probation Journal* 13: 133-135.
- Davis G. (1988) *Partisans and Mediators: The Resolution of Divorce Disputes*, Oxford: Oxford University Press.
- Davis G. (2001) Reflections in the aftermath of the family mediation pilot. *Child and Family Law Quarterly*: 371-381.

- Davis G and Bevan G. (1999) Research: A preliminary exploration of the impact of family mediation on legal aid costs. *Child and Family Law Quarterly*: 411-421.
- Davis G and Bevan G. (2002) The future public funding of family dispute resolution services. *Journal of Social Welfare and Family Law* 24: 175-184.
- Davis G and Lees P. (1981) A study of conciliation: its impact on legal aid costs and place in the resolution of disputes arising out of divorce. Department of Social Administration: University of Bristol.
- Davis G and Roberts M. (1988) *Access to Agreement: A Consumer Study of Mediation in Family Disputes*, Milton Keynes: Oxford University Press.
- Davis G and Westcott J. (1984) Report of the inter-departmental committee on conciliation. *The Modern Law Review* 47: 215-222.
- Day Sclater S. (1999) *Divorce: A Psychosocial Study*, Oxford: Blackwells.
- Day Sclater S and Piper C. (1999) *Undercurrents of Divorce*. Aldershot: Dartmouth Publishing Company Limited.
- Diduck A. (2003) *Law's Families*, Oxford: Butterworths.
- Diduck A and Kaganas F. (2006) *Family Law, Gender and the State*, Oxford: Hart Publishing.
- Diduck A and Kaganas F. (2012) *Family Law, Gender and the State*, Oxford: Hart Publishing.
- Diduck A and O'Donovan K. (2006) *Feminist Perspectives on Family Law*. Abingdon: Routledge-Cavendish.
- Dingwall R. (1986) Some observations on divorce mediation in Britain and the United States. *Mediation Quarterly* 11: 5-23.
- Dingwall R. (2010) Divorce mediation: should we change our mind? *Journal of Social Welfare and Family Law* 32: 107-117.
- Dingwall R and Eekelaar J. (1988) *Divorce Mediation and the Legal Process*, Oxford: Clarendon Press.
- Dingwall R and Greatbatch D. (2001) Family mediators - what are they doing? *Family Law* 31: 378-382.
- Dingwall R and Greatbatch D. (1991) Behind closed doors: a preliminary report on mediator/client Interaction in England. *Family & Conciliation Courts Review* 29: 291-303.
- Dingwall R and Greatbatch D. (1993) Who is in charge? Rhetoric and evidence in the study of mediation. *Journal of Social Welfare and Family Law* 15: 367-385.
- Dingwall R and Greatbatch D. (1995) Family mediation researchers and practitioners in the shadow of the green paper: a rejoinder to Marian Roberts. *Journal of Social Welfare and Family Law* 17: 199-206.
- Dingwall R, Greatbatch D and Ruggerone L. (1988) Gender and interaction in divorce mediation. *Mediation Quarterly* 15: 277-287.
- Dobash RP and Dobash RE. (2004) Women's violence to men in intimate relationships: working on a puzzle. *British Journal of Criminology* 44: 324-349.
- Featherstone B and Trinder L. (1997) Familiar subjects? Domestic violence and child welfare. *Child & Family Social Work* 2: 147-159.
- Finer M. (1974b) *Report on the Committee on One Parent Families Cmnd 5629*, London: HMSO.
- Fisher T. (1997) *NFM Guide to Separation and Divorce*, London: Vermilion.
- Folger JF and Jones TS. (1994) *New Directions in Mediation: Communication Research and Perspectives*. London: Sage Publications.
- Fortin J. (2014) Taking a longer view of contact. *Family Law* 44: 634-637.
- Greatbatch D and Dingwall R. (1989) Selective facilitation: some preliminary observations on a strategy used by divorce mediators. *Law and Society Review* 23: 613-641.
- Greatbatch D and Dingwall R. (1997) Argumentative talk in divorce mediation sessions. *American Sociological Review* 62: 151-170.
- Hague G, Mullender A, Kelly L, et al. (2002) How do children understand and cope with domestic violence? *Practice: Social Work in Action* 14: 17-26.

- Hague G, Thiara R and Mullender A. (2010) Disabled women, domestic violence and social care: the risk of isolation, vulnerability and neglect. *British Journal of Social Work*: 1-18.
- Hague G and Wilson C. (2000) The silenced pain: domestic violence 1945-1970. *Journal of Gender Studies* 9: 157-169.
- Hanmer J, Itzin C, Quaid S, et al. (2000) *Home Truths about Domestic Violence*. London: Routledge.
- Harding M and Newnham A. (2014) Initial research findings: the typical levels of parental involvement where post-separation parenting is resolved by court. *Family Law* 44: 672-675.
- Hargie O. (2011) *Skilled Interpersonal Communication - Research Theory and Practice*, East Sussex: Routledge.
- Harne L and Radford J. (2008) *Tackling domestic violence: theories, policies and practice*: McGraw-Hill International.
- Harold G, Pryor J, Reynolds J, et al. (2001) *Not in front of the children?: How conflict between parents affects children*, London: One Plus One Marriage & Partnership Research.
- Hawkins C. (2008) *Divorce and its implications to children: alone with 150,000 Other Children*: [www.wkins.org/divorce.html](http://www.wkins.org/divorce.html)
- Haynes JM. (1981) *Divorce Mediation: A Practical Guide for Therapists and Counselors*, New York: Springer Publishing Company.
- Haynes JM and Charlesworth S. (1996) *The Fundamentals of Family Mediation*, Sydney: The Federation Press.
- Herring J. (2009) *Family Law*, Harlow: Pearson Education Ltd.
- Hester M. (2009) *Who does what to whom? Gender and domestic violence Perpetrators*, Bristol: University of Bristol in association with the Northern Rock Foundation.
- Hester M, Hanmer J, Coulson S, et al. (2003) *Domestic Violence: Making it Through the Criminal Justice System*, Sunderland: University of Sunderland.
- Hester M, Pearson C and Harwin N. (2007) *Making an impact: Children and domestic violence: A reader*, London: Jessica Kingsley Publishers.
- Hester M, Pearson C and Radford L. (1997) *Domestic Violence - A National Survey of Court Welfare Officers and Voluntary Sector Mediation Practice*, Bristol: Policy Press.
- Hester M and Radford L. (1992) Domestic violence and access arrangements for children in Denmark and Britain. *Journal of Social Welfare and Family Law* 14: 57-70.
- Hester M and Radford L. (1996) Domestic Violence and Child Contact Arrangements. *Social Policy Research*.
- Hester M, Westmarland N, Gangoli G, et al. (2006) *Domestic Violence Perpetrators: Identifying Needs to Inform Early Intervention*, London: Home Office.
- HMSO. (1979) *Marriage Matters*, London: HMSO.
- HMSO. (1993) Lord Chancellor's Department. Looking to the future. Mediation and the ground for divorce. A consultation paper. Cmnd 2424.
- HMSO. (1995) Lord Chancellor's Department Looking to the future: mediation and the ground for divorce the government's proposals. Cm 2799.
- HMSO. (2005) *Domestic Violence: A National Report*, London: CAFCASS.
- HMSO. (2009) Together we can end domestic violence against women and girls: a consultation paper. London: Home Office.
- HMSO. (2010) Proposals for the Reform of Legal Aid in England and Wales. Cm 7967.
- HMSO. (2012) Draft Legislation on Family Justice. Cm 8437.
- Humphreys C. (2007a) *Domestic violence and Child abuse*, Totnes: Research in Practice.
- Humphreys C. (2007b) Domestic violence and child protection: exploring the role of perpetrator risk assessment. *Child and Family Social Work* 12: 360-369.
- Humphreys C, Hester M, Hague G, et al. (2000a) *From Good Intentions to Good Practice: Mapping Services Working with Families Where There is Domestic Violence*, Bristol: The Policy Press.

- Humphreys C, Hester M, Mullender A, et al. (2000b) *Working with families where there is domestic violence*, York: Joseph Rowntree Foundation.
- Humphreys C, Houghton C and Ellis J. (2008) *Literature review: Better Outcomes for Children and Young People Experiencing Domestic Abuse - Directions for Good Practice*, Edinburgh: The Scottish Government.
- Humphreys C and Mullender A. (2002) *Children and Domestic Violence: A Research Overview on the Impact on Children*, Totnes: Research in Practice.
- Humphreys C, Mullender A, Lowe P, et al. (2001) Domestic violence and child abuse: developing sensitive policies and guidance. *Child Abuse Review*: 183-197.
- Humphreys C and Thiara R. (2003) Mental health and domestic violence: 'I call it symptoms of abuse'. *British Journal of Social Work* 33: 209-226.
- Hunter R and Barlow A. (June 2013) Legal Aid, Lawyers and Family Mediation: Glimpses of a Post-LASPO World. *International Law and Affairs Group*. The Hague, Netherlands.
- Jenks C, Firth A and Trinder L. (2012) When disputants dispute: interactional aspects of arguments in family mediation sessions. *Text & Talk - Interdisciplinary Journal for the Study of Discourse* 32: 307-327.
- Kaganas F. (2010) When it comes to contact disputes, what are family courts for? *Current Legal Problems* 63: 235-271.
- Kaganas F. (2011) Regulating emotion: judging contact disputes. *Child and Family Law Quarterly* 23: 63-96.
- Kaganas F and Day Sclater S. (2000) Contact and domestic violence - the winds of change. *Family Law* 30: 630-636.
- Kaganas F and Diduck A. (2004) Incomplete citizens: changing images of post-separation children. *Modern Law Review* 67: 959-981.
- Kaganas F, King M and Piper C. (1995) *Legislating for Harmony - Partnership under the Children Act 1989*. London: Jessica Kingsley Publishers.
- Kaganas F and Piper C. (1994a) The divorce consultation paper and domestic violence. *Family Law* 26: 143-145.
- Kaganas F and Piper C. (1994b) Domestic violence and divorce mediation. *Journal of Social Welfare and Family Law* 16: 265-278.
- Kaganas F and Piper C. (2002) Shared parenting - a 70% solution? *Child and Family Law Quarterly* 14.
- Kaganas F and Sclater SD. (2004) Contact disputes: narrative constructions of 'good' parents. *Feminist Legal Studies* 12: 1-27.
- Kvale S. (1996) *Inter Views: An Introduction to Qualitative Research Interviewing*, London: Sage Publications.
- Kvale S. (2007) *Doing Interviews*, London: Sage Publications.
- Lazarus-Black M. (2007) *Everyday harm: domestic violence, court rites, and cultures of reconciliation*: University of Illinois Press.
- Lewis R. (2004) Making justice work: effective legal interventions for domestic violence. *British Journal of Criminology* 44: 204-224.
- LSC. (2000) Funding Code - Section A Criteria.
- LSC. (2010a) 2010 Standard Civil Contract - Family Mediation Specification.
- LSC. (2010b) Tightening the family mediation exemption assessment under family legal aid: a consultation.
- LSC. (2012) 2010 Standard Civil Contract - Family Mediation Specification (Applicable to Family Mediation Contracts commenced on 1 December 2012).
- LSC. (2013) Amendments to the 2010 Standard Civil Contract effective from 1 April 2013.
- Maclean M. (2007) Parenting after Partnering. In: Felstiner WLF and Feest J (eds) *Ontai International Series in Law and Society*. Oxford: Hart Publishing.
- Maclean M. (2010) Family mediation: alternative or additional dispute resolution? *Journal of Social Welfare and Family Law* 32: 105-106.

- Maidment S. (1981) The fragmentation of parental rights. *The Cambridge Law Journal* 40: 135-158.
- McCarthy P, Simpson B, Corlyon J, et al. (1991) Family mediation in Britain: a comparison of service types. *Mediation Quarterly* 8: 304-323.
- McIntosh J and Clearinghouse AFR. (2007) *Child inclusion as a principle and as evidence-based practice: applications to family law services and related sectors*: Australian Institute of Family Studies.
- McIntosh J, Smyth B, Kelaher M, et al. (2010) *Post-separation parenting arrangements and developmental outcomes for infants and children: Collected reports*, Victoria: Family Transitions.
- Morley R and Mullender A. (1994) *Preventing Domestic Violence to Women*, London: Home Office Police Department Great Britain, Crime Prevention Unit.
- Morris P. (2008) *Adult Non-Participation in Mediation* Unpublished Dissertation: Birkbeck, University of London.
- Mullender A. (2002) *Children's perspectives on domestic violence*, London ; Thousand Oaks, California.: SAGE.
- Mullender A, Kelly L, Hague G, et al. (2001) *Children's Needs, Coping Strategies and Understanding of Woman Abuse*, Swindon: ESRC.
- Mullender A and Morley R. (1994) *Children Living with Domestic Violence: Putting Men's Abuse of Women on the Child Care Agenda*, London
- Murray R. (2003) *How to Survive your Viva*, Maidenhead: Open University Press.
- Murray R and Moore S. (2006) *The Handbook of Academic Writing - A Fresh Approach*, Maidenhead: Open University Press.
- NAO. (2007) *Legal aid and mediation for people involved in family breakdown*, London: National Audit Office.
- NFM. (1996a) *NFM Guidelines for Screening for Domestic Violence in Mediation*, London: National Family Mediation.
- NFM. (1996b) *NFM Policy on Domestic Violence*, London: National Family Mediation.
- NFM. (2001) *AICTP Training Manual*, Bristol: National Family Mediation.
- NFM. (2012 :74-75) *NFM resource, policy and guidance manual 2012*, Exeter: NFM.
- Norgrove D. (2011a) Family Justice Review: Final Report. London: The Stationery Office.
- Norgrove D. (2011b) Family Justice Review: Interim Report. London: The Stationery Office.
- Ogus A, Walker J and Jones-Lee M. (1989) *Report to the Lord Chancellor on the Costs and Effectiveness of Conciliation in England and Wales*, Newcastle upon Tyne: The University of Newcastle upon Tyne Conciliation Project Unit.
- Ogus A, Jones-Lee M, Cole W, et al. (1990) Evaluating alternative dispute resolution: measuring the impact of family conciliation on costs. *The Modern Law Review* 53: 57-74
- ONS. (2012a) Divorce in England and Wales. Fareham: Vital Statistics Output Branch.
- ONS. (2012b) Divorces in England and Wales - 2011. London: Office for National Statistics.
- ONS. (2012c) Focus on: Violent Crime and Sexual Offences, 2011/12. London: Office for National Statistics.
- Parkinson L. (1986) *Conciliation in Separation and Divorce*, London: Croom Helm.
- Parkinson L. (1997a) *Family Mediation*, Australia: Sweet and Maxwell.
- Parkinson L. (1997b) Separating and divorcing couples: patterns of communication and conflict. *Family Mediation*. London: Sweet and Maxwell, 55-64.
- Parkinson L. (2011) *Family Mediation: Appropriate Dispute Resolution in a New Family Justice System*, Bristol: Family Law
- Paymar M and Barnes G. (2007) Countering confusion about the Duluth Model. *Battered Women's Justice Project*, accessed online <http://centerforchildwelfare.fmhi.usf.edu/kb/DomViolence/CounteringConfusionAbouttheDuluthModel.pdf>.
- Peacey V and Hunt J. (2008) *Problematic contact after separation and divorce? A national survey of parents*, London: One Parent Families/Gingerbread.

- Pence E and Paymar M. (1993) *The Duluth Dometic Abuse Intervention Project*, Duluth: Springer Publishing Company Inc.
- Piper C. (1987) Divorce conciliation: Who decides about the children. Thesis: Brunel University.
- Piper C. (1993) *The Responsible Parent - A Study in Divorce Mediation*, Hemel Hempstead: Harvester Wheatsheaf.
- Piper C. (2008) *Investing in Children - Policy law and practice in context*, Cullompton: Willan Publishing.
- Piper C. (2010) Investing in a child's future: too risky? *Child and Family Law Quarterly* 22: 1-20.
- Piper C and Kaganas F. (1997) Family Law Act 1996, section 1(D) - How would they know there is a risk of violence? *Child and Family Law Quarterly* 9: 269-280.
- Powers WR. (2005) *Transcription techniques for the spoken word*, London: Rowman Altamira.
- Radford L, Hester M, Humphries J, et al. (1997) For the sake of the children: the law, domestic violence and child contact in England. *Women's Studies International Forum* 20: 471-482.
- Raitt F. (1996) Domestic violence and divorce mediation: A rejoinder to Kaganas and Piper and a proposal that the mediation process should always serve the best interests of the child. *Journal of Social Welfare and Family Law* 18: 11-20.
- Roberts M. (1990) Systems or selves? Some ethical Issues in family mediation. *Journal of Social Welfare and Family Law* 12: 6-17.
- Roberts M. (1992) Who is in charge? Reflections on recent research on the role of the mediator. *Journal of Social Welfare and Family Law* 14: 372-387.
- Roberts M. (1994) Who is in charge? Effecting a productive exchange between researchers and practitioners in the field of family mediation. *Journal of Social Welfare and Family Law* 16: 439-454.
- Roberts M. (1996) Family mediation and the interest of women - facts and fears. *Family Law* 18: 239-241.
- Roberts M. (1997) *Mediation in Family Disputes (Principles of Practice)*, Hampshire, England: Arena.
- Roberts M. (2005) Family mediation: The development of the regulatory framework in the United Kingdom. *Conflict Resolution Quarterly* 22: 509-526.
- Roberts M. (2007) *Developing the Craft of Mediation - Reflections on Theory and Practice*, London: Jessica Kingsley Publishers.
- Roberts M. (2008) *Mediation in Family Disputes*, Aldershot: Ashgate Publishing Ltd.
- Roberts M. (2014) *a-z of mediation (sic)*, Basingstoke, Hampshire: Palgrave Macmillan.
- Roberts S. (1983) Mediation in family disputes. *The Modern Law Review* 46: 537-557.
- Davis G and Westcott J. (1984) Report of the Inter-Departmental Committee on Conciliation. *The Modern Law Review* 47: 215-222.
- Robson C. (2011) *Real World Research*, Chichester, West Sussex: Wiley.
- Seale C. (2004) *Researching Society and Culture*. London: Sage Publications.
- Silverman D. (2007) *A Very Short, Fairly Interesting and Reasonably Cheap Book about Qualitative Research*, London: Sage Publications Ltd.
- Simpson B, Corlyon J, McCarthy P, et al. (1990) Client responses to family conciliation: Achieving clarity in the midst of confusion. *British Journal of Social Work* 20: 557-574.
- Smart C, Neale B and Wade A. (2001) *The changing experience of childhood: Families and divorce*: Polity Press.
- Smith J, Flowers P and Larkin M. (2009) *Interpretative Phenomenological Analysis: Theory, Method and Research*, London: Sage Publications Ltd.
- Smith JA. (2003) *Qualitative Psychology - A Practical Guide to Research Methods*. London: Sage Publications.
- Smith M, Balmer N, Miles J, et al. (2013) In scope but out of reach: Examining differences between publicly funded telephone and face-to-face family law advice. *Child and Family Law Quarterly* 25: 253-269.



- Stanley N. (2011) *Children experiencing domestic violence: a research review*: Research in Practice Dartington.
- Stevenson M. (2012) Cooperative parenting following family separation. *Family Law* 42: 1396-1398.
- Strasser F and Randolph P. (2004) *Mediation A Psychological Insight into Conflict Resolution*, London: Continuum
- Thayer ES and Zimmerman J. (2001) *The Co-Parenting Survival Guide - Letting Go of Conflict after a Difficult Divorce*, Oakland CA: New Harbinger Publications, Inc.
- Thiara RK and Gill AK. (2012:79) Domestic violence, child contact and post-separation violence London: NSPCC.
- Trinder L. (2008) Conciliation, the private law programme and childrens wellbeing: two steps forward, one step back. *Family Law* 38: 338-342.
- Trinder L, Beek M and Connolly J. (2001) *Children's and Parents' Experience of Contact after divorce*, York: Joseph Rowntree Foundation.
- Trinder L, Connolly J, Kellett J, et al. (2006a) Making Contact Happen or Making Contact Work? The Process and Outcomes of In-Court Conciliation. *DCA Research Series*.
- Trinder L, Firth A and Jenks C. (2007) Back to the Future: A Micro Analysis of English Family Court Dispute Resolution Meetings *ESRC: Economic & Social Research Council*.
- Trinder L, Jenks C and Firth A. (2009) *Opening Closed Doors: A Micro analytic Investigation of Dispute Resolution in Child Contact Cases*, Swindon: ESRC.
- Trinder L, Jenks C and Firth A. (2010) So presumably things have moved on since then? The management of risk allegations on child contact dispute resolution. *International Journal of Law Policy and the Family* 24: 29-53.
- Trinder L, Kellet J, Notley C, et al. (2006b) *Evaluation of the Family Resolutions Pilot Project*, Research Report RR720: London Department for Education and Skills.
- Trinder L, Kellet J and Swift L. (2008) The relationship between contact and child adjustment in high conflict cases after divorce or separation. *Child and Adolescent Mental Health* 13: 181-187.
- Trinder L and Kellett J. (2007) Fairness, Efficiency and effectiveness in court-based dispute resolution schemes in England. *International Journal of Law Policy and the Family*.
- TSO. (2012a) The Civil Legal Aid (Family Relationship) Regulations 2012. 2684. England and Wales.
- TSO (2012b) The Civil Legal Aid (Procedure) Regulations 2012. 3098. England and Wales.
- TSO (2013a) The Civil Legal Aid (Merits Criteria) Regulations 2013 104.
- TSO (2013b) The Civil Legal Aid (Remuneration) Regulations 2013 422.
- TSO (2013c) The Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Commencement No. 6) Order 2013. 453 (C19). England and Wales.
- UKCFM. (1998) *UK College of Family Mediators, Directory and Handbook 1998/99*, London: Sweet and Maxwell.
- WAFE. (2009a) *Statistics: Domestic Violence*, Bristol: Womens Aid Federation of England.
- WAFE. (2009b) *The Survivors Handbook*, Bristol: Womens Aid Federation of England.
- WAFE. (2013) *Domestic Violence Statistics - update*, Bristol: Womens Aid Federation of England.
- Walby S and Allen J. (2004) *Domestic Violence, Sexual Assault and Stalking: Findings from the British Crime Survey*, London: Home Office.
- Walker A, Flatley J, Kershaw C, et al. (2009) Crime in England and Wales 2008/09. Volume 1 Findings from the British Crime Survey and Police Recorded Crime. London: Home Office.
- Walker J. (2004) Picking up the pieces: Marriage and divorce : Two years after information. Newcastle: Newcastle Centre for Family Studies.
- Walker J. (2013) 'A brave new world for family mediation in England and Wales? Challenges and opportunities following the Norgrove review'. *6th World Conference on Family*

- Law and Children's Rights*. Australia: available at <http://lawrights.asn.au/6th-worldcongress/papers.html> [last accessed 16th Dec 2013].
- Walker J and McCarthy P. (1996) The long term impact of family mediation. *Childright*: 16-17.
- Walker J and McCarthy P. (2004) Picking up the pieces. *Family Law* 34: 580-584.
- Walker J, McCarthy P, Finch S, et al. (2007) *The Family Advice and Information Service - A Changing Role for Family Lawyers in England and Wales? Final Evaluation Report*: Legal Services Commission.
- Walker J, McCarthy P, Simpson R, et al. (1990) Family conciliation in England and Wales: the way forward. *Family and Conciliation Court Review* 28: 1-8.
- Walker J, McCarthy P and Timms N. (1994) *Mediation: The Making and Remaking of Co-operative Relationships. An Evaluation of the Effectiveness of Family Mediation*, University of Newcastle on Tyne: Relate Centre for Family Studies.
- Walker JA. (1986) Assessment in divorce conciliation: issues and practice. *Mediation Quarterly* 11: 43-56.
- Walker JA. (1989) Family conciliation in Great Britain: from research to practice to research. *Mediation Quarterly* 24: 29-54.
- Webley L. (1998) *A Review of the Literature on Family Mediation for England and Wales, Scotland, the Republic of Ireland, France and the United States* London: Institute of Advanced Legal Studies.
- Webley L. (2010) Gate-keeper, supervisor or mentor? The role of professional bodies in the regulation and professional development of solicitors and family mediators undertaking divorce matters in England and Wales. *Journal of Social Welfare and Family Law* 32: 119 - 133.
- Webley LC. (2008) *Adversarialism and Consensus? The Messages Professional Bodies Transmit about Professional Approach and Professional Identity to Solicitors and Family Mediators Undertaking Divorce Matters*, Thesis: Institute of Advanced Legal Studies.
- Yates C. (1983) The interdepartmental committee report on conciliation: A Step Backwards. *Journal of Social Welfare and Family Law* 5: 335-341.
- Yates C. (1988) *The National Family Conciliation Council Research Project*. London: NFCC.