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**The enactment of workplace mediation in British Universities: A study of  
mediator meta-theory and the integration of practice**

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## **Abstract**

Research in the field of mediation has sought to demonstrate its effectiveness in resolving disputes. Less attention however, has been paid to how mediators perform their role and how they draw on theory to underpin and integrate their practice. This study explores mediation as a social interaction from the perspective of the mediator by drawing on the experiences of 18 workplace mediators in five British universities and their accounts of practice. The study finds that university mediators enact the facilitative model of mediation as a relational, intersubjective and co-constructed practice that is distinct from the theory embedded in the formal model in which most are trained. An explanation for this difference is found in meta-theory, the overarching philosophy that frames actual practice rather than practice being composed of strategically selected techniques.

The workplace mediators who participated in this research were relatively inexperienced – fewer than 20 cases – and the study sheds light on their professional development as they sought to develop their own theories of practice. The study identifies habitual practice and heedful performance as stages in this development and characterised by a mediator’s increasing fluency in interaction. The research finds that mediator learning is currently supported by reflective practice but demonstrates the role that reflexive practice can play in developing mediator understanding of interaction, leading the mediator to be intentional in interaction rather than rely on intuition.

Workplace mediation in universities is commonly conducted by co-mediating pairs. Conventionally, co-mediation is understood as a support mechanism for less experienced mediators. This study highlights that co-mediation is made effective by relational trust and demonstrates that co-mediation enhances the delivery of mediation by providing a stage and actors for dramaturgical performance. In particular, experienced co-mediators were found to perform vulnerability, inviting the parties to respond by interacting with openness and trust.

## Acknowledgements

This thesis represents the culmination of a quest for knowledge in the practice of mediation; something that might enrich both this practitioner and wider communities. The experience of conducting the research has been reminiscent of the wandering of the tribes of Israel in the desert; distractions, discouragements but with occasional flashes of light as something of promise emerged. To seek and search out wisdom has felt, at times, like sore travail (Ecclesiastes 1: 13). This section is in grateful recognition of those who lightened the journey and spurred the path to completion.

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## Chapter 1 – Introduction

This study examines the practice of workplace mediation as social interaction from the perspective of the mediator, drawing on the practice of in-house mediators in five British universities. Mediation conceived and examined as social interaction is a recognised gap in the literature (Banks and Saundry, 2010). Consequently, the aim of this research was to produce a better understanding of the interaction between mediators and the disputing parties and also between mediators as they co-mediate. What emerges from the research data are themes of performance (how mediators enact mediation), trust (how mediators relate to each other and the parties) and power (how mediators use their influence to create a safe space for interaction).

Mediation can be defined as *'a voluntary, consensual process in which the parties in dispute are assisted to reach a settlement'* (Genn *et al.*, 2007: 9)<sup>1</sup>. Mediation is a field that draws on many other disciplines (Zariski, 2010; Menkel-Meadow, 2013), leaving open multiple possibilities for the construction of a theoretical framework for research. Mediation is a multi-faceted social interaction (Wall and Kressel, 2012; Itten, 2017), and yet theorising practice in terms of interaction is rare (Banks and Saundry, 2010). This research explores interaction in mediation from the perspective of the mediator by drawing on the experiences of 18 university workplace mediators and their accounts of practice. The study finds that university mediators take a distinctive approach to mediation which is relational, intersubjective and co-constructed. By focusing on interaction, this study contributes to a fresh understanding of the practice and the conceptualisation of mediation.

The practice of mediation can be understood as the enactment of a formal model, a set of skills and a process learned in a training programme that enables the novice to commence practice. At least 25 such formal models are said to exist (Kressel, 2013) of which the most ubiquitous is the facilitative model based on principled negotiation (Fisher and Ury, 1997) and utilised by university mediators. Two critiques of this model are used to frame the analysis of the empirical data. Firstly, that the formal model represents only one element in understanding how mediators practice and that personal schema and implicit theory also need to be taken into account (Kressel, 2013). Secondly, that the facilitative model is ideologically flawed and leads ineluctably to a settlement approach, and moreover fails to be explicit about interaction and the relational space in which mediation takes place, a critique which is contained within what are termed second-generation

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<sup>1</sup> Caution is, however, required with this definition: provided by legal academics, it reflects the practice of mediation in the English civil courts. As the reader will encounter in this thesis, mediation needs to be understood in context and an all-encompassing, singular definition is arguably *'not possible or even desirable'* (Picard, 2004: 301).

models of mediation (Cobb, 2001). The significance of this research is that it represents a new way of thinking about existing models and the emergence of personal theories of practice as mediators gain experience.

The research addresses an issue of importance to mediators as they develop their practice: how they work from the foundation of basic training, learn from the experience of practice and synthesise a personal theory of practice. The study finds that the practice of mediation in universities represents an emergent, relational, second-generation approach to mediation but that this arises from the legacy of first-generation mediation training. There is therefore a dissonance between the formal model and practice. This finding is expanded upon by exploring the development path for mediators and defining two stages: habitual practice and heedful performance. Habitual practice, an ability to execute the mediation process, is a competence in mastering techniques that is supported by reflective practice. Heedful performance is interactional competence, a fluency in interaction that is supported by reflexive practice. The study explores both reflective and reflexive practice and shows how the latter can lead the practitioner to be explicit and intentional in interaction.

Categorising mediation practice as relational conveys an approach where the mediator's focus is on the interaction between the parties rather than the solution to a dispute or conflict (Folger, 2008). The study traces relational practice to dialogical communication, the co-construction of meaning and an intersubjective process (Cunliffe and Easterby-Smith, 2004; Fox, 2007) and maps a settlement approach to mediation to a monological conception of interaction. Relational-dialogical interaction and settlement-monological interaction represent meta-theory, the framework which guides the mediator in selecting micro-practice or techniques such as reframing, questioning or information gathering. The research demonstrates that the relational practice of mediation is best understood as an epistemic enactment, i.e. one that relies on meta-theory and parallels a researcher's choice of epistemology, rather than a strategic application of micro-practices.

University workplace mediation is commonly conducted as co-mediation, the pairing of two mediators to provide mutual support. Developing a personal theory of practice suggests a potential differentiation in style that could impact on the effectiveness of co-mediation. The study finds that the building, enactment and performance of trust is fundamental to effective co-mediation. Such trust has two elements: role trust, a commonality of expectation as to what mediation entails, that maps to habitual practice; and relational trust, openness between the mediators, that maps to heedful performance. Further, the study shows that co-mediation is more than a support for the less experienced mediator; it becomes a place of performance that is essential to heedful performance and a relational approach to mediation. Conceiving of mediation as performance draws on

Goffman's dramaturgical approach (Smith, 2006) and the study shows how university mediators perform improvisation and vulnerability.

The methodology deployed in this study is interpretive, intersubjective and constructionist. This marks the study as distinctive from mediation studies that observe practice and seek to test hypotheses, e.g. an examination of the effectiveness of mediator training (Lieberman, Foux-Levy and Segal, 2005). The study also differs from those that examine techniques used by mediators and seek to infer rules and effectiveness, e.g. the use of conversation analysis to explore interactional competence in mediation (Garcia, 2010). This research represents an examination of the purposes that drive action, going beyond micro-practice to consider meta-theory. It is also distinctive in focusing on less experienced occasional mediators, their learning, development and the emergence of personalised schemes of practice. Research in mediation is said to have become the provenance of law schools (Wall and Kressel, 2012), with an attendant de-emphasising of social psychology and the nature of interaction. This research aims to redress this balance by focusing on mediation as a social process, looking at how the mediator facilitates the interaction and relates to the parties. It is thus firmly in the field of social psychology albeit from a sociological perspective.

### **1.1 The Field of Mediation**

Mediation is an alternative dispute resolution (ADR) process that provides a means for parties in dispute or conflict to find a resolution on their own terms. It is an alternative to the settlement of a dispute by a recognised authority such as a tribunal judge, and distinct from other ADR processes such as arbitration in that the mediator – the neutral charged with running the process – has no authority to impose a solution. Mediation is utilised in a variety of settings: commercial disputes which might otherwise be settled in civil court, divorce disputes (family court), employment disputes (tribunal), and special education needs (tribunal). In addition, mediation is employed as an alternative to internal disciplinary or grievance processes in the workplace or where no formal adjudication possibility exists such as in neighbour disputes or in restorative justice.

Mediators typically enter the field by undertaking a training programme of approximately 40 hours duration (Webley, 2010) that is specific to a particular sector such as family mediation. This culminates in an assessment and often accreditation as a mediator by a recognised professional body. Students are expected to acquire key skills and the ability to manage the mediation process and to demonstrate this in role plays which emulate disputes in the sector (White and Agne, 2009). Key skills taught in basic training enable the student to facilitate communication with and between the parties in dispute. Such skills include active listening, summarising and questioning which enable the mediator to open up an understanding of the dispute whilst developing rapport with the



speaker. To these foundational skills more advanced skills are added, such as framing and reframing which equip the mediator to challenge the parties' perceptions of the dispute and create the opportunity for change or resolution (Fisher and Fisher-Yoshida, 2017).

Students are provided with a template for managing mediation as a multi-stage process (Menkel-Meadow, 2016). The template outlines a sequence of activities, a list of what the mediator needs to cover at each stage to move from dispute to resolution. The description of these stages varies by training provider but will typically include an opening phase, an exploration of the issues, a discovery of interests, a discussion of possible options, and a closing resolution or agreement (Kovach, 2005). Process management is, however, more than a check list of what to do. Critically, the mediator must also learn a new pattern of interaction with the parties that positions themselves as facilitators rather than controllers. This may be an unfamiliar role and markedly different from the norms of prior professional experience as say a barrister or HR specialist. Accordingly, students are introduced to, and coached in, the key concept of the mediator as neutral and impartial, not taking sides and allowing the parties to control the outcome of the mediation.

Mediation is conducted as a private, confidential process to provide an environment where parties can interact freely in the safe space which is created and sustained by the mediator. Such conditions have triggered concerns over the potential for the misuse of bargaining power within mediation (Grillo, 1990; Van Gramberg, 2003). This thesis examines how university mediators recognise and manage the power extant in relationships between parties and utilise mediator power whilst enacting the role of neutral and achieving the purposes of mediation.

The set of communication and process management skills together comprise what is termed a mediation model. One such model is dominant in the practice of mediation: the facilitative model which draws inspiration from the Harvard Program on Negotiation (HPON) and has a seminal text in Fisher and Ury's 'Getting to Yes' (Irvine, 2007). Other models have been developed – and are explored in this thesis – which share a common set of skills but differ in meta-theory, the philosophy of the purposes of mediation. Such alternative models are yet to significantly challenge the pre-eminence of the facilitative model. The facilitative model provides a unifying force to the practice of mediation, although its adaptation for use in each sector has introduced differences in practice. Consequently, the workplace mediator will recognise much of the practice of the family or commercial mediator but recoil at some aspects as beyond the bounds of mediation as they understand and practise it.

## 1.2 The Field of Research

Mediation is a well-recognised method for addressing conflict in the workplace. It has been widely adopted in the UK, particularly in the Higher Education (HE) sector where the cost of employment disputes – the visible tip of conflict – is reported to average £400 000 per institution per year (Times Higher Education, 2014). Mediation in universities is typically provided in-house by a pool of mediators drawn from staff. Professional development is an issue for these mediators as they may experience fewer than two cases per year (Poyntz, 2012).

When research focuses on practitioners, a choice must be made as to who should be selected to provide input and who has sufficient experience to shed light on practice. Commonly in studying mediators, a bar is set in terms of a minimum number of cases or years of experience. Expert status is defined as 10 years (Wilson, 2011; Kressel and Gadlin, 2009) or even 20 years (Meyers and Witzler, 2014). Generally, mediators are regarded as ‘experienced’ when they have undertaken between 50 and 100 cases (Goldberg, 2005). Mediators are regarded as ‘highly experienced’ when they have undertaken at least 500 cases (Raines, Pokhrel, and Poitras, 2013). However, there is a downside in focusing on experts: it overlooks learning from the less experienced. Studies that focus on expert mediators have shed light on complex practice schema which have crystallised over time (Kressel, 2013). Studying mediators in their early stages of practice however, as this research does, enables an examination of the emergence of personal style and consideration of what promotes practitioner development and the integration of practice.

In some sectors, the less experienced practitioner may be wholly representative of the practice of mediation. The university mediators who participated in this research were all internal staff; a common feature of workplace mediation in universities (Poyntz, 2012). They were experienced and recognised in their main professional roles, but mediation is for them an infrequently practised side line. As shown in Figure 1, their mediation experience ranges from zero to 20 cases with a median of eight cases. They acknowledged they were not professional mediators although they aspired to be professional as mediators (U4<sup>2</sup>) and to move beyond basic training (U3). Lack of opportunity to practice was seen by these university mediators as an obstacle to learning and development. An ideal of a case every month was expressed by Anna<sup>3</sup> but, in practice, mediators may undertake two or fewer cases per year (Poyntz, 2012). In this respect they are not alone in the field of mediation: a

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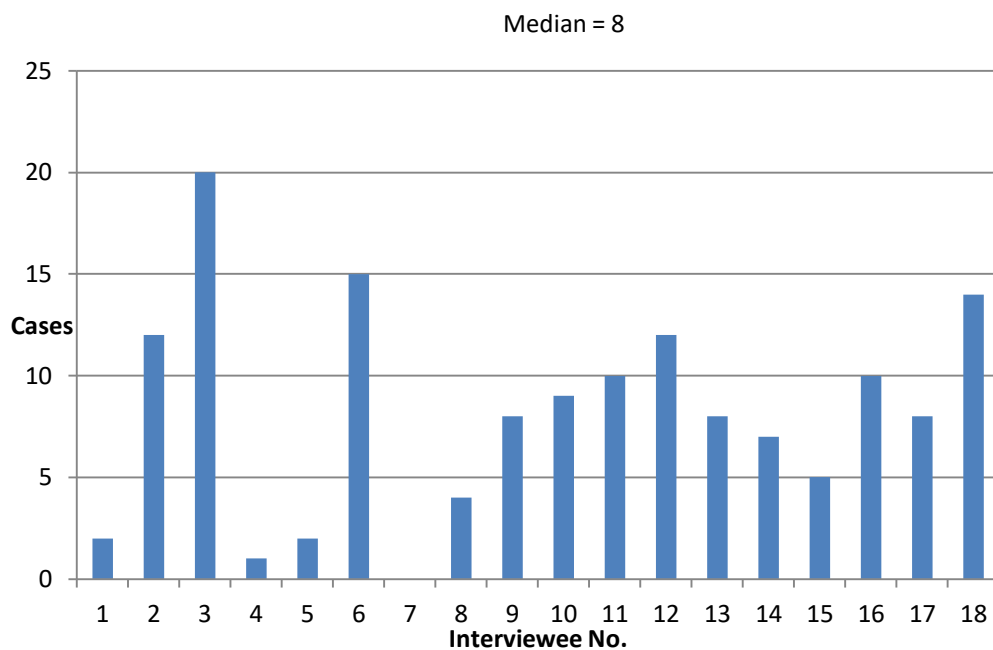
<sup>2</sup> U(N) refers to a comment collected in a Phase One workshop at University N that is not attributed to a particular participant in the research. Further details of the Phase One workshops and the coding of the universities are provided in Section 3.3.2.

<sup>3</sup> Anna is the pseudonym assigned to a participant interviewed in Phase Two of this research.

recent report found 56% of commercial mediators in the UK classified themselves as part-timers, with 80% of this group undertaking four or fewer mediations per year (CEDR, 2016).

A study of university mediators can therefore shed light on the emergence of mediation practice; a mediator's transition from being rule governed to confident adaptability in interaction; their reworking of what has been learned in training in the light of experiencing mediation.

**Figure 1 Experience (cases undertaken) of interviewees**



## 1.2 Thesis Outline

This thesis is set out over eight further chapters. The literature review (Chapter 2) examines the practice of mediation by building a theoretical framework of social interaction from a symbolic interactionist perspective. This is then linked to mediator style, theories of workplace conflict and the practice of mediation in universities. The review identified two main areas for research: firstly, the contribution that a theory of social interaction can make to the systematic integration of practice; and, secondly how two mediators, with differing styles, can be effective when co-mediating. The research was undertaken in the HE sector as it represents a sector with a high uptake of workplace mediation (Poyntz, 2012) and has a particular challenge in mediator development: providing sufficient casework to foster professional progress. The study was therefore considered to have potential for high impact and practical relevance.

The methodology utilised in this research, discussed in Chapter 3, is co-constructive and interpretivist; an approach consistent with mediation as a complex social interaction with multiple

interpretations. Accordingly, the methods employed are qualitative, with an emphasis on semi-structured interviews and mediator reflection. The core of the data in the study is the accounts of practice provided by 18 workplace mediators drawn from the mediation services at five British universities. These recorded interviews have been transcribed, coded and analysed using template analysis.

The results of this analysis are presented in this thesis across four chapters (4-7). Each chapter is a cluster of the coded data for four different aspects of how mediators conceive of and perform their roles, respectively; goals, power, co-mediation and theory. The beliefs and perceptions that mediators hold about mediation – its purpose, its goals and how success is measured – frame their behaviour. Chapter 4 explores the goals that drive practice and utilises a questionnaire originally employed in a study of Israeli mediators. This chapter demonstrates the prioritisation of relational over settlement goals for the university mediator and points to similarities with the transformative model.

Chapter 5 looks at how mediators conceive of the use of power within mediation and the positioning of the mediator in relation to the interaction. It examines the use of micro-practices such as reframing to demonstrate how mediators exercise power. The chapter shows that university mediators have a strong sense of mediation as an empowerment of the parties. However, it also reveals a tension between what mediators are taught in basic training and their disposition to empowering the parties.

The combination of two mediators with different styles as a co-mediating team is popular in university workplace mediation but potentially problematic. Chapter 6 focuses on the workings of co-mediation and the community of practice that supports the mediator. This chapter shows that effective co-mediation is rooted in two expressions of trust, role and relational, and provides an opportunity for mediation as performance.

For the practitioner, theory and practice are said to be intertwined (Macfarlane and Mayer, 2005). Theory guides practice and the experience of practice produces theory. Chapter 7 examines the theory, both explicit and implicit, that mediators draw on to guide practice. The chapter shows that mediators' explicit use of theory is limited while the proprietary acronyms learned in basic training are influential. The metaphor of conversation, used to describe practice, is explored to produce an understanding of the meta-theory, the overarching framework, deployed by the mediator. Conversely, an absence of the use of negotiation as a metaphor flags the practice of mediation in

universities as different from other enactments of the facilitative model, a point developed further in Chapter 8.

The strands from these four chapters are drawn together in a discussion chapter (Chapter 8). Here the data are synthesised to produce a theoretical framework for understanding interaction and practice integration. This provides a mapping of university workplace mediation as relational and dialogical, explores the nature of heedful performance and proposes reflexive practice as a route to mediator development. Finally, a concluding chapter (9) details the findings of this research and their contribution to knowledge before providing a set of recommendations for mediator practice, learning and development.

## Chapter 2 – Literature Review

Conflict is prevalent in the workplace. Research suggests managers spend 30-50% of their day addressing conflict, whilst 80% of their difficulties within conflict stem from strained employee relationships (Coleman et al 2013). Consequently, managing conflict is a key organisational requirement. Formal measures such as grievance and disciplinary procedures may be employed to address conflict. Alternatively, organisations can utilise forms of Alternative Dispute Resolution (ADR) including specifically mediation, where a neutral third party assists the parties to explore and potentially to resolve their differences. Crucially, and unlike grievance and disciplinary procedures, disputants control outcomes while mediators facilitate the process (Wall and Dunne, 2012).

The origins of mediation as an alternative method of dispute resolution have been traced at least as far back as its use by guilds in the Middle Ages (Roebuck, 2007). However its introduction, in a form recognisable in current practice, lies in its utilisation in the United States in the early 20<sup>th</sup> century for labour disputes (Menkel-Meadow, 2000). Mediation received further impetus and recognition in the US when adopted for settling commercial disputes following the 1976 Pound Conference (Kovach and Love, 1998; Leathes, 2011). Development was further spurred by the academic backing of the Harvard Programme on Negotiation (HPON) and the 1981 publication of mediation's seminal text, 'Getting to Yes' (Fisher and Ury, 1997; Menkel -Meadow, 2006).

A decade later in 1991, the foundations for the practice of mediation were laid in the UK when the Centre for Effective Dispute Resolution (CEDR) began to offer mediation skills training. CEDR was subsequently joined by other private providers who recognised a dual opportunity – training provision and the delivery of mediation services by their own trained and accredited mediators. Specific training for workplace mediators followed in 1998 (Doherty and Guylar, 2008) with workplace mediation receiving a public imprimatur in 2005 when Acas commenced a service (Latreille, 2011).

Whilst the initial provision of mediation was external – by private providers or individual mediators – the public sector has shown a preference for internal schemes utilising their own employees (Wood, Saundry, and Latreille, 2014; Dickens, 2014). In November 2002 the first such scheme was launched by Bradford MDC (Saundry, 2012). This was followed by the first university scheme in 2003 (Scrine and Taylor, 2009), West Midlands Police in 2004 and five NHS Trusts in 2006. According to one provider of mediation training, mediation has now been adopted across all central government departments (private conversation with author), a move which is consistent with the government's

2001 pledge to use ADR to resolve disputes involving any department (Genn *et al.*, 2007; Latreille, 2011).

The importance of workplace mediation in the UK today can be seen from an analysis of the 2011 Workplace Employment Relations Study which found mediation is widespread – where written dispute procedures exist – with 62% of organisations making provision for mediation. Usage of mediation is however lower, with just 7% of organisations employing mediation in the previous year, although this figure rises for workplaces with more than 500 employees (42%) and those with experience of tribunal claims (48%). Meanwhile demand for Acas mediation is reported as doubling between 2004/5 and 2010/11 (Wood, et al, 2014).

Where mediation is referred to amongst mediators without further qualification, it will typically signal that the facilitative model of mediation is being utilised. However, as noted in Chapter 1, there are other models of mediation in use and these serve in this thesis as reference points for the analysis of university workplace mediation. In this chapter, the four main mediation models are examined and are represented in outline in Table 1.

**Table 1 Four Main Models of Mediation**

Model	Origin	Mediator as	Usage
Facilitative	Harvard Programme on Negotiation; 'Getting to Yes'	Facilitator	Widespread; usually the model deployed if not otherwise specified
Transformative	Bush & Folger's critique of US mediation	Supporter of relational interaction	Most famously adopted for workplace conflict by the US Postal Service. Now utilised by one National Health Service Hospital Trust
Narrative	Adapted from Narrative Therapy by Winslade and Monk	Disrupter of conflict story	Australian roots, but now used by one London community mediation service
Evaluative	Facilitative Model	Evaluator of parties' positions	Used as an extension of the facilitative model to drive settlement, particularly in commercial disputes

Literature in the mediation field is diverse, drawing on a range of disciplines including anthropology, sociology, economics, game theory and psychology (Menkel-Meadow, 2013). The literature also reflects mediation practice ranging from that conducted 'under the shadow of the law' (Mnookin and Kornhauser, 1979) – either court or tribunal – to that of a more relational nature such as feuding neighbours. This diversity of both theory and practice provides a '*rich opportunity for cross pollination*' (Costantino, 2009: 96) but plurality brings problems of meaning. Conflict, for instance, is

a term widely used but with meanings that vary according to practice schema (Kressel, 2013) and for mediators the *'same words... do not always mean the same things'* (Picard, 2002: 261).

As mediation can be viewed from many perspectives, a choice must be made when building a theoretical frame. In this review the point of departure is the theory of social interaction as a dialogical, intersubjective process. This is justified on two counts. Firstly, mediation is a social practice and how mediators understand their practice is a *'sociologically significant means of obtaining insight'* (Picard, 2002). Secondly, theorising practice in terms of social interaction is a recognised gap in the literature relating to workplace mediation (Banks and Saundry, 2010).

Empirical research in the field of workplace mediation is widely considered to be limited but growing (Bollen and Euwema, 2013; Latreille, 2011; Banks and Saundry, 2010; Bennett, 2014). However, research in the UK has demonstrated mediation's effectiveness in the workplace as measured by settlement rates – defined as closed or resolved cases – reaching 88% (Latreille, 2010) and 83% (Broughton and Ledermaier, 2014). This metric however, is not entirely unproblematic as – in the absence of control groups – it begs the question of the counterfactual; how might any given case have been otherwise resolved absent the intervention? Insights into this question are rare in mediation, although a recent evaluation of mediation in special education needs (SEN) cases provides evidence of mediation's effectiveness (CEDAR, 2017), with 78% of mediated disputes resolved without recourse to an Employment Tribunal as compared with 64% for those not utilising mediation. Mediation is further reported to be beneficial in terms of relational repair especially in the aftermath of disciplinary or grievance procedures (Latreille, 2011). Organisations may also have wider, more strategic, goals such as changing their culture of conflict and a number of studies have demonstrated that mediation can contribute to systemic change (Saundry, McArdle, and Thomas, 2011; Bingham, 2012).

Mediation is thus important and effective, meriting its place alongside formal procedures. However, what makes mediation effective when each case is different? The mediator is core to the process, so how do they make their decisions? Do mediators rely on intuition – as many claim (Douglas, 2007; Irvine, 2008; Kressel and Gadlin, 2009; Walsh, 2015; Rooney, 2007) – and adapt their approach between and possibly within each case, or is there a favoured and fixed style to their practice (Kressel, 2013)? Studies of mediator behaviour are extensive and yet we know little of mediator motivation (Zarankin, Wall and Zarankin, 2014), and of how mediators select techniques and apply strategies. For example empathy is an important mediator behaviour but is this directed to smoothing the path to settlement or an expression of deeper curiosity (Kressel, 2013: 724)?



This review commences with a section on Social Interaction to provide a theoretical frame for mediation as a collaborative process and insight into the personal schema of mediators. This is followed by examining the literature on mediator style and examines the formal models and informal integration that mediators utilise. A third section locates mediation within the literature on workplace conflict and outlines more specifically the practice of mediation in British universities. In a final section these streams are drawn together to identify how research can contribute to practice of co-mediation that appears to have been adopted in most British universities.

## **2.1 Conflict in the Workplace**

Conflict is a term which is widely used but rarely explicitly defined. The reader or listener is left to derive meaning from the context in which the term is used. Thus, armed struggle, family strife, environmental protest or industrial strikes all differ but may be considered as examples of conflict. These examples display two common features. Groups or individuals are set against each other in competition or adversarial positions. Conflict is viewed as destructive and to be avoided.

In contrast mediation – drawing on Mary Parker Follett, an early pioneer of mediation in US labour disputes – conceives of conflict as difference, arising from the differing perspectives of the disputants (Menkel-Meadow, 2000). This de-emphasises the search for blame or vindication which characterises rights or power-based approaches. Additionally, it opens up the possibility of conflict being viewed constructively; as an opportunity for learning.

Theorising structural conflict in the workplace follows from a conception of how employer-employee relationships are, or should be, organised. Four contrasting ideologies are identified by Budd and Colvin (2014): egoist, critical (radical), unitarist and pluralist. An egoist approach draws on neo-liberal philosophy, where the relationship between employer and employee is regarded as transactional in nature. Labour is viewed as a commodity, and each party seeks a price that satisfies in that it represents their best alternative. Underpinning an egoist frame is the assumption that labour markets are (or can be) perfectly competitive, enabling conflict to be dissolved within market clearing transactions.

A critical approach challenges such a faith in the efficacy of markets and is premised on a belief in an inherent inequality residing in the employer-employee relationship. This critique first developed by Marx in the 19th Century and represented today by radical scholarship that emphasises unequal power dynamics that reside in societal structure (Budd and Colvin, 2014). Conflict is inevitable in this framework as the owners of the means of production seek to exploit workers. Resolution of structurally embedded conflict requires systemic change. An egoist approach assumes that the

interests of the employer and employee are fully represented in the efficiencies of the market. A critical approach sees the worker as enmeshed in a structure that favours the interests of capital, one that must be radically transformed if the interests of the worker are to be met.

A unitarist approach to management assumes a communality of interest between worker and employee. Efforts are therefore made to build and sustain a unity of interest through a Human Relations approach to management. HR policies are designed to align employee/management interests, an approach viewed by radicals as a '*disguised method for imposing managerial authority*' (Budd and Colvin, 2014: 13). A unitarist perspective holds that employees and managers have the same goals and that goodwill and communication will suffice to diffuse conflict (Edwards, 1986). Should conflict arise, it is an indication of the poor management of employees; a failure to secure a unity of interests. This may be remedied by grievance procedures – the imposition of solutions – or, through participatory problem-solving techniques (Lewin, 2001). In the unitarist approach, conflict between individuals – relationships that are deviant – is of more importance than the structure of employer-employee relationship (Budd and Colvin, 2014).

A pluralist approach recognises a diversity of interest and requires measures that enable diversity to be fairly and effectively managed. Pluralism accepts that conflict is not an aberration, as the unitarist approach suggests, but is inevitable in that employer and worker interests differ. Conflict is naturally embedded within the institutional structures of capitalism (Edwards, 1986) and fostered by the power imbalance between employer and employee. Where the critical approach seeks radical change of the system, the pluralist approach seeks to redress the power imbalance within the given system. Trade unions play a vital role in this regard by engaging in collective bargaining and making possible organised collective action such as strikes. On a wider perspective, the state can intervene to regulate the employee-worker relationship in the form of minimum wage legislation, statutory employment rights and dispute resolution agencies.

Dix et al provide a definition of conflict as '*the discontent arising from a perceived clash of interests*' (2009). Budd et al refer to conflict as arising from difference, either real or imagined (2017). From a unitarist perspective, management might expect that conflict resolution targets a change in perception so that parties recognise common interests. Mediation may therefore be utilised to open up a channel of communication for the parties and create possibilities for mutual understanding. From a pluralist perspective – where the expectation is that the interests of organisation and employee are not completely aligned – resolving conflict might be conceived as negotiation between competing interests that leads towards some form of compromise; a process that traditionally fell to union and company representatives but where mediation is now potentially deployed (Colvin, 2012).

Working forward from theorising structural conflict allows an explanation of the expectations that management may hold regarding dispute resolution systems. A unitarist philosophy may prioritise efficiency (Saundry, Bennett and Wibberley, 2016) whereas a pluralist perspective may additionally be concerned with voice and equity (Budd and Colvin, 2014). However, at this juncture it is useful to note that any workplace, in practice, may not necessarily fit entirely into any one theoretical category. Unitarist ideology can coexist with pluralist practice (Geare, Edgar and McAndrew, 2006). HRM may be the expression of management philosophy in an organisation but a legacy of pluralist procedures can still remain (Currie et al., 2017). Moreover, structure may provide the context for understanding conflict in the workplace – a macro view – but actual and potential conflict involves people and their cognitive and affective frames, perspectives and needs (Budd, Colvin and Pohler, 2017: 8) – a micro view of conflict. The enactment of mediation in any organisation may not conform to macro level expectations but operate at the micro level – a possibility that this thesis examines.

The conflicts typically addressed by mediation are those that have crystallised into a dispute, where parties have recognised, or been obliged to recognise, a need to address conflict. Mediation is usually conducted with a limited number of disputants (often two) although the process can be adapted for utilisation with larger numbers. One principle of mediation is that of party self-determination, where disputants are free to decide on the outcome or indeed whether there is any outcome or resolution. Mediation thus has an individualist, agency focus.

Mediation however, does not take place in the absence of structure; echoing structuration theory (Stones, 2005) it rather interacts with structure. For example, the presence of employment rights and grievance procedures provides alternatives to disputants that shape their expectations of and interaction within mediation. In turn, mediation can impact on structure. This occurs at the micro level for participants as they generate mutually acceptable norms. It can also be realised at a macro level to change the organisational conflict culture: examples exist of mediation schemes set up expressly for this purpose (Nabatchi and Bingham, 2010; Saundry, et al 2011) and the potential for mediation to effect organisation-wide change is recognised by the UK government (BIS, 2011).

### **2.1.1 Conflict and mediation in universities**

An article (May 29th 2014) in Times Higher Education, covering 70% of British universities, reported sectoral spending over a four year period on settling employment disputes at £29 million, an average of £400k per institution. Settling disputes marked for Employment Tribunal averages £15.6k a case. Universities are however said to be risk averse with only 16% of claims lodged with an Employment Tribunal proceeding to a hearing, as against 27% for all claims. Whilst these figures – disputes

heading towards external resolution – are only a subset of total disputes, it is clear that resolving disputes and managing conflict are important in the HE sector. This has spurred the use of mediation, and the sector is reported to have the most developed practice of workplace mediation in the UK (Bennett, 2014).

The effectiveness of mediation in reducing the costs of dispute resolution is, however, only one of the drivers for its introduction. An ability to repair relations (Bennett, 2014) and the difficult, arduous, slow nature of formal procedures (Poyntz, 2012) are also factors. At a more strategic level, some institutions have justified mediation as an expression of their ethos exemplified in a collaborative method of addressing conflict (Poyntz, 2012; Bennett, 2014).

Mediation as practised in universities is distinctive in that it often involves conflict between academics who are ‘highly creative and highly valued but do not always have the people skills’ (Bennett, 2014: 11) and highly individualistic (Yarn, 2014). However, mediation is also required to serve the wider university staff and in some cases is made available to students (Poyntz, 2012). The needs of this wide spectrum are typically provided by an internal mediation service, with external mediation reserved for cases involving the most senior academics (Bennett, 2014).

These internal services depend on university staff trained in the basic (40 hour) mediation skills training by external providers. In principle, mediators are typically selected from across a university, although HR staff may be disproportionately involved (Poyntz, 2012; Broughton and Ledermaier, 2014) with only 25% of institutions electing not to train HR staff (Bennett, 2014).

Co-mediation is the preferred practice model in universities; a pragmatic choice that enables mediators to support each other and gain experience more rapidly (Latreille, 2011; Bennett, 2014). This is particularly important as universities average 12-15 mediations per year (Bennett, 2014) whilst maintaining pools of mediators numbering on average 10 (Poyntz, 2012). Thus, any one mediator may experience as few as two mediations in a year; a number that was mirrored in a survey of mediators trained by Acas (Broughton and Ledermaier, 2014).

## **2.2 Social Interaction**

Interaction with other people – social interaction – is an everyday experience. Commencing in childhood we develop patterns and behaviours that enable us to function in interaction without conscious thought. This can lead to an intuitive approach to interaction where actions are taken because, in the light of experience, they feel appropriate. Mediators may be no exception, taking interaction for granted as *‘fish take the sea and birds the air’* (Lang and Taylor, 2000: 153). This research however, examines mediation as a social interaction and this requires an exploration of the

assumptions that frame the interaction of parties and mediators. Consequently, this section sets out a basis for conceptualising mediation as a social interaction.

Our interaction with other human beings may occur at various levels. It takes place with minimal engagement when we coordinate our movements with others in the street by unconsciously deploying body language. We interpret intentions and respond accordingly, seamlessly avoiding collision. It can however, be an altogether more complex, joint task – say the negotiation of a sales agreement – requiring the conscious use of language and speech. For each individual there is a search for meaning and understanding which in turn forms the basis for further action.

Actions – such as a gesture or speech – which invite a response from the other, are termed Communicative Action: actions which elicit a response from the other are considered Social Interaction (Crossley, 1996: 79). Thus, perception prompts action, which frames perception for the other; forming an interactive loop in which meaning is converged upon. Action in the form of language is *'the tool with which we think'* (Crossley, 1996: 38). Or more broadly, we may speak of 'linguaging', which in addition to language involves *'gestures, facial expressions, bodily comportment, manipulation of objects, use of artefacts, etc.'* (Linell, 2014: 59).

Interaction is intersubjective - a connection between subjective individuals. The intersubjective space formed in interaction is both *'a site of sharing and agreement, and of competition and contestation'* (Crossley, 1996: 23).

### **2.2.1 Theorising Social Interaction**

Theorising Social Interaction requires a conceptualisation of the two actors involved – the 'Self' and the 'Other' and may be conceptualised in a number of ways providing differing explanations for self and other and what is accomplished in the interaction. Self emerges and is continuously changed by interaction in contrast to being structured, stable and determined by external factors.

Symbolic Interactionism represents a sociological perspective within social psychology. Symbols are the words, objects and acts we use to communicate with, and are interpreted by the other. Language is important as a symbolic system; a means to describe our thoughts to ourselves and others. Communicative Action is both overt (with the other) and covert (with the self). Self is not an entity but a dialogical process between the impulsive, unpredictable 'I' and the organised 'me' (Lauer and Handel, 1983). Social interaction therefore has a profound significance: not only is it an important cause of human action, but it is where the self is developed, creating our human qualities and forming our identity (Charon, 2009).

Social interaction involves a threefold process of communication, interpretation and adjustment. That is to say, an incoming stimulus or message is interpreted before speech action is initiated. The presence of such an interpretative step distinguishes it from instinct, an inborn biologically programmed response (Schwinn, 2014).

Symbolic Interaction requires role taking, overcoming an egocentric viewpoint and acquiring the perspective of the other. The conditions that underpin this as a cooperative process have parallels in the practice of mediation and can be divided into five sub-processes (Charon, 2009). 'Ongoing Communication' requires the actors to be willing to communicate and mediation provides a safe space for parties to meet and listen to each other. 'Mutual Role Taking' is the willingness to see the perspective of the other and to take the other into account which can flow, in mediation, from listening and reflection. 'Defining the others as social objects' means a willingness to recognise the identity of the other and accept that identity as useful for achieving mutual gains. 'Defining social objects together' entails a shared focus of attention that is important to both interactants and around which action is organised. Finally, 'Developing Goals in Interaction' is premised on goals being similar (or at least complementary) – a condition which mediation can achieve by helping parties move from the deadlock of positions to consideration of their interests.

Goffman – commonly connected with, but in his own view distinct from, Symbolic Interactionism – views the self as a performer providing an impression for the other and looking to '*sustain a viable image... in the eyes of others*' (Goffman cited in Smith, 2006: 99). This is accomplished by the use of frames, rituals, roles and metaphors. The focus is on the self and how the self changes in response to the audience of the other.

Goffman developed this dramaturgical approach further by reference to the arena of performance (Front Stage) as distinct from the location of preparation and rehearsal (Back Stage). In Front Stage, the challenge is to manage face (how we present) and interpret cues (how our audience is responding). As the interaction evolves, there is the delicate task of dropping one's guard and adapting to change. This is conducted by way of collusive communication, a guarded step-by-step movement towards revealing true interests (Goffman, 1959).

Goffman's concept of self and other is a dyad that could be two individuals or two teams of individuals. However, he does introduce the concept of third party intervention by a mediator who performs a discrepant role in being privy to the dark and strategic secrets that each side holds. Although Goffman is here using the term mediator in a generic sense, there is a parallel with the practice of mediation. Addressing parties separately (in caucus) provides an opportunity for the

mediator to help both sides (Back Stage) to prepare effectively for joint meetings (Front Stage). A mediator becomes a facilitator of collusive communication, creating the conditions which enable interests to be surfaced. And a mediator assists in the interpretation of cues by underpinning listening and inviting reflection.

From a more psychological perspective, Social Perspective Coordination theory offers a cognitive developmental model in which the individual becomes progressively skilled in aligning their perspective with the other (Weitzman and Weitzman, 2006). This takes place in four stages. 'Egocentric' in which fight or flight behaviour is prominent and the other is viewed as an object whilst the self is seen as in conflict with the external world. 'Unilateral' is characterised by obedience either granted to, or commanded of, the other. The other is recognised as having interests but the self is the principal subject of negotiation with interests separate from the other. 'Reciprocal' is rooted in exchange oriented negotiations which seek a balance of interests, although the interests of self prevail over those of the other. And finally, 'Mutual' is where collaboration is active and seeking to meet the needs of both self and the other is possible.

Ostensibly this final stage maps to the conditions for cooperation in Symbolic Interactionism above, i.e. there is recognition of the other and their needs. However, the focal point here is the individual – and their acquisition of skills – and not the intersubjective focus of interactionism. Moreover, empirical research demonstrates that whilst individuals might have the skills to operate at higher levels they may choose to employ skills at lower levels because of cultural norms (women socialised to defer to men) or perceived power differentials (Weitzman and Weitzman, 2000). Social actors may therefore have the potential to cooperate, but it may require a mediated process to enable that potential to be realised.

### **2.2.2 Elements of Social Interaction**

Perception plays an important role in interaction. The step of interpretation – according to Shibutani (1975) – is conducted by drawing on the perspective of a reference group. These groups arise from the various societies to which we belong – *'we see reality as a result of the perspectives we take on through social interaction and the groups whose perspectives we use are called our reference groups'* (Charon, 2009: 37). The mediator must therefore be aware that disputants will draw on a variety of sources for perspective and that these may sometimes conflict. Some sources may be obvious – say a lawyer drawing on legal society – but other latent sources may need to be considered by the mediator. Equally, the mediator themselves must become aware of their own sources of perspective.

Inviting parties to draw on differing perspectives is disruptive and discomfiting, potentially rendering the self inconsistent or disintegrated (Shibutani, 1975). Disputants are often subconsciously aware that this occurs within mediation and this can cause anxiety and reluctance to engage. Mediators must therefore frame mediation as a safe place where participants will be treated with respect. The pattern for respectful behaviour is usually achieved by agreeing, and then maintaining, ground rules for the joint meeting.

Emotion is also constructed within interaction and not instinctual; there is a micro-second processing that occurs before action. When somebody treads on our toes we interpret this act as aggression or clumsiness before communicating say anger or irritation. Mediators may be more or less comfortable with the expression of emotion in mediation. They should however see this as arising from an interaction in which they also participate; they are not detached unemotional observers.

In both perception and emotion, interpretation occurs rapidly, drawing on established frames of experience and action to produce what is referred to as '*social structuration*' (Crossley, 1996: 49). The interaction is a pre-reflective radical mode of intersubjectivity where we are '*too engaged to be aware of either ourselves or of them*' (Crossley, 1996: 71). By contrast, an interconnected egological mode involves a degree of reflective distance which enables the internal dialogue with, and the development of, the self (Crossley, 1996). For the mediator this egological, reflexive mode finds resonance in theorising the subject of reflection. 'Reflection in Action' is an ability that enables the most capable mediators to respond effectively to what is occurring in the (mediation) room (Lang and Taylor, 2000). Professional development requires reflexivity; to be effective this must move beyond the security of re-examining techniques into a testing of deeper assumptions, a process termed double loop learning (Argyris and Schön, 1974). The use of reflective practice and the development of reflexive practice is a topic which is explored further when examining the empirical data in Chapter 8.

### **2.2.3 Intuition and Improvisation**

Mediators are said to rely upon intuition to guide their decision making (Marshall and Hurworth, 2009; Douglas, 2007; Lande, 2008) and encouraged to use their intuition purposefully (Lang and Arms, 2017). Intuition represents gut feeling (Katz and Sosa, 2015), a spontaneous response without apparent forethought (Rooney, 2007) that enables the practitioner to respond to interaction. Intuition may be viewed as the antithesis of technical rigour or analysis (Schön, 1995) and lacking a theoretical foundation (Zariski, 2010). However, practice enables previously analytic processes to



become intuitive (Pretz *et al.*, 2014), and for the more experienced practitioner intuition becomes a *'highly developed capacity to synthesize theory and technique into decisions and actions'* (Lang and Taylor, 2000: 7). Moore and Koning (2015) point out that formalisation and structure work counter to intuition, boxing the practitioner in and dampening creativity. It might therefore be expected that intuition is an emergent skill for mediators, something that grows with experience, and the confidence to act flexibly and adaptively.

Intuition and improvisation are counterparts in interaction. Where intuition is skill in responding to interaction, improvisation is skill in how to respond. Improvisation is *'intuition guiding action in a spontaneous way'* (Crossan and Sorrenti, 2002: 30); a *'combination of intuition, creativity, and bricolage'* (Leybourne and Sadler-Smith, 2006: 484), using the resources or techniques at hand to make a response in the heat of the moment (Keevers and Treleaven, 2011). Improvisation is a popular metaphor for mediation, conveying working in the moment (Bellman, 2006), a structure that enables creativity (Cooley, 2007) or performance (Balachandra *et al.*, 2005). Improvisational theatre is about *'embracing the uncertain, trusting intuition, acting before thinking, adapting to circumstances, and working as a group in a process of creation'* (Vera and Crossan, 2004: 701).

Improvisation is both spontaneous and creative (Vera and Crossan, 2004). This distinguishes improvisation from a spontaneous response to interaction which is patterned, the repetition of routine action that may characterise the less experienced mediator as they strive to deliver habitual practice (a term explained in Section 2.5). Good improvisational theatre is said to emphasise process over outcome (Vera and Crossan, 2004), the interaction of the participants being valued over the dialogue which is produced. Applied to mediation, the metaphor of improvisational theatre underlines the importance of the relational. Significantly, where settlement oriented mediators utilise the metaphor it is in advocacy of more creative outcomes (Cooley, 2007).

### **2.3 Mediation as an Ideal Process**

Communicative Action is conceived by Habermas as an ideal process, *'an alternative way of relating to others that does not just use them as means to self-interested goals tied to the necessity of producing our material needs'* (Ritzer and Smart, 2001: 202). In this he distinguishes it from Instrumental Action – where an agent does something to bring about a desired end – and Strategic Action – getting other people to bring about the desired end.

Communicative Action – as theorised by Habermas (Chilton, Cuzzo and Stalzer, 2005) – is a collaborative process requiring power to be exercised in a manner that enables an integrative approach. Power is utilised *'for'* the achievement of gains for both self and other. By contrast,

Instrumental and Strategic Action represent competitive processes where power is deployed 'to' or 'over'. Notionally this is the triumph of self over other. However, material gain comes at the expense of social interaction. In Symbolic Interactionist terms this can therefore be conceived of as a diminution of both.

Collaborative processes require a willingness and ability to communicate. When conflict arises, there is ideally an opportunity for learning and growth. More commonly however, communication and collaboration are disrupted. *'Conflict tends to destabilize the parties' experience of both self and other, so that the parties interact in ways that are both more vulnerable and more self-absorbed than they did before the conflict'* (Della Noce, 2003: 928).

Where Communicative Action fails, parties resort to Instrumental and Strategic Action. Attempts are made to settle disputes by recourse to power or rights; the latter involving formal processes – such as a disciplinary procedure or tribunal hearing – where a third party is granted the authority to impose a decision (Ury et al cited in Lewicki, Saunders, and Minton, 1999). Alternatively, a mediator may be invited to intervene and facilitate a return to Communicative Action as an ideal collaborative process.

In the 1920-s, Follett theorised three ways conflict may be dealt with: domination, compromise and integration (Menkel-Meadow, 2000). Domination is the exercise of power. Compromise – each side yielding something – may be the outcome of mediation especially if settlement is prioritised; mediation is effectively driven to instrumental purpose. Integration instead is premised on mutual gain – Communicative Action in Habermas' terms – and arises from the trust and fresh perspectives engendered by collaboration rather than competition. Integration – in the classic illustration by provided by Follett (Menkel-Meadow, 2013) – is the ability to see an orange as both peel and fruit rather than divide it in compromise or sequester it by power.

## **2.4 Meaning and Conflict**

Looking at how meaning emerges in interaction again presupposes an underlying theory. Drawing on Blumer – a leading Symbolic Interactionist – meaning can fall into one of three categories which are distinguished by how they conceive of the individual and the interaction (Blumer, 1986). Firstly, meaning can be considered as intrinsic. It is inherent, can be determined objectively and is independent of the individual. This is a realist approach where social interaction has no relevance. Secondly, meaning may be achieved by psychical accretion, a progressive layering of perception and cognition – the psychological equivalent of 3-D printing – within the individual. Thirdly, meaning as arising within social interaction, the Symbolic Interactionist approach which involves an

interpretative process and a tentative interaction with self. Meaning emerges as an iterative process of external and internal communication – the *'repeated sequence of perception-action-speech (spoken thoughts) mutually informing to provide cohesive grip on the world'* (Crossley, 1996: 31).

To illustrate the differences in these approaches, consider the potential problem of cognitive bias; a skewing of perception that leads to distortions and errors of judgement. If meaning is intrinsic, then bias can be dissolved objectively by determining the correct view. If meaning lies within the individual, then bias is a subjective problem that a mediator might help disarm by offering alternative views. The micro-practice of reframing may be utilised by the mediator to offer a different perspective to the individual. However, within social interaction, bias is intersubjective and therefore a mutual problem that requires a joint and not an individual view.

Theorising language has a similar divide between an individual and interactive focus. For the monologist, *'language is a means of transferring or transporting messages, ideas, and meanings from the sender to the recipient'* (Linell, 2014: 62). Dialogical theory however, proposes that meaning shapes and is shaped by interaction; it is dialogically constructed. We seek meaning from our interpretation of the interaction and adjust our subsequent action, providing input for the other's search for meaning.

There is an assumption we make initially in an interaction that we share meaning; *'words and phrases have the same significance for us and the other'* (Crossley, 1996: 85). However, as we communicate we discover different perceptions and what Coulter terms an interpretive asymmetry (Coulter, 1975); we see things differently, we are in conflict. This may lead to a battle to establish our position and undermine that of the other by the *'negotiation of referential, social, and expressive meanings'* (Schiffrin, Tannen, and Hamilton, 2001: 654). Alternatively, it can be an intersubjective collaborative exercise; Communicative Action as conceived by Habermas as an ideal process.

## **2.5 Monological and Dialogical in the context of mediation**

Mediator behaviour is described as a dichotomy between *'task-oriented, settlement-focused styles, and styles with relational foci and objectives'* (Kressel and Wall, 2012: 336). Attending to both styles is viewed as difficult to accomplish and it is therefore suggested that mediators elect to come down on one side or the other (Wall and Kressel, 2012). This dichotomy of mediator style can be mapped to a dichotomy of interaction, monological or dialogical as shown in Table 2.

A settlement approach represents monological interaction; that is where the parties are single agents trading information (Glenn and Kuttner, 2013). It is predicated on the view that mediation is

an individualist ideology (Bond, 2013), drawing on *'rational liberal philosophies of human nature that view conflict as a problem to be solved'* (Picard and Jull, 2011: 157). The mediator facilitates an exchange between individuals that seeks to solve a problem. Information is exchanged leading to the uncovering of a resolution to conflict. For the mediator, information is gathered to feed mental mapping, the process of mediators conceiving *'what they should do to facilitate movement toward settlement'* (Wall and Kressel, 2016: 15). Practitioners view themselves as gatherers of information, mining the interaction to gain insight into a dispute so that they can provide *'the help required to achieve a resolution'* (Marcoz, 2016: 1). This process is deductive; mediators seek meaning in the collection of facts, and make formulations (hypotheses) as how to act (Lang and Taylor, 2000: 32).

The questions used to generate information aim to identify the causes of the conflict and to analyse patterns of behaviour. Questioning can be highly structured and directive as the mediator endeavours to understand the cause of the conflict (Kressel, 2009). One recent study, using conversational analysis, found community mediators using solution focused questions (SFQ) (Stokoe and Sikveland, 2016). These emanate from a mediator analysing the situation and formulating a solution and are designed to frame the parties' perceptions of conflict in ways that pave the way to settlement on terms that mediators endorse. Using these methods mediators may be seen to *'routinely and unabashedly engage in manipulation and deception to foster settlements'* (Coben, 2000: 5).

In monological interaction the mediator is positioned as a reader of a situation. Interaction becomes a place of experimentation where meaning and truth are perceived by the mediator (Lang and Taylor, 2000). In dialogical interaction, the mediator is a co-author (Barge and Little, 2008). Interaction becomes a place where parties relate to each other and jointly create meaning, the mediator facilitating a co-construction of reality, *'a joint process of opening and re-examining opinions and foundational assumptions'* (Kuttner, 2012: 325). Mediation then becomes *'an interpretive and intersubjective process in which "truth" is co-constructed'* (Rothman, 2014: 442). Mediation is defined in terms which emphasise interaction rather than settlement; interaction is integral and relational depth is required to move mediation forward rather than interaction becoming merely incidental, a means to the end (of information exchange). A relational approach to interaction is inductive, drawing on *'interpretive philosophies that understand humans as connected to each other through complex webs of relationships and meanings formed through social interaction'* (Picard and Jull, 2011: 157).

**Table 2 Monological and Dialogical Interaction**

	<b>Monological</b>	<b>Dialogical</b>
Approach	Settlement	Relational
Methodology	Deductive working from hypothesis and formulation	Inductive
Information as	Uncovering facts	Constructing meaning
Questions as	Solution Focused Mediator Understanding Finding the cause of conflict	Interaction focused Inviting recognition
Interaction	Place of experimentation	Place of relationship
Parties	Single agents	Inter-related
Mediator as	Reader	Co-author

Mediation operates within a discourse that brings meaning to practice, that explains how mediation is performed in a given context. Discourse represents the general and enduring systems of thought formed by assumptions that shape practice (Barge and Little, 2008). Mediation discourse is introduced in basic training. Concepts such as neutrality become ‘*an officially sanctioned discourse*’ (Kressel, 2007: 276) and notions of interaction are set, ‘*if a mediator has been trained by an institution that emphasizes problem solving, then the mediator is apt to analyse the dispute*’ (Wall and Dunne, 2012: 225). The discourse of mediation is created in basic training and then sustained and modified in the community of practice (COP). The dichotomy of monological and dialogical interaction, settlement or relational orientation can be seen as threads throughout the practice of mediation. As developed further within this dissertation, these modes of interaction provide an explanation for different enactments of the facilitative model and second-generation models of mediation.

## **2.6 Mediator Development**

Differences in how interaction is conceived – monological or dialogical – can be discerned in the philosophy underpinning mediator development. Consider two influential works on the topic of mediator development: Lang and Taylor’s ‘The Making of a Mediator’ (Lang and Taylor, 2000) and Bowling and Hoffman’s article ‘Bringing Peace into the Room’ (Bowling and Hoffman, 2000), both of which propose a 3-stage process of development.

Stage 1: The acquisition of good habits

Both works concur that the first step is the acquisition of basic skills; ‘*active listening, reframing, focusing on interests, prioritizing issues, and helping the parties generate options*’ (Bowling and

Hoffman, 2000: 7). This is a stage where habitual practice is shaped and skills imparted, traditionally from a psychological perspective which emphasises individual agency and *'resonates well with the notion of highly structured and scripted methods where the expert maker, in this instance a practitioner, has a clear idea of the problem to be solved and knows how to preside over it'* (Barge and Little, 2008: 519). Communication skills focus on *'identifying what people must do... in order to produce a result and the psychological mechanisms that influence their performance'* (Barge and Little, 2008: 507). This can however lead to ethical issues as *'highly skilled individuals can learn how to manipulate and control situations if they master the rules that govern interaction'* (Barge and Little, 2008: 509).

At this stage, simple goals such as settlement are prioritised and become the basis for the assessment of performance; mediators analyse the situation, and when clarity is gained on a solution, press forwards to agreement. The underlying premise is of monological interaction where concepts such as neutrality – the mediator being impartial between the parties - are skills to be learned (Lieberman, et al, 2005) as trainees lack a theoretical framework for interaction.

In a monological approach, professional development requires self-awareness and this comes from reflective practice, *'a modernist idea that searches for patterns, logic and order'* (Gray, 2007: 13). What and how questions are to the fore.

*'Using an internal dialogue, reflective mediators ask questions such as "What other skills do I require?" "How can I acquire these skills?"'* (Lieberman, et al, 2005: 254)

Simple goals such as settlement lend themselves to the development of habitual performance. Habit is reinforced by the success of reaching agreement, i.e. *'consistency and habit formation can be explained by reinforcement'* (Wall and Kressel, 2016: 24). Experience of mediation can hone skills but to progress to the next stage of development mediators need to move beyond the familiar and the comfortable; *'habitual cognitive predilections may need to be periodically challenged and modified'* (Kressel and Gadlin, 2009: 340).

Stage 2: The discovery (or construction) of theory

In the second stage the mediator needs to acquire a *'greater intellectual understanding of the process...a deeper understanding of how and why mediation works'* (Bowling and Hoffman, 2000: 24). Similarly, for Lang and Taylor theoretical knowledge enables the mediator to make sense of practice, providing a frame for further development. Indeed, some commentators have argued that making theory explicit is *'at the heart of expertise'* (Zariski, 2010: 207). This deeper understanding

and theorising is moreover personal, tapping into the beliefs, and values of the individual. This theme of self-awareness and expanding knowledge is echoed by other writers:

*'Developing a philosophical approach as a mediator is the result of an expanding professional knowledge. Mediators must undergo a self-examination process and develop a unique set of values as well as awareness of their personal perceptions regarding various approaches in mediation'* (Lieberman, et al, 2005: 242).

Reflective practice empowers this stage in a symbiotic relationship with theory. Accessing theory allows for richer reflection which in turn helps build a personalised theory of practice that sharpens further reflection (Lang and Taylor, 2000: 127). Experience of mediation provides the opportunity to learn from failure but also to ask more than 'what am I doing wrong' and to pose 'why' questions, especially as mediators gain a more sophisticated appreciation of goals; *'...practical reflexivity thus examines the habitual ways of seeing the world'* (Gorli, Nicolini and Scaratti, 2015: 1351)

Stage 2 represents a staging post towards heedful practice, the mediator building a theoretical map of practice to equip them to respond in the moment. Concepts such as neutrality are no longer skills to be acquired (as in Stage 1) but approaches to be explored:

*'Heedful performance suggests that practitioners adapt their responses according to the uniqueness of the emerging situation'* (Barge and Little, 2008: 512)

Stage 3: The emergence of heedful performance

Whilst the two approaches are similar in effect for the initial phases, they diverge on phase three in their view of interaction. Lang and Taylor propose a final stage that leads to interactional competence, a fluency in interaction that is artistic in its quality (Lang and Taylor, 2000: 19). Fluency is the ability to manage formulation flexibly, rather than impose a standardised rehearsed mediator formulation, (Lang and Taylor, 2000: 79), i.e. being heedful in interaction by reflection-in-action. Interaction is still however seen as monological; the combination of the *'...intentions, interpretations and behaviours of each person'* (Lang and Taylor, 2000: 157). Formulations whilst fluid and constantly changing are still hypotheses. Essentially what is proposed is the acquisition of advanced skills achieved through reflective processes.

By contrast, Bowling and Hoffman envisage a final stage which is clearly relational. Their goal is for the mediator to establish their identity, to *'be a mediator, rather than simply doing certain prescribed steps'* (Bowling and Hoffman, 2000: 7). Paving the way to identity is relational: *'the self is perceived as an emergent, ever-changing product of one's interaction, constructed within*

*interactions, its values and vision being an ongoing construction in the emergent flow of interactions rather than set values and perceptions one imposes on the world'* (Glenn and Kuttner, 2013: 14). The mediator is not a detached observer but intrinsic to the conflict, *'inextricably involved in the conflicts they mediate'* (Bowling and Hoffman, 2000: 11). Interaction is viewed as dialogical: *'mediation is a process that we can better understand as an integrated system than as a set of discrete interactions between and among individuals acting autonomously'* (Bowling and Hoffman, 2000: 20).

Reflection-in action is a heedfulness that *'offers a useful lens for exploring how practitioners know what to do next'* (Keevers and Treleaven, 2011: 507). In a dialogical approach this is replaced by the reflexive notion of intra-action to stress that:

*'the human and other-than-human actors in a relationship should not be seen as distinct entities but as entangled agencies that establish each other as well as being created themselves'* (Keevers and Treleaven, 2011: 508)

Both approaches are heedful and attend to discourse, but they understand interaction differently and they approach learning in different ways. Reflection assumes an objective reality; it is a representational rather than a relational view of knowledge (Keevers and Treleaven, 2011). Reflective practice is an appropriate response where interaction is viewed as monological and learning is centred on embedding advanced skills. Conversely, a relational dialogical concept of interaction calls for reflexivity as a matter of congruity, with the mediator being relational in both practice and learning.

## **2.7 Collaboration as a Point of Departure**

Mediation is a flexible process that takes many forms reflecting the context of the conflict and the participants – both disputants and mediator. However, the essential, irreducible core of mediation is the collaborative process. Mediator efforts – interventions and the exercise of power – are therefore directed towards establishing and maintaining the conditions for collaboration.

Symbolic Interactionism and Habermas' Communicative Action provide a theoretical framework for the conditions which underpin cooperation. Goffman provides a framework for how parties play their way towards cooperation. Intersubjectivity throws light on the resources which are drawn upon in interaction and the reflexive process which enables change.

Rich as this theory is, is collaboration an end in itself? Collaboration may be necessary but is it sufficient? And if not, then what is it a step towards? The facilitative model of mediation acknowledges cooperation as a necessary condition but reaches beyond this for a goal of settlement.



By contrast the transformative model proposes that the achievement of empowerment and recognition – indicators of cooperation – are all that is required. Meanwhile for the narrative mediator, cooperation is a pre-requisite for disrupting and reconstructing narrative.

Such mediation models are however constructs; types of ideal processes that do not necessarily reflect the actual practice of mediation. A mediator's action is shaped not only by formal models but their personal schema (Kressel, 2013) – their understanding of goals, their view of interaction and their worldview and values. This enables them to make sense of their task and decide on how to employ power – *'...the power that a mediator can exercise, is likely to vary with the type and orientation of the mediator, as well as the model or approach that he or she employs'* (Gerami, 2009: 434).

### **2.7.1 Values**

Acting impartially would seem to call for practice which is objective, detached and value-free. However, when we seek to formulate meaning, values act as our anchor and guide. They provide a framework for our decision making. They are part of the self that the mediator brings into the interaction. In psychotherapy, the paradigm of the value-neutral therapist is now seen as untenable (Jackson, Hansen and Cook-Ly, 2012). Personal values are the foundation for theory and practice (Lang and Taylor, 2000). An *'explicitly value-based approach'* brings a richer understanding of mediation and its practice than *'purely conceptual understanding'* (Folger and Bush, 2005: 123). Values however, are *'schematic and high-level mental constructs'* (Hunt, Kim, Borgida, and Chaiken, 2010: 1156) that are not readily apparent without reflection.

How are values formed? For Feather, values are *'a set of stable, general beliefs about what is desirable... these beliefs emerge from both society's norms and the individual's core psychological needs and sense of self'* (cited in Eccles and Wigfield, 2002: 121). Values are accreted within a process of socialisation and in interaction. There is diversity in the values each of us holds and our values represent our self-identity. The particular mix of values a mediator holds however is not important per se; what is important is that our values are consistent with our practice (Lang and Taylor, 2000).

Schwartz offers a set of nineteen core values based on empirical research (Schwartz *et al.*, 2012) and matches these to the types of behaviour they may elicit. For example, the value of Face evokes a motivation for security and power in order to maintain one's public image, while a value of Interpersonal Conformity prompts compliance with rules, laws and formal obligations. Each individual is said to possess these values to varying degrees. The nineteen basic values can be

clustered into those with a social focus (e.g. benevolence) and those with a personal focus (e.g. achievement). Within each cluster values complement each other but across clusters may conflict in any particular context. Thus, whilst we draw on our values to inform our decision making, how we do so is context specific.

A similar conflict occurs in a dualism of interests and values. Construal Level Theory (Hunt *et al.*, 2010) looks at the trade-off between material self-interest and values and posits a temporal perspective where near term focus engenders self-interest and psychological distance appeals to values. Mediation as a short – typically one-time – intervention may therefore encourage a focus on interests, often reinforced by asking parties to consider the relief of finding settlement on the day. A focus on relationships may therefore require the mediator to offer a frame for the longer term.

Concretely what might this mean for mediators? What is the linkage between abstract personal values and the actions and goals a mediator might adopt? A study of Israeli mediators identified sixteen orientations which translate personal values into mediation specifics (Nelson, Zarankin and Ben-Ari, 2010). This research invited those surveyed to rate their response to statements which point to an instrumental purpose such as *'mediation is a flexible procedure to resolve a conflict'*; whilst other statements reflect the potential for conflict to be positive (*'mediation is an educational experience'*), life enhancing (*'mediation allows for participants' moral growth'*) and mediation as a *'way of life'* or *'perpetuating injustice against the weak'* (Nelson *et al.*, 2010: 307). The empirical data gathered utilising these statements is examined in Chapter 6, shedding light on the goals and motivations that drive mediator behaviour.

### **2.7.2 Views of Interaction**

When mediators communicate with parties either separately or in joint meetings, they engage in interaction. How mediators conceive of such interaction affects how they conceive their role and the performance of mediation. They do so by drawing (consciously or otherwise) upon their own epistemology, revealed by the frames and metaphors they use to describe the process. Using narrative and metaphor analysis in a 2009 study Goldberg concludes:

*'... most practitioners enact their worldviews in how they decide what it is important to focus on (ontology and epistemology) and decide what to do about it (axiology, logic and order, and ethics), and that those frames shape processes, specifically how they choose to give and use power in a process.'* (Goldberg, 2009: 427)

Blumer's analysis of the different approaches to meaning (above) illustrates epistemology in action. A mediator adopting a realist position will seek to unearth truths behind a conflict – mediation as

forensic examination. Drawing the parallel with research, they may behave as detached objective observers reaching into but never quite part of the interaction. Those operating from an interactionist perspective in contrast, will seek to enable parties to construct their own explanation of the conflict.

A mediator's approach to epistemology however, is conceivably not fixed. It may change as she/he becomes more experienced, as one study of students suggests (Kessels, 2013). An interesting question to pose to mediators therefore, is how their view of interaction has changed over time.

### **2.7.3 Goals**

Goals initiate the mediation process and drive behaviour in pursuit of achieving these outcomes (Wall and Dunne, 2012). Goals may be explicit, articulated for example as objectives of a mediation service, or may be expressed by participants. These are typically defined in tangible terms such as resolution that ends a grievance process or settles a claim and may be implicit and connected with professional and personal values. For the mediator goals might be process related, such as ensuring collaboration, and outcome related (such as settlement or justice). Goals emerge in social interaction and may therefore be subject to change. Less concrete objectives such as relational repair may also emerge and the mediator will need to respond accordingly.

Mediators may perceive that clients want them to accomplish a resolution of the conflict, or at least a diminution in its intensity; that disputants require them to be attentive and assist in creating communication between the parties. The parties may additionally require the mediator to acknowledge there is a justification for their position (Nelson, et al, 2010).

Meanwhile, recent research suggests that mediators focus on just four goals: agreement; improvement of the parties' relationship; benefiting the parties as well as society; and improving the mediation process (Zarankin, et al, 2014). Following multiple goals however, is potentially cognitively immobilising, the mind freezing and unable to make decisions. As the concept of bounded reality suggests, there are limits to what the human mind can handle under conditions of uncertainty and complexity (Simon, 2000). Mediators may therefore simplify by initially focusing on a single goal, predominantly agreement (Zarankin, et al, 2014). This can be modified and further goals selected as mediators respond to the interaction (Wall and Dunne, 2012).

Mediator goals emerge in the context of Shibutani's reference groups (Shibutani, 1975): the societies we draw on that influence perception and interpretation. One key reference group is the set of fellow mediators in the practice or service, most especially as they interact in basic and Continuous Professional Development (CPD) training. Another is the society that reflects our

professional background, e.g. lawyer, lecturer or unionist. Goals interact: they may complement or conflict with each other. Consider the situation of a perceived power imbalance: is this a threat to justice or to collaboration, or are both legitimate goals for that mediator? Does the mediator act to rebalance power and does this clash with self-determination as a guiding principle? To address this last question, we turn next to a consideration of mediator power.

## **2.8 Power**

As noted above, power is a concept frequently associated with conflict. It is typically premised as a scarce resource to be competed over in a zero-sum game – I gain power as you lose power. Power is said to be exercised ‘over’; it is the ‘capacity to secure the dominance of one’s values or goals’ (Piffner and Sherwood cited in Bell, Walker, and Wilier, 2000: 135). Power can be exercised at both an individual and a collective level. Within any organisation there is a power struggle between employer and employee to secure position or resist encroachment and exploitation – ‘a theory of exploitation is the necessary basis for a theory of conflict’ (Edwards, 1986: 53).

Lukes, whilst similarly viewing power as dominance, theorises a dimension of power that is all the more effective for being exercised without conflict (Piper, 2005). For example, a manager might manipulate the preference of a subordinate so that they believe a course of action is in their subjective interest (but against their real interests). However, what Lukes is proposing here is the absence of observable conflict. Conflict in terms of difference is still present and mediation effective in helping parties to articulate interests and open up the possibility of generating a resolution based on mutual gain.

In contrast, mediation is an invitation to engage in power in a distributed, collaborative manner as power ‘with’ (McClelland, 1975), inculcating collective agency (Bandura, 1999), recognising hierarchical power but gently steering parties into a different power relationship (Wiseman and Poitras, 2002). Research into the perceptions of power in the workplace shows people hold two views of power – limited power and expandable power (Coleman, 2004). Limited power is premised on the assumption that power is a zero-sum quantity: to share is to lose power. Expandable power is premised on a cooperative power-sharing orientation where power can be mutually expanded. Power is exercised ‘with’ in conjunction with other individuals; power is viewed not as problematic but as an enabler to be harnessed in pursuit of change or resolution.

Power needs to be considered in mediation in two respects; firstly, relational power which concerns the parties engaging in the mediation and secondly, structural power which relates to the context in which mediation takes place within the organisation. Where parties in mediation are from different

strata in an organisation they may carry perceptions and expectations rooted in hierarchical power: thus, a subordinate may feel reluctant to challenge their supervisor. Mediation involves communication – both talking and listening – and *'low-power parties may not have had as much ability to communicate or voice their concerns given the constraints power differences can place on communication'* (Greer and Bendersky, 2013). Research indicates that mediators are aware of these issues of relational power and take steps to address these (Bollen, Ittner and Euwema, 2011). The adept mediator will utilise techniques, *'to encourage the low- power parties to express themselves freely and the high-power parties to refrain from resorting to their authority to control communication'* (Wiseman and Poitras, 2002: 58).

Structural power has a more covert influence on mediation. Mediation can be viewed as an extension of management prerogative (Colling, 2004): the right of management to prescribe the employer-employee relationship. Within a unitarist ideology, this might permit the discussion of interpersonal issues but preclude *'discussion of an issue or person, it prevents discussion about the nature of the relationship or the legitimacy of hierarchical power'* (Ridley-Duff and Bennett, 2011: 115). Management may exert structural power in their choice of mediation model; parties and the mediators may accept constraints on what may be discussed, but such an outcome is not inevitable. Mediation can be enacted in ways which offset structural power. A unitarist ideology may frame mediation to be an efficient way of settling interpersonal disputes but mediation can be performed in ways which empower employees (voice) and provide fair outcomes (equity) (Saundry, Bennett and Wibberley, 2016).

In summary, mediation sees conflict as an expression of human difference which may arise in any social interaction. As a phenomenon it is thus inevitable but not inevitably destructive. Conflict has two faces, destructive and creative (Cloke and Goldsmith, 2000; Pondy, 1967), and mediation is an opportunity to handle conflict constructively. To do so requires collaboration and a different orientation to power.

### **2.8.1 Mediator Power**

Power can be exerted over both process and content in ways which reflect the style and goals of the individual mediator. Consider for instance an aspect of process control, namely the *'ground rules'* which apply to joint meetings. These follow from the assumption that parties must be able to listen to each other in order to ensure a cooperative process. Mediators may choose to dictate the rules regarding listening (*'no interruptions'*) which will be followed, or they may invite the parties to

negotiate rules themselves. Equally, mediators exercise power as an authority when they subsequently intervene to enforce such rules.

*'Mediators are also invested with a great deal of power by the mediation process. Whether or not they consciously choose to exercise it, mediators inevitably use their influence at every point of the intervention'* (Mayer, 1987: 75). Mediators can use power manipulatively (Coben, 2000) to drive towards settlement, or collaboratively in providing a supportive structure for disputants. The potential for such power arises because participants typically have no prior experience of mediation and are dependent on the mediator for expertise. Even a simple choice as to who speaks first in a joint meeting is an exercise in mediator power. The mediator must choose or leave the decision to the parties.

Much mediation takes place outside of joint meetings, either as preparatory or as caucus meetings (Menkel-Meadow, 2015). This allows the mediator privileged access to information, which is a potent source of power (Shapira, 2009). This shapes the interaction with the parties and influences the information they divulge. It also presents the mediator with choices as to how and when they might use information that parties have agreed might be shared. Information might be used strategically as an inducement towards settlement – or withheld if unhelpful – or divulged immediately.

Framing and reframing are important mediator tools that seek to influence participants. How the mediator frames the process is important in managing expectations: mediation might be framed as 'a last chance for settlement' or alternatively as 'a constructive conversation'. In summarising a participant's input, a mediator has the opportunity to reframe, to emphasise positive elements or to offer an alternative view.

Reframing as an invitation to adopt a different perspective invites the question of what are legitimate perspectives in an ideal process. The principles of Communicative Action would suggest the perspective of the other is valid; the concept of multiple reference groups allows that alternative perspectives may be available within the self. A mediator who reframes with these perspectives in mind – deferring to the parties – is following a power 'with' approach. The obvious danger is that the mediator imposes their own perspective to achieve an instrumental purpose such as settlement.

In principle there is a divide in mediation between process and content. The mediator is said to be in charge of the process and the parties in charge of content, although the transformative model (see below) is an exception as it aims to place the parties in control of both process and content. Mediator power may extend however into content areas, particularly if a concrete resolution of a

dispute is seen as a desirable goal. In pursuit of this aim a mediator may influence what is discussed, possibly restricting issues to 'what can be settled here today'. Alternatively, a mediator might employ a directive technique such as 'reality testing' to weaken resistance to agreement.

A study of mediators participating in a mandatory mediation programme found some quite distinctive views of mediator power:

*'The first group viewed power as the ability to impose one's will on another through use of subject expertise; the second group adopted this definition but also indicated that the idea of power encompasses the ability to manage the issue agenda; and the third approach to power encapsulated the two preceding frameworks but added that the idea of power also includes the capacity to shape interests and preferences'* (Hanycz cited in Gerami, 2009: 440)

We might of course expect a compulsory programme to be directive, but this response illustrates a tension in the type of power exercised by the mediator. Returning to Habermas, using power 'over' for instrumental reasons (settlement) is perhaps understandable but inconsistent with Communicative Action and power 'with'. Some degree of power 'over' by the mediator may be inevitable, especially to set the process in motion, but we might expect that use of this type of power would diminish as collaboration embeds. Alternatively, the choice a mediator makes regarding power may inform as to their goals, values, style and view of interaction.

## **2.9 Mediator Style**

Throughout mediation, a mediator must make judgements about which process to follow. They must select which of 100 identified techniques (Wall and Dunne, 2012) is most appropriate, or possibly sit back whilst remaining an engaged but observant listener. Responding to an interaction which may involve high emotion and tension, being in the moment, whilst holding a mental map of potential routes to resolution is a demanding task. This calls for simplification which is achieved by the adoption of a personal style (Wall and Kressel, 2012).

Style is not fixed and may, with experience, become increasingly flexible. Research finds that mediators can be categorised as operating with either a simple or a complex schema (Kressel, 2013). A simple schema is portrayed as less stressful, relying on formal models, simpler intervention strategies and 'linear' procedural scripts. A complex schema is less reliant on formal models and utilises a diversity of intervention strategies. The latter is accompanied by more decisional stress as mediators have a greater array of choices and possible objectives. The path to a complex schema is reflective learning and, in a virtuous loop, those with complex schema are more open to such learning. A majority of mediators present themselves as stylistically eclectic (Charkoudian and Ritis,

2009) and so may aspire to complex schema. However, Kressel's research suggests either approach is effective provided it is exercised skilfully.

Mediator style combines formal models of practice and informal personal schema, a '*structured aggregation of personal insights that individuals acquire over time based on their experiences*' (Zarankin, et al, 2014: 141). Models operate at a conscious explicit level and personal schema at an implicit non-conscious level (Kressel, 2013). Personal schema, described as '*largely hidden...and the cognitive underbelly of practice*' (Kressel, 2013: 722), are explored above in the section Social Interaction. In this section we next turn to formal models and what these mean for the practice of mediation.

The number of formal models available to the mediator has been reported to exceed 25 (Kressel, 2013). However this review will concentrate on four main models (Kressel and Wall, 2012). These can be distinguished from each other by their explanations of conflict and power and the role they expect of the mediator.

### **2.9.1 Four Main Models**

The main model is facilitative, an approach alternatively labelled as problem-solving. So predominant is the facilitative model that disputants (Relis, 2005), and in some circumstances mediators, may be unaware that their experience of mediation draws on this methodology. Conflict is seen as arising from disputants becoming locked into positions. Resolution lies in facilitating the parties to examine the true interests which lie behind these positions. This is achieved in a collaborative (power 'with') process where parties develop options for mutual gain. The model draws on negotiation theory reflecting the background of its academic developers in the Harvard Program on Negotiation (Menkel-Meadow, 2013).

In this model the mediator is expected to control the process, providing a framework for the parties to negotiate. Whilst initially developed for use in the early 20<sup>th</sup> century for labour disputes in the US, it is now employed in settings that range from court-annexed to family and neighbour disputes. It is grounded in the four elements of principled negotiation (Fisher and Ury, 1997):

- Separating the people from the problem – i.e. focusing on issues and not personal antagonism
- Focus on interests and not positions – positions lock parties into the dispute whereas interests enable them to gain a fresh perspective



- Invent options for mutual gain – here the emphasis is on both mutuality and the future. Where do the parties wish to be, what new norms do they want to set?
- Insist on objective criteria – finding a basis '*independent of the will of either side*' (Fisher and Ury, 1983: xii)

Principled negotiation was formulated in an era where some negotiators in the legal and labour fields were striving for a less adversarial approach (Menkel-Meadow, 2013). It represents the assimilation by Fisher and Ury of several strands of negotiation theory including insights from social psychology (Menkel-Meadow, 2006). One major influence on Fisher and Ury's thinking is the work of Walton and McKersie (1965). They are credited (Wheeler and Waters, 2006) with the concept of integrative interest-based negotiation – the cooperative value creating aspect of the process – as distinct from distributive negotiation, its competitive value claiming counterpart (McKersie and Walton, 1992).

Raiffa's work in game theory (Raiffa, 1982) is said to have led Fisher and Ury to the concept of BATNA (Best Alternative to Negotiation) (Wheeler and Waters, 2006). Crucially however, principled negotiation does not neglect the social interaction that takes place within negotiation. This approach acknowledges a further key insight attributed to Walton and McKersie; the concept of attitudinal structuring – a recognition that the attitudes and behaviour that arise in the negotiation process are as important as the substantive issues (Lipsky, Seeber and Avgar, 2015).

Mediation employed in settings where lawyers are likely to be involved, such as commercial disputes, is often referred to as 'facilitated negotiation' (Riskin, 1997: 17). This conveys a sense of a third party stepping in to remedy a failure by parties and lawyers – as their agents – to agree a solution. It is also a frame, albeit one that might puzzle participants in another type of dispute. A mediator must therefore be adaptive in framing the mediation process. They may for example, in neighbour disputes, frame mediation as an opportunity to hold a constructive conversation. This reflects a common feature of conflict; a breakdown in communication.

The dominance of the facilitative model was challenged in 1994 by the transformative model (Bush and Folger, 1994). This model views conflict as arising from a failure of social interaction between the disputants and eschews conflict resolution as an objective. Consequently, mediation is an opportunity for effective interaction to be restored. This involves the parties regaining recognition (of the other) and empowerment (expression of the self). The mediator's role is as a supporter to the interaction, inviting rather than directing parties to the extent that they – and not the mediator – are in control of the process. The transformative model has now been introduced in a number of situations, most prominently in a workplace scheme for the US Postal Service (Bingham, 2012). It is

not widely practised in the UK but has recently replaced a facilitative practice in a hospital health trust (private conversation with trainer).

Bush and Folger criticise the facilitative model as transactional, driven by an objective of settlement or agreement. The target of their criticism is US practice in court-annexed cases which may indeed be driven by such instrumental purposes. This leaves open the possibility that their assertion is a situated critique: valid in a particular context but not universally applicable to the facilitative model. Moreover, Bush and Folger's alternative model is predicated on recognition and empowerment being the sole requirement for the restoration of interaction. However, these have been challenged as necessary but not sufficient conditions (Condlin, 2013; Gaynier, 2005) and failing to account for the limits of human capacity to interact when in conflict. This has prompted a further development – the Insight Model – that conceives of mediation as a learning model equipping parties with the skills to manage conflict (Sargent, Picard and Jull, 2011).

Narrative mediation draws on narrative therapy and takes a post-modernist view of power (Winslade, Monk and Cotter, 1998). Conflict arises in the form of a dominant narrative with disputants potentially unaware of the colonising effect of such a narrative. The mediator – as discourse analyst – is therefore tasked to alert the parties, disrupt the conflict stained narrative and assist the parties to discover alternative narratives. In achieving this fresh narrative, mediation is said to be '*a means to achieve a higher moral self*' (Hansen, 2004: 306) and provide '*the development of a counter-story of dialogue, cooperation and agreement*' (Winslade and Monk, 2002: 11).

Bush and Folger propose that their emphasis on party self-determination and interparty understanding means power is no longer an issue. This is in contrast, they contend, with both facilitative and narrative mediation. In the former, mediators must re-balance disputant power to achieve equitable outcomes; in the latter, mediators must exert power to disrupt and reshape narratives (Bush and Folger, 2012).

Finally, evaluative mediation is a model where the mediator expresses an opinion on the merits of the case to provide an added impetus towards settlement. This approach is controversial and considered by some as falling outwith the boundaries of mediation (Kovach and Love, 1998). Providing an opinion in a case relies upon possessing expertise in how it may be disposed of in a formal procedure. It is thus a model of mediation that can be adopted, or lapsed into as critics might argue, by professionals, for example lawyers or HR practitioners. An expectation for mediation to be conducted under the evaluative approach may also arise amongst disputants (Seargeant, 2005).

Evaluative and facilitative models can be viewed as falling on a continuum with mediators adapting their approach within the mediation (Riskin, 1997). Thus, mediation may commence in a facilitative mode but move into a more evaluative form if parties become stuck and settlement is at risk.

The four models can also be classified in terms of a relational-transactional (settlement) continuum (Kressel, 2013). The evaluative model with its settlement focus is clearly transactional, whilst the transformative is relational. Positioning the facilitative model however, is potentially problematic. To critics such as Bush and Folger, it is transactional, but when used in neighbour mediation it may be understood as relational; practised in the workplace it might be either. Moreover, mediators are reported to be unaware of their actual styles (Wall and Kressel, 2012). This leaves open the possibility that the facilitative model is being practised unwittingly in a hybrid manner that does not as – Picard suggests – fall readily into a recognised classification scheme (2004).

### **2.9.2 Integration**

Given their differing explanations of conflict and power, it is perhaps unsurprising that proponents of narrative and transformative mediation are purists, proclaiming an exclusiveness of practice for their model. This does not permit – in their view – a model to be '*ransacked for its techniques*' (Hansen, 2004: 307). Many mediators however, do not appear respectful of such demarcations. Even where they identify with a particular model, they draw on a wide variety of strategies designed to meet the needs of the mediation (Jameson, Sohan and Hodge, 2014).

There is a parallel in psychotherapeutic practice where an integrative approach is common; a level of 25-50% is reported amongst American clinicians. This would seem perfectly natural when empirical studies reveal that only 10-15% of variance in therapeutic outcome is accounted for by technique. Factors said to influence the choice of an eclectic approach are experience – learning the limitations of an exclusive theoretical orientation – and a lack of a doctrinaire position in initial training (Boswell, et al, 2010). We might expect therefore, that mediators will develop a more integrated approach over time but that those originally trained in transformative mediation may be less receptive to integration, at least at a conscious level.

How might integration operate in mediation? Integrated practice in psychotherapy suggests this might be accomplished in one of four ways (Boswell *et al.*, 2010). In 'Technical Eclecticism' the practitioner selects the best single model for the case. However, given the unfolding interaction that is mediation, it is difficult to confidently select a best model at the onset. 'Theoretical Integration' is a synthesis of two or more models. An example is Mareschal's bifocal approach; a synthesis of the

facilitative and transformative models in which mediators have twin goals, interests and relationships (Mareschal, 2003).

'Assimilative Integration' is rooted in one model but includes techniques from others. This would seem to be the most accessible approach for many mediators. Described as a '*realistic way station to a sophisticated integration*', it can however be criticised as a '*waste station of people unwilling to commit to a full evidence-based eclecticism*' (Norcross and Goldfried, 2005: 10). 'Common Factors' is a synthesis across models based on core elements that are common. This approach is achieved '*as a heuristic that implicitly guides the efforts of experienced therapists*' (Norcross and Goldfried, 2005: 9).

Professional competence is said to require development of one's own theory of practice which includes technical and interpersonal theory (Argyris and Schön, 1974). Developing a personal integrative practice would seem therefore to be advantageous; a hallmark of the professional mediator. However, there is a danger which arises in how mediators integrate. A distinction must be drawn between eclecticism and syncretism; the latter an '*uncritical and unsystematic combination*' of '*pet techniques*' stemming from inadequate training (Cooper and McLeod, 2010: 10). Mediators may commence practice after 40 hours of training (Kressel, 2013) and their theoretical basis is weak (Macfarlane and Mayer, 2005); consequently their ability to consciously formulate an integrated practice is limited. A syncretic approach is therefore a more likely outcome.

## **2.10 Implications for research**

Empirical research into mediation style is problematic. Using surveys to investigate style enables a wide collection of data. However, the use of mediator surveys is questionable, as self-reported mediator style differs from observed style (Charkoudian, 2012). Direct observation of mediators provides a resource intensive alternative, but studies based on observation are limited in number and their results contradictory (Wall and Kressel, 2012). For instance, a literature review found evidence that both supports and refutes the notion of style flexibility within and also between cases (Wall and Kressel, 2012).

A possible explanation for this state of affairs is that scholars and practitioners have different points of departure and they understand style differently. Scholars look to identify behaviours that can be clustered and labelled as a particular style. This approach has resulted in a proliferation of definitions – 25 according to one study (Wall and Kressel, 2012) – and creates difficulties in comparing results across studies. Practitioners however, conceive of their practice in terms of their formal models, e.g. facilitative or transformative (Kressel, 2013) but report interventions that are

wider than their espoused model (Charkoudian and Ritis, 2009). This is indicative of a degree of integration; an extension of practice beyond a single model acquired in basic training. Following Kressel's work (Kressel, 2013) this is perhaps unsurprising, as we may expect that integration is personal and, with experience increasingly less reliant on any one formal model. Thus, when studies report high user satisfaction irrespective of mediator style (Wall and Kressel, 2012) we might question whether the nuances of mediator style have been adequately captured.

What then is missing from the literature on mediator style that might point to fruitful research? Firstly, there has been little consideration of the process by which mediators become eclectic. Research rather takes mediator eclecticism as a point of departure for the investigation of behaviour. Kressel does point to the role of reflection in professional development and has developed this in his reflective case study method (Kressel, 1997) based on tapping the wisdom of experts in defining effective interventions (in divorce mediation) as a means of building theory. It lacks the converse however; the role that a better appreciation of theory might have, particularly on the development of less experienced practitioners. Would, for instance, a richer grounding in theories of social interaction, enable mediators to make better, more conscious choices in integration?

In addition, the focus in the literature is on the individual mediator and their personal style. No light is shed on the common practice of co-mediation (mediators acting in tandem) that is used, for example, in universities. We may therefore ask how a pair of mediators decides on their interventions if they are to form an effective working alliance. Further, mediators work collectively in in-house schemes and these provide further frames that influence schema. However, this has not yet been researched; we know little of the expectations of internal schemes for mediator flexibility, and what steps do they take to promote this.

### **2.11 Research Questions**

This chapter has developed a framework for viewing mediation as a social interaction before turning more specifically to the practice of workplace mediation in the HE sector. From this it is possible to articulate a number of questions that are germane to this practice and the challenges faced by the university mediator. How do these mediators compile their personal schema? How are mediators selected to co-mediate and how do they make this effective? How do mediators develop their skills with such limited opportunities to practice? We turn now to the formulation of research questions which can address these issues and provide a contribution to the professional development of the less experienced mediator.

Theories of social interaction are significant in providing an explanation for conflict, the use of power, conditions for a cooperative process and the personal schema that underpin a mediator's style. Synthesising such theory with practice is a path to professional growth (Lang and Taylor, 2000; Argyris and Schon, 1974) that can be undertaken consciously and deliver an integrated eclectic practice responsive to the complexities of mediation. However, if theory does not explicitly serve as the foundation, integration may follow a non-conscious route drawing on personal schema and lead not to eclecticism but syncretism (Cooper and McLeod, 2010), the haphazard assembly of techniques noted above that serves neither mediator nor mediation well.

There has, however, been little research into the process by which mediators integrate their practice and develop professionally. Techniques such as the reflective case study (Kressel, 1997) are valuable means of generating theory from practice but have been used to capture the wisdom of experts. The converse: how theory – a conscious framework for social interaction – might contribute to practice, is unexplored. Moreover, research that is practice-relevant, that bridges the gap between '*what mediation researchers do and what mediation practitioners care about*' (Kressel, 2013: 711), needs to address the needs and practice of the less experienced mediator. Attending to this subset of practitioners – recently trained and endeavouring to enact mediation – opens up the possibility of weaving together theory, research, practice and learning; a 'four-way nexus', a 'new paradigm' for the study of conflict management (Ebner and Parlamis, 2017).

This study therefore aims to address this gap by examining the connection between social interaction and the practice of less experienced mediators. Consequently, the research questions address the process by which theory, practice and training interact to produce personal theories of practice and are framed as:

1. *How do mediators conceive of interaction?*
2. *What theory do mediators draw on to shape their practice?*
3. *How do mediators make decisions?*
4. *In what ways might an explicit understanding of Social Interaction Theory contribute to a mediator developing a consciously integrated, flexible practice?*

A second research theme arises from the challenges of co-mediation outlined in this Chapter. Previous research on personal style has focused on the individual mediator and there has been no previous investigations that extended to the common practice of co-mediation (mediators acting in tandem). This leaves a gap in understanding how a pair of mediators allows for personal style and still forms an effective working alliance. Further, workplace mediators often work collectively within

in-house schemes and these provide further frames that influence schema. However, we know little of the expectations of internal schemes in relation to mediator flexibility, and what steps they take to promote this. Consequently, the second set of research questions are formulated as:

1. *How does co-mediation become effective given differing personal styles?*
2. *How do mediators coordinate their actions and cognitions?*

The practice of co-mediation and the professional growth of mediators, how they integrate their practice and formulate their personal style, are issues which touch a wide span of mediation activity. Knowledge gained in research can therefore make a contribution beyond any one sector. Nonetheless a focus is required, and it was decided to locate this research in workplace mediation in the HE sector. This was justified on three grounds. Firstly, the sector is prominent in the practice of workplace mediation and so research has the potential for high impact. Secondly, mediation services in universities practice co-mediation but, with limited opportunities for experience face challenges in mediator development, meaning research in this area would be of practical relevance. Finally, this is an accessible sector with a desire to engage and learn (Poyntz, 2012); this lowered recruitment hurdles and enhanced the prospects for a successful completion of the research.

Having identified two broad themes – social interaction and co-mediation – and formulated the research questions, we now turn now to the design and implementation of the research. In the next chapter we examine both methodology – the guiding philosophy for the research – and method, how the research was conducted.

### Chapter 3 – Methodology and Methods

Research must be established within a methodological framework to provide coherence to the selection of methods and the evaluation of results. Selecting a methodology may default to the paradigm established in the researcher's field, but this approach conceals a choice that should be made explicitly. There is no single incontestable means to determine methodology (Johnson, Buehring, Cassell, and Symon, 2006) and consequently the researcher must argue a case for their philosophical preference. The justification for such a preference should be deductive in that theory and practice are linked, and also inductive, emanating from the researcher's conception of their role.

Two aspects of philosophy are of particular importance: ontology – *'the nature of the social world and what can be known about it'* – and epistemology – *'the nature of knowledge and how it can be acquired'* (Ritchie and Lewis, 2003: 1). Ontology and epistemology represent beliefs or assertions respectively as to the nature of reality and the means of producing knowledge, and are to a degree related: *'an objectivist epistemology is necessarily dependent on realist ontological assumptions... a subjectivist epistemology can be combined with either subjectivist or realist assumptions about reality'* (Johnson et al., 2006: 136).

Ontological positions are commonly conceived as standing on a continuum from realism – where there is one reality that can be determined objectively – through to relativism – where there are multiple, subjectively determined realities (Järvensivu and Törnroos, 2010). Realism differs from relativism in the view taken of the involvement of human agency:

*'A realist view assumes that social reality has an independent existence prior to human cognition, whereas a subjectivist ontology assumes that what we take to be reality is an output of human cognitive processes'* (Johnson et al., 2006: 136).

The challenge for the researcher is to find a way to justify their position in regard to their research which is consistent with their actions and interactions, and which yields knowledge that can be trusted. In selecting an ontological stance however, the researcher must address a dilemma: realism requires an objectivity which conflicts with the subjective nature of the researcher's role in the analysis of data, and relativism raises questions as to the transferability of knowledge:

*'Adopting a realist position ignores the way the researcher constructs interpretations of the findings and assumes that what is reported is a true and faithful interpretation of a knowable and independent reality. Relativism leads to the conclusion that nothing can ever be known'*



*for definite, that there are multiple realities, none having precedence over the other in terms of claims to represent the truth about social phenomena'* (Andrews, 2012: 42)

The difficulties of taking an ontological stance may draw the researcher to a compromise solution, seeking a middle ground that eschews the extremes of pure realism or extreme relativism. This research however rejects this approach in favour of an intersubjectivist ontology: not a middle ground between two poles but a third 'knowledge problematic' that shares the ontological space with objectivism (realism) and subjectivism (relativism) (Cunliffe, 2010). An intersubjective ontology is relational (Keevers and Treleaven, 2011), where '*people constantly shape situations, meanings and lives through conversations, actions and interpretations around what they and others are doing'* (Cunliffe and Scaratti, 2017: 31). This view, unlike realism, recognises human agency, but unlike relativism sees reality as defined in the interaction of individuals rather than by individual cognition. It thus represents '*a way of thinking about who we are in the world that is based on the belief that we are not separate individuals (entities) but we are always in relation with others'* (Cunliffe, 2016: 742).

Epistemology may be categorised as either a positivist approach where '*the world is independent of and unaffected by the researcher'*, or an interpretivist approach in which '*the researcher and the social world impact on each other'* (Ritchie and Lewis, 2003: 16). Looking specifically at the field of this research, we find that the process of mediation is a complex social interaction in which parties construct meaning (Mareschal, 2005) and where human action is a response to such meaning making (Picard and Jull, 2011). Multiple interpretations arise in mediation and accounts of mediator actions reflect the differing perspectives of the parties to the interaction (Moore, 2014). Studying mediation therefore requires an epistemology that can accommodate the open, subjective nature of the process. Accordingly, this research draws on an interpretivist perspective consistent with the theoretical framework of symbolic interactionism detailed in the literature review. This approach has been widely deployed in mediation (Relis, 2005; Dignan et al., 2007; Picard and Siltanen, 2013; Garcia, 2010).

An interpretivist approach falls under the broader canopy of social constructionism (Lincoln and Lynham, 2011; Denzin, 2001; Gergen, 1985): a movement within constructionism where the '*major focus is on the social processes giving rise to knowledge'* (Gergen and Gergen, 2007: 4). It shares with post-modernism the perspective that '*knowledge is relative and not universal and subjectively determined not objectively given'* (Ransome, 2010: 187). However, it should be seen as distinctive from postmodernism in two aspects: firstly in viewing humans as transcendental agents (Ransome, 2010), free to act and choose rather than constrained and determined by structure; and secondly, in

deriving meaning from language rather than language becoming the object of discursive analysis (Kvale, 2007a). Social constructionism is based on the *'notion that our social realities and sense of self are created between us in our everyday interactions and conversations'* (Cunliffe, 2004: 410).

Reflexivity requires the researcher to examine their role in the research process and to develop *'a habit of awareness and critical thinking regarding their engagement with... research and its participants'* (King, 2004: 18). Reflexive practice can usefully be applied (inductively) to the process of selecting a methodology so as to ensure coherence in how the researcher will subsequently act. For instance, a question may be posed of the researcher-interviewer: do they see themselves on a *'search-and-discovery mission... maximizing the flow of valid and reliable information that resides inside the informant's mind'* – a critical realist approach; or in a *'social encounter in which knowledge is jointly constructed'*, a social constructionist approach that Järvensivu and Törnroos label as moderate or weak constructionism (2010: 102). The experience of this researcher – as a mediation practitioner – suggests the latter approach is a better personal fit.

Social constructionism is a *'relationally responsive'* subset of constructionism (Cunliffe, 2010: 658) that corresponds to an intersubjective approach to ontology; it allows for an objective reality, but how we understand that reality is socially constructed (Andrews, 2012). A particularity of an intersubjectivist approach is that ontology and epistemology are said to be entwined (Cunliffe and Scaratti, 2017: 33); both the nature of reality and the generation of knowledge are relational. For example, interviews are viewed as *'conversations in which participants jointly reflect on issues and discuss insights'* (Cunliffe, 2010: 659). Further, the epistemological frame of moderate constructionism aligns with an intersubjectivist perspective. Knowledge is created by the interactions of individuals and not discovered by the mind (Andrews, 2012): *'within the constructionist dialogues we find that it is not the individual mind in which knowledge, reason, emotion and morality reside, but in relationships'* (Gergen and Gergen, 2007: 5). Research participants construct their realities through interaction with the researcher (McLachlan and Garcia, 2015). Interviews within a constructionist epistemology prioritise:

*'the interactional element of the interview through an intersubjective and reflexive exchange with 'participants'... achieved, however, through a co-constructed, collaborative and meaning-making process between interviewer and interviewee'* (McLachlan and Garcia, 2015: 199)

Accordingly, this research draws on a methodology that is interpretive, intersubjective and moderately constructionist. This allows the study of interaction – in the field of workplace mediation

– to be addressed in a relational approach, opening up the possibility to view practice in the light of second generation models of mediation that ground their approaches in a social constructionism (Douglas, 2008). Having examined the meta-theory which frames the use of research methods, we turn now to the quality of knowledge produced under this methodology.

### 3.1 Evaluation

The criteria for evaluating research need to be consistent with the chosen epistemology and articulated at the design stage (Leitch, Hill and Harrison, 2009; Ritchie and Lewis, 2003). There is agreement in the literature that conventional positivist criteria of validity, reliability and generalisability cannot be directly applied when working with a constructivist methodology (Lincoln and Lynham, 2011; Johnson et al., 2006). However, there is no consensus on what criteria might replace them (Järvensivu and Törnroos, 2010; Lincoln and Lynham, 2011).

Social constructionism makes claims regarding knowledge that are profoundly different from positivist claims of objective truth with universal application. It is an epistemology which has a *'pragmatic conception of knowledge... [Where] issues of truth and objectivity are replaced by concerns with what the research brings forth'* (Gergen and Gergen, 2007: 7). Positivists seek to answer the question, 'Is this research valid?' However, the social constructionist seeks to address a different question: 'What is this research valid for?' (Aguinaldo, 2004: 1). Knowledge which is constructed – rather than generated – in dialogic interaction (within interviews) is situated and contextual (Mason, 2002: 62). Recognising knowledge as situated means that studies should not:

*'... be evaluated in terms of the generalizability of the resulting knowledge (i.e. the universality of the theory) but rather in terms of whether the results contribute to contextual insights'* (Järvensivu and Törnroos, 2010: 104)

Analytical generalisation is a term used in moderate constructionism to conceptualise the transferability of knowledge (Järvensivu and Törnroos, 2010); it requires a *'reasoned judgement about the extent to which the findings from one study can be used as a guide to what might occur in another situation'* (Kvale, 2007b: 12). It involves both the researcher and the reader in what can be pictured as a relay: the researcher gathering, interpreting and analysing the data in the first leg before passing on the baton to the reader for the next leg. The researcher must justify truth claims by demonstrating they are supported by the data and then argue the case for transfer. The reader is invited to judge what is offered and recognise the knowledge as socially robust, of value in the new community: *'the subject community that is a part of the context adopts and accepts the transferred theories'* (Järvensivu and Törnroos, 2010: 104).

Analytical generalisation is predicated on '*rich specific descriptions*', and '*high-quality descriptions of the interview process and products*' (Kvale, 2007b: 12). Accordingly, this chapter offers a reflexive account of data gathering, analysis and interpretation. In addition – in the subsequent chapters containing empirical data (Chapters 4-7) – extensive use is made of interviewee quotes. This enables a multiplicity of voices to represent the data rather than the '*single voice of the omniscient researcher*' (Gergen and Gergen, 2007: 14), albeit the researcher functions as the coordinator of such voices and the '*arbiter of inclusion, emphasis and integration*' (2007: 15).

The core challenge in describing evaluation is to demonstrate that the results of an intersubjective, moderate constructionist approach can be considered trustworthy. Examining the literature, two themes emerge in response to this challenge: transparency ('what needs to be demonstrated'); and communication (the 'how'). These need to be applied in each stage of the research – design, data collection, analysis and interpretation (Leitch, et al, 2009).

Transparency requires the researcher to be open regarding the process of research and to articulate how the research practices adopted '*transform observations into data, results, findings and insights*' (Leitch et al., 2009: 73). Such openness requires reflexivity of the researcher, a willingness to be critical of their role that should be a feature of social constructionism (Gergen and Gergen, 2007: 13). This can clarify, for the reader, how issues such as bias have been addressed or discomfiting data have been recognised. It should also provide theoretical candour; evidence of the conceptual development underpinning conclusions (Leitch, et al, 2009). Reflexivity is important as validity – in social constructionism – depends on the '*qualities inherent in the researcher and the research process*' (Leitch, et al, 2009: 73). This chapter therefore provides a reflexive account of both researcher and methods that explains how the research design in this study was enacted in practice. Such reflexivity provides the reader insight '*into a consciousness of construction*' (Gergen and Gergen, 2007: 14) and the '*individual values, epistemic assumptions and methodological frameworks [that underpin] the validity argument*' (De Luca, 2011: 311).

Communication is a development process with a selected audience: this thesis '*an interpretive activity addressed to a community of interlocutors*' (Gergen and Gergen, 2007: 15). Establishing validity should involve an interaction with '*study participants, the scientific community, and the general public*' (Järvensivu and Törnroos, 2010: 103). Developing rigour in research practice involves communication between the researcher and the academic community, most particularly within supervision (Frels and Onwuegbuzie, 2012). Communication should establish with these communities that what is offered constitutes '*socially robust knowledge*' (Shotter, 2009: 283): knowledge that is '*relevant and accepted by actors in the context of its application...knowledge [that]*

*is credible, salient and produced in a legitimate way'* (Seijger et al., 2016: 393). Knowledge that is grounded in the empirical data produced in university workplace mediation and also has resonance in the wider context of mediator development. Communication should produce '*compelling, powerful, and convincing evidence for the intended audience'* (Leitch, et al, 2009: 74).

Communicative validation as described by Kvale (2007b), occurs in three contexts which have been adapted (Table 3) to show how it has been applied to this study. Self-understanding occurs within the interview as participants interact intersubjectively with the researcher and bring meaning to their practice. However, in the present study there was also the opportunity for the researcher to gain self-understanding by reflecting on what was emerging from data analysis in the context of his own mediation practice.

The practitioner (mediation) community is a second context for communication. Here, the emphasis is on critical commonsense: does what is represented as knowledge make sense? Does it offer something helpful to practice? The fora for this communication are mediator gatherings such as practice meetings and workshops. As described below and experienced by the researcher in presenting his work to practitioners, these fora are occasions where situated knowledge (this study) meets situated comprehension (the practitioners' concept of mediation). Situated comprehension arises from the particularities of mediation practice in any given sector and can act as a filter for the evaluation of situated knowledge. We might expect, consequently, the findings of this study to resonate more readily where practice is perceived as relational – for example in a workshop undertaken with Acas trained workplace mediators – rather than settlement focused, e.g. the Judge-Mediators of the Employment Tribunal Service.

Finally, theoretical understanding is validated within the research (academic) community. Initially by the supervisors of this research, but then progressively by the examiners of this thesis and the wider community. Socially robust knowledge is, however, not static; it is open-ended with a strongly empirical dimension (Shotter, 2009), offered for consideration, testing and improvement in each of these three contexts.

**Table 3 Communicative Validation (adapted from Kvale, 2007b: 9)**

<b>Context of Interpretation</b>	<b>Community of Validation</b>	<b>Form of Validation</b>	<b>Forum</b>
<b>Self-understanding</b>	Interviewees (1) Researcher (2)	Member validation	(1) Within interview (2) In reflexive practice
<b>Critical Commonsense Understanding</b>	The mediation community	Audience validation	Practice meetings, workshops, and conferences
<b>Theoretical Understanding</b>	The academic community	Peer validation	Supervisors, examiners, and wider dissemination

Having introduced the parameters by which the research should be evaluated we turn to the means by which the reader may do so: the reflexive description of the researcher, methods and the quality of data, analysis and interpretation.

### **3.2 The Researcher**

The reader of this research is entitled to query what frames the researcher brings to their work. This is particularly the case where, as here, the researcher is a practitioner of mediation and shaped by their own experience of practice and where the research methodology is non-realist. Accordingly, this section provides some background details for the researcher and the context and conduct of the research.

The researcher qualified as a commercial mediator in 2006, having successfully undertaken a standard 40-hour programme of instruction in facilitative mediation and becoming an accredited mediator. Later that year, I undertook a further 40 hours of instruction in mediation that qualified me as a community mediator. These courses were substantially identical, despite the significantly different context in which mediation was to be practised. The main difference, it seemed at that time, was in the role plays; a core feature in the embedding and assessment of mediation skills. These respectively featured commercial disputes with sole mediators and neighbour disputes with co-mediators. I subsequently completed a six-hour conversion workshop to qualify as a workplace mediator; an approach premised on applying a generic mediation skill set to a different context. I have since practised in commercial, community, intergenerational, workplace and special education needs cases and have now completed over 200 cases. This, by some measures, qualifies me as an experienced mediator (Goldberg, 2005b; Raines, Pokhrel and Poitras, 2013).

After obtaining accreditation, I followed a path of gaining experience by practicing mediation and undertaking sessions of continuous professional development (CPD); a route required by many of the professional bodies representing the field of mediation, including the Civil Mediation Council.

However, even whilst growing in competence, I found the adage of ‘just follow the process’ – the application of mediation skills within a structure – provided an inadequate understanding of the dynamics of a negotiation process. I concluded therefore, that I needed to explore the theoretical underpinnings of mediation in greater depth. Accordingly, I entered the Masters degree in Conflict Resolution and Mediation at Strathclyde University in the first cohort in 2010, graduating in 2012 with a dissertation that examined the reasons for the popularity of workplace mediation in British universities.

As I now practice across a number of fields, I have reflected on my responses to differing cases and formulated a range of questions that centre on the mediator, their role and their decision making. Do I have a style as a mediator which is flexible, allowing for the generalities of context but addressing the specifics of any particular interaction? Do I work forward from a repertoire that, with some adaptation to the parties, works for all the special education cases I undertake, or do I work backwards from a heedful attention to the interaction? What is it that brings together the techniques and skills I have acquired in a coherent and integrated fashion? How do my presence and actions influence the interaction of the parties? Of the myriad choices I need to make during the course of any mediation, why do I do what I do when I do it? The genesis of this self-funded research, the focus on the mediator, lies in a personal curiosity in addressing these questions.

Beyond the selection of a research area, I have continued to practice as a mediator and this has influenced the study, particularly in the writing of this thesis. The methodology of this research is co-constructive, and this most obviously applies to the interaction between participants and researcher in the production of data. However, co-construction applies beyond this phase to include the researcher interacting with the data, with the literature and with his own experience to produce a synthesis which is coherent and resonant with the reader and the mediation community. This synthesis has worked in two directions: the data suggesting connections in practice and established theory or conversely practice/theory providing a frame for interrogating the data.

An example of the former can be seen in the production of Table 12, a synthesis of epistemic orientation in the practice of mediation. This concept emerged from the researcher’s engagement with the data and the table seemed a coherent way of interpreting what had been found. However, what crystallised matters and brought clarity to the writing was an SEN mediation case undertaken at that time. In response to what was emerging from the data I asked myself in what way was my conduct of that mediation co-constructive and how had I positioned myself in the interaction? At that stage it became clear that what I was synthesising in theory had a resonance in, at least, my own practice.

I have also found the various communities of practice I participate in particularly useful in checking resonance in the wider community. Here, in conversation with fellow mediators, I have been able to test emerging concepts and to see if I can clearly explain what I have found; a process that has sharpened both my thinking and my writing. Equally, listening to another mediator describing their methods has provided the opportunity for reflexivity; why do I do practice in a different way from a fellow practitioner?

The reverse direction – practice influencing analysis and writing – is best illustrated by two experiences that occurred during the course of the research. A 2015 conference in Edinburgh featured a US academic whose work is cited in this study. When mediators gather in conferences and practice meetings there is an opportunity to share accounts of practice. These, it is hoped, enable recognition of best practice, and learning and development to occur. However, where accounts are provided in different fields, what I have witnessed is not recognition but mutual incomprehension often expressed as ‘that’s not mediation’. In one session Kenneth Kressel, a US academic and practitioner, showed a video of family mediation conducted in the context of the US legal system and invited reflective comments from his audience. This enactment of mediation was highly directive with the mediator frequently interrupting the parties and tightly controlling the agenda. Said to be highly effective in its US context, this approach was robustly contested by the workplace and community mediators in the audience although, as one family mediator confided, it is recognised as completely normal in their field. The reader will find this concept of the highly contextual nature of mediation examined further in Chapter 7.

Secondly, in January 2016, I was asked to judge a national mediation competition where competitors were drawn from the ranks of university law schools. Being asked to switch from a non-judgemental facilitator, as a mediator, to grading the effectiveness of what I saw played out in front of me in role play, was a disconcerting experience. Is there one right way of mediating or does my view represent simply one alternative? When a fellow judge opined that a competitor should have been more in control, more directive, while conversely I commended them for being calm and letting the parties interact, did that reveal more about me and my conception of mediation than any absolute standard?

One particular aspect of the competition seemed to trip up many of the competitors. This was a requirement to include in the observed role play at least one joint and one private session subsequent to the initial joint meeting. Mediators therefore had to develop a strategy for how to utilise these sessions in a manner that responded to the way the cases were unfurling before them. Most chose to break into a series of private meetings with the mediators shuttling between parties



hoping to narrow the differences between the parties before a final wrap up joint session to complete an agreement. This is an approach that would be recognised by many commercial mediators who conceive that mediating only starts once the initial session is dispensed with and the work of negotiating can commence in private sessions.

This emphasis on private sessions fitted well where the issues of the conflict were transactional in nature, e.g. how much money needs to be paid to settle a claim. A difficulty arises – as it did with these role plays – where the conflict is relational, e.g. where explanations, apologies, trust, and better communication are part of a solution. If relational aspects are to be addressed, mediators may well have to use private meetings not as interlinked negotiating rooms but as preparation for a subsequent interaction in a joint meeting. These students had a level of interpersonal skills and a 5-step process they had recently learned and a few hours practice. They could demonstrate the skills, but they lacked a clear strategy or framework as to how to flex the process to the cases before them. The reader will find this theme of the less experienced mediator and their concept of interaction is a recurrent thread throughout this thesis.

I embarked on this research with a desire to understand and develop my own practice, and the process of co-construction – the interaction of theory, data and practice – involved in conducting the study has certainly made a contribution to this goal. Further, I surmised that others in the field of mediation might have similar questions or ambitions that would mean the research had value to the wider mediation community. What I have observed during the course of this research in practice meetings, conferences and other settings has reinforced that view.

### **3.3 Methods**

Selecting a methodology, as described above, does not predetermine the methods that will be utilised, as epistemology and method are not synonymous: epistemology does not '*dictate what specific data collection and data analytical methods researchers must use*' (Johnson and Onwuegbuzie, 2004: 15). Methods should be chosen based on their appropriateness in addressing the research questions (Ritchie and Lewis, 2003: 15) whilst methodology provides the frame for how these methods are deployed in ways which are coherent and consistent. This section describes the methods used in this research, the reasons for their selection and their adaptation in response to the constraints and opportunities of fieldwork, analysis and interpretation.

As outlined later in this section, mixed methods – the mixing of quantitative and qualitative methods (Meth and McClymont, 2009) – have been used in this research in the harnessing of survey questions alongside interviews. This is a popular combination in mediation research (Borton and

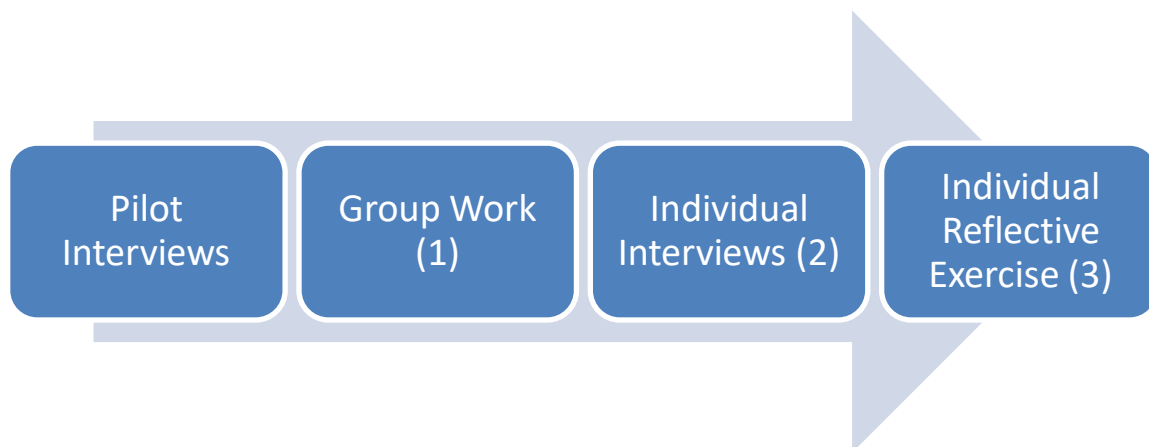
Paul, 2017; Poitras *et al.*, 2015; Nelson, et al, 2010; Bingham, 2012; Latreille and Saundry, 2015). Mixed methods seek to gather, analyse and interpret data in ways which are complementary, but sit within the overarching methodology and represent a pragmatic approach to selecting methods which is characteristic of a constructionist epistemology (Gergen and Gergen, 2007). The matching of methods in a mixed approach can take many forms: quantitative and qualitative may be of equal or disproportionate weight and can take place in sequence or in parallel. In this study, it was appropriate – in addressing the research questions – to use a concurrent embedded strategy (Creswell, 2009) where the quantitative element (questionnaire) was secondary, a complement to the qualitative element (interview) in both data gathering and subsequent analysis.

### **3.4 Data Gathering**

The core of the approach to data gathering was the interviews conducted with university workplace mediators. These were based on a topic guide derived from the research questions (Appendix 1) supplemented by a questionnaire employed in previous research into mediator decision making (Appendix 2). The topic guide represents the cascading of the research questions into more specific components that frame the conversation with an interviewee. The guide is a means to steer a discussion between researcher and participant but is not an exact prescription of what is covered (Ritchie and Lewis, 2003: 115). Mixing methods by deploying a questionnaire as an initial step alongside a topic guide had two purposes. Firstly, using questions that had proved engaging to mediators in the earlier research was seen as a means of building rapport and centring subsequent discussion in areas of research interest. Secondly, when subsequently analysing data it opened up the possibility for comparison with the earlier research.

Fieldwork was conducted in four phases as shown in Figure 2. Initially, two pilot interviews were conducted with experienced mediators who had no connection with any university to test and refine the interview method and content. Subsequently, in Phase One, the researcher travelled to four institutions to make a presentation (Appendix 4) that introduced the field of research and to issue an invitation for individuals to participate in Phase Two. Finally, at the conclusion of each individual interview, mediators willing to contribute further were invited to undertake a reflective exercise (Phase Three) connected to a future case (Appendix 3).

**Figure 2 Data Generation and Collection**



Recruitment was conceived as a cascade process: contacting first the university to request access to their pool of mediators, offering a group presentation (Phase One), and a further invitation to individual mediators to participate in interviews (Phase Two). Initial contact was made with the 18 universities that had participated in the earlier 2012 research with an invitation to participate in a study of mediator decision making. However, this elicited a limited response with just four universities responding positively. Accordingly, personal networking was utilised to recruit a further two institutions. One was recruited via an academic with interests in mediation who was able to provide an introduction to the mediation service at their university. The other university was recruited through a contact made at the Higher Education Mediation Forum.

### **3.4.1 Pilot Interviews**

The pilot interviews were conducted with mediators who each had more than 20 years' experience and were personally known to the researcher. One had a particular connection with co-mediation as a coordinator of a community mediation service in addition to experience as a commercial mediator. The other, as a transformative mediator and trainer, was considered likely to have some knowledge of the theory of social interaction that underpins the practice of the transformative model. The interviews therefore represented two opportunities: to check the effectiveness of the interview method and to produce data that could be contrasted with that collected in the main study.

Structure was provided to each interview by utilising a questionnaire (Appendix 2) originally used in research with Israeli mediators and which is described in more detail in Chapter 6. Here a number of statements were made that cover the purpose, goals and success factors in mediation, and participants invited to grade their response from strongly disagree to strongly agree. This approach was found to work well in that the questions engaged the interviewees and – critically for the epistemology of the research – generated a conversation with the researcher. This effectively turned

a fill-in the numbers survey into a semi-structured interview, with the interviewees willing to provide some explanation or commentary on their scoring and the researcher able to probe responses. Further, establishing this level of interaction between interviewee and the researcher subsequently proved useful when moving into the semi-structured section (Appendix 1). However, what became apparent was that conversation flowed when topics such as neutrality, power and conflict, issues that might arise in practice meetings were addressed, but slowed when meta-theory, intersubjectivity or reflexivity were raised. Topics that may be of interest to the academic clearly did not necessarily resonate with the practitioner and their concerns for useful theory.

Interviews were conducted over Skype, recorded using Callnote and uploaded into NVivo for transcription and analysis. This was found to be effective and confirmed that interviews could be successfully conducted on-line, enabling researcher and interviewee to agree a suitable time free of the constraints of scheduling visits to each institution. This additionally opened up the possibility of offering participants in Phase Three a reflective interview rather than the completion of a reflective journal.

It was therefore concluded that the interview method was likely to be effective in Phase Two, generating data that could address the research questions and be uploaded and analysed within standard software. However, the experience of the pilot interviews did flag a potential difficulty: if conversation with experienced mediators flagged when moving into unfamiliar territory such as the theorising of interaction, how would less experienced mediators respond?

### **3.4.2 Phase One Group Workshops**

Mediators in universities gather together periodically for training and development, and it was conceived that this might be a suitable forum in each university for the group work phase of the research. The approach was for the researcher offer a presentation as a contribution to CPD whilst noting down the reactions of the group and incorporating this into the research. Further, having engaged the assembled mediators in the field of research it was expected that a number of them would then be willing to participate in the succeeding phases.

Conceptually, meeting with these practice groups provided the opportunity for the researcher to build a bridge between the concrete, pragmatic concerns of the practitioner (Kressel, 1997) and theories of social interaction. A presentation (Appendix 4) was therefore prepared, trialled in a workshop for Acas mediators, adapted and then delivered to each of the four institutions willing to accommodate the researcher. A further two universities, U5 and U6, were unable to participate in a group workshop.

The first observation to make of these groups is the conflict between research and practice. When mediators gathered there was a tendency for tales of mediations to be told. These focused on vivid moments in mediation where threats or obstacles were overcome. Alternatively, major triumphs were recalled where agreement is reached against the odds. Mediators appeared able to clearly recall the actions or interventions taken but when asked to explain why they took a particular course of action, frequently resorted to explanations of it being the right thing to do; an intuitive unexamined process.

The dilemma for the researcher is to encourage participation but to hold that interaction within a framework that relates to theory and encourages reflection. Data need to be acquired but should fall broadly within the ambit of the research questions that are being posed. In University 1, there was a great deal of interaction but unfortunately no particular engagement with theory or the research and subsequently no recruits for Phase Two. Accordingly, the workshop material was modified to be less abstract and the researcher kept a tighter control on the group interaction. This achieved a better balance with feedback at the end of the next workshop citing the opportunity to *'think behind'* (U2) the theory of mediation or as one participant subsequently articulated:

*'It was a really useful opportunity for us all to sit-down and 'think', rather than talk too much (which we mediators do love!)*' (U3)

A second observation is that even with a more focused approach there were limits to what could be achieved within the ambit of a 60-minute group session. It took time to understand the dynamics of the group and build rapport. Echoing the experience of the pilot interviews, the researcher needed to locate a starting point for the mediator in their ability to engage with theory. It was found possible to introduce the research and topics such as personal style in the workshops, but not to cover the concept of social interaction in any depth. It was further possible to obtain data which illuminates how the practice group at each university operates works but not to establish a base-line for theoretical knowledge. Clearly the bridge building, between theory and practice, would need to fall to the individual interviews in Phase Two.

A third observation is that mediator groups in one university met infrequently (U5) and another had already scheduled the content of their next practice meeting (U6); there was not necessarily a fit with the timescale of the researcher. Fortunately, in both cases these institutions were willing to facilitate the recruitment of mediators into Phase Two.

The outcome of Phase One was therefore twofold: it provided data for the group interaction in four cases which is analysed in chapter 7 and paved the way for the recruitment of 18 mediators for

Phase Two, as shown in Table 4. As the initial design had targeted the involvement of two or three institutions and the recruitment of three to four mediators at each university, this was considered a sufficient number of recruits to proceed to Phase Two.

**Table 4 Participant Recruitment**

University	Phase One Participants	Phase Two Recruits	Notes
U1	6	0	
U2	9	5	
U3	5	1	
U4	4	3	Two of three Phase Two recruits not present at Phase One workshop
U5	n/a	3	Difficulties in arranging group meeting and agreed to go directly to Phase Two
U6	n/a	6	Did not wish to accommodate 90 minute workshop into regular practice meeting but agreed 5 minute briefing to enable recruitment for Phase Two

The universities have been coded in the order in which the group workshops took place. Two of these institutions (U2 and U5) were originally polytechnics that achieved university status under the 1992 Further and Higher Education Act, whilst the remaining four are pre-1992 universities. Two universities have student enrolments of over 30,000 (U3 and U5), whilst the other four have enrolments that lie between 12 and 18,000.

### 3.4.3 Phase Two Individual Interviews

An interpretivist approach emphasises qualitative methods, as these are viewed as *'more faithful to the social world'* than quantitative methods (Gergen and Gergen, 2007: 473). The most common qualitative method is the interview (King, 2004a); a social interaction with the researcher engaging in a relationship with the interviewee that leads to an understanding of their life-world (King, 2004a). The present research involved the use of semi-structured interviews, as this allowed participants scope to construct their accounts but to do so in the context of the research questions. As such it formed a middle ground between an unstructured approach that might have produced data which bore no relation to the questions, and a structured approach that risked missing important aspects that the researcher might have overlooked.

Structure was provided in two forms: an interview guide that focused on topics rather than a defined schedule of questions (King, 2004a), with topics drawn from the literature review. This was paired with a questionnaire, per the pilot interviews, where participants were invited to respond

numerically to a set of statements but additionally invited to add a commentary or offer an explanation for their choice.

Interviews were scheduled to run for 60 minutes but often ran, with permission, longer (to 75 minutes). These were conducted remotely over Skype by video link, although only the audio was recorded using Call Note software. This method was not entirely trouble free as some institutions did not support Skype and interviewees elected to link from their home location, bringing bandwidth considerations into play. On two occasions such bandwidth problems caused the interview to be interrupted although it was possible to re-establish the link and continue on a voice only basis.

Key skills for the interviewer are the ability to build rapport and enable an interviewee to reflect and articulate their thoughts; skills which are coincidentally required of a mediator (Marshall and Hurworth, 2009). However, beyond the deployment of skills, a researcher needs to account for the stance they take. As a participant in an interaction, the researcher will inevitably condition the interviewee's responses (Dick, 2004), requiring the former to engage in reflexivity consistent with the chosen methodology, i.e. as a co-constructionist and not as an objective observer.

What distinguishes a co-constructionist approach is an observation articulated by Back, that *'...interviews are performative interventions that create, as well as reflect, the 'real' world'* (cited in Baker and Edwards, 2012: 6). The researcher enables the interviewee to create an understanding of their world; in this study by examining their practice from an interactional perspective. The researcher recognises the interviewee as the expert in their world whilst offering, for consideration, theoretical concepts that are potentially unfamiliar to less experienced mediators. The researcher facilitates the creation but does not direct it; gathers data, responds to data and formulates further questions that enable the interviewee to build a richer picture. What is described here echoes how a co-constructive practitioner enacts mediation; a point which will become clearer in the discussion of the study's results in Chapter 8.

#### **3.4.4 Phase Three Reflective Interviews**

The third phase of the research was conceived as a reflective exercise focused on a selected future case and specific topics. This phase built on themes emerging from an initial analysis of the data and captured in a template for reflection provided to participants (Appendix 5); an example of communication between researcher and participant. This was envisaged to take place over a period of nine months to allow participants, who practice infrequently, to undertake a mediation. Participants were given a choice of completing a reflective journal, but in practice preferred to make

their contribution by recorded on-line interview as utilised in Phase Two; a method more consonant with co-construction even if somewhat more demanding in transcription.

Incorporating this phase in the research had two aims. Firstly, to allow the possibility for some measure of longitudinal study where participants were able and willing to reflect on multiple cases; a serial engagement between theory and practice that could lead to richer insights. Secondly, to address a potential problem with the collection of data: in Phase Two, interviewees were providing an account of practice based on a recall of prior cases, prompted by the questions introduced in the interview. This was felt likely to lead to a more generalised reflection and raise the potential for a gap to emerge between what is espoused and what is practised; a tendency to *“mis-remember” events as a result of retelling them* (Hoffman and Wolman, 2003: 764).

One means of addressing this gap is to place the researcher as a direct observer of the mediator in action. There is, however, reluctance from parties to permit videoing of private confidential mediation sessions (Bollen and Euwema, 2013). As an alternative, the research considered a method pioneered by Kressel and known as the Reflective Observer (RO), an in-depth reflective case conference approach to identifying best practice in mediation (Moore, 2014). The observer is present in the mediation, although not as a co-mediator, taking notes that concentrate on mediator behaviour. These notes are subsequently used in a facilitated dialogue with the mediator(s) that resembles a semi-structured interview. However, this raised a number of practical considerations when negotiating with universities during the recruitment process. Foremost amongst these was that approvals would still be required from each university and the parties to mediation in addition to the two co-mediators, risking agreement to participate in the research. Further, the researcher would be required to travel, observing the mediation before conducting the reflective exercise with mediators who have gone through the rigours of a day's mediation.

*‘... at the end of the day sometimes it can just be a massive relief that the day's over...It's hard to then think back and think about how it went well really, what went well, what did we miss out completely, what didn't we bring up that we should've done’ (Anna)*

Consequently, it was decided to conduct the phase without observing the mediations, but by remote interview with the mediators subsequently at a time that was suitable for the interviewee(s).

### **3.5 Ethics**

Two ethical issues were identified in the methods utilised in this research: confidentiality and psychological health. Whilst confidentiality is a general concern in research, it is an aspect with a particular resonance in mediation, as the process is itself private and confidential. Fortunately, as an



integral part of mediation, confidentiality as a provision is addressed explicitly and mediators were alert to describing practice in ways which did not identify the parties. Explicit permission was obtained in consent forms for the use of quotations in a manner that would not be attributed to any one individual or case. Consequently, pseudonyms have been used to label interviewees' quotes throughout this thesis and only aggregated data is provided in this chapter to describe the background of participants. The process of obtaining consents was further simplified when the pragmatic decision was made to preclude direct observations of mediation, thus removing the need to seek agreement from the parties.

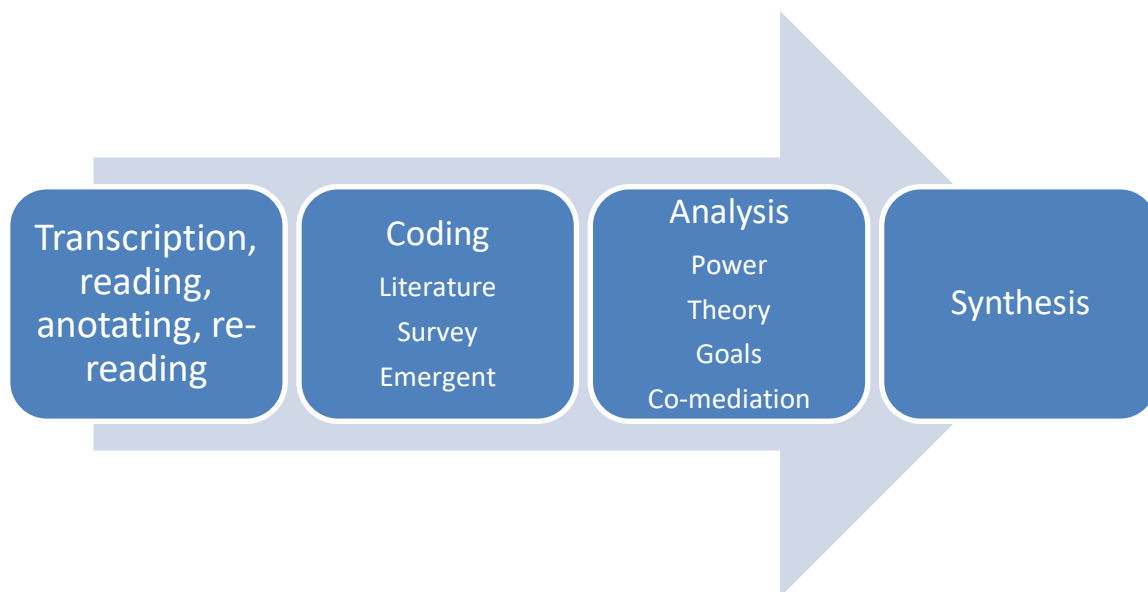
The second issue concerned the possible impact on psychological health when mediators undertake reflection directly with the researcher rather than in keeping a reflective journal. It was identified that such reflection would need to be conducted with sensitivity as it involved a relationship of trust and openness. As case review is a regular feature of mediator practice it was not envisaged that this aspect was likely to cause concern; a view confirmed by the experience of the Phase Three interviews.

### **3.6 Analysis**

Turning 22 hours of interviews into a well-argued thesis is a process illustrated by Figure 3. It required organising the data in such a way that the researcher could be sensitive to the voice of the interviewee but seek to answer the research questions set out in Chapter 2. A structure was therefore required that was open enough to allow for the emergence of insights that might confirm or contradict the researcher's pre-conceptions, but focused enough that a coherent analysis of social interaction could be constructed.

Data were generated by the researcher transcribing the recorded interviews in NVivo which ensured a certain intimacy with the material. Data were then organised by imposing a coding structure, providing the researcher with a fresh perspective code by code. This prompted insights and themes that were explored further by interrogating the data. Analysis was conducted in layers, commencing with a reading of the individual codes, then analysing the codes under four key headings (the basis for Chapters 4-7 of this thesis) followed by an integration of these insights with the literature and a synthesis – the development of new theoretical understanding – in the Discussion chapter (8).

**Figure 3 Analysis Process**



Template analysis was deployed to provide an organising framework for the analysis and interpretation of the data collected. Template analysis is a well-recognised means of analysis for research into workplace mediation (Bennett, 2014; Saundry, 2012; Saundry and Wibberley, 2012). It can accommodate a range of epistemological positions, including an interpretivist approach, where meaning is sought in language (Kvale, 2007a) but is inappropriate for a radical relativist (discourse analysis) perspective (King, 2004b) where language is the object of analysis.

Template analysis relies on the labelling or coding of text with the themes or issues of importance to the researcher's interpretation. The set of codes – the template – is based on the interview topic guide which is in turn derivative of the research questions (King, 2004b), although in practice the initial template may be formulated once exploratory interviews have been conducted (Brooks and King, 2014). Once the final version of the template has been defined, analysis and interpretation of the data can commence. The coding of the text is in itself a '*flat, descriptive account of the data*' (King, 2004b: 17) and interpretation the means to produce a thicker, richer synthesis of themes illustrated by particular examples. Interpretation is a subjective process but one that can be approached to a degree systematically.

In this research, the two pilot interviews were utilised to lay the foundation for the codes. These are known in NVivo as nodes whereas interviewees are sources. Having transcribed, read, annotated and re-read these interviews, it was possible to translate the topic guide into a hierarchy of codes shown under 'Literature' in Appendix 3. To this was added a set of codes for each of the survey

questions ('Survey'). Finally, a third set of codes was added ('Emergent') reflecting themes, such as neutrality and metaphor that were surfacing in the pilot interviews, to form an initial template.

Coding the interviews involved the researcher working through each interview and allocating sections of text to one or more nodes. Having completed this task, it was possible to read the data for a further time with a different perspective; by node rather than by source. Reading in this manner started to show commonalities and differences across the interviewees. For example, there was evidence that some mediators used the metaphor of conversation to explain their practice. From here it was possible by the use of text search in NVivo to identify where in the source text this metaphor had been used and shed light on the meanings being conveyed. The researcher was thus able to respond to the emergence of phenomena by the re-interrogation of the data.

The use of NVivo thus provided a database that was organised by node and searchable by key word. The use of nodes, which in turn were derived from the template drawn from the research questions, was important in guiding and framing the researcher's thinking. The ability to search by key word enabled a deeper drill into any particular theme across a given source. NVivo as a database was valuable to this researcher as an efficient means of handling data and to convey to the reader that data has been handled in a systematic manner. However, an efficient means of organising and reading the data still required an effective analysis.

### **3.6.1 Emergent Data**

However, whilst interesting for the researcher, such emergence was fragmentary; a patchwork of snapshots at a micro level without a sense of coherence or connection to the larger theme of social interaction. For instance, looking at mediator goals it emerged that mediators have a concept of the importance of recognition and, to a lesser degree, empowerment; insights that are important but need to be set into a wider context, namely the research questions. In order to do so a further macro level template was required and nodes were grouped under four key headings. The choice of these headings reflected what had emerged from the data and a judgement by the researcher that these related to the research questions and could create a cogent set of conclusions in the area of social interaction.

- Goals: Interviewees' responses to the questionnaire statements and the implications for goal setting.
- Power: Examining mediators' conception of power in mediation, their own and that of the parties.
- Co-mediation: The practice of co-mediation.

- Theory: Examining interviewees' understanding of theory and what their practice implied for theory.

Under these headings the researcher was able to progress the analysis by using the writing process to generate thinking and vice versa; analysis becoming sharper as a narrative was constructed; data being re-examined to check if they supported the narrative. An explanation for the choice of these particular headings is provided in the introduction of each chapter. However, they remain, to a degree, a subjective choice by the researcher, albeit one guided by intensive reading of the data and the frame of the research questions. The effectiveness of the choice may perhaps be judged by the rolling forward of their analysis into the synthesis stage of the Discussion chapter and their contribution to an improved understanding of mediators and social interaction.

One final emergent element of data occurred in the survey data collected in the process of interviewing. The initial intention was to ask interviewees to score each answer as a prompt towards reflection and then expand on their answers, thereby generating qualitative data (described in Sections 3.4.1 and 3.4.2). However, having gathered the numerical data, a decision was made to include this in aid of the analysis and discussion presented in chapter 4. This mixed methods approach – discussed in Section 3.3 – should be seen as a pragmatic means of responding to emergent data with the aim of developing a richer analysis.

### **3.7 Reflection**

A particular issue in qualitative research is the perennial question of how many interviews is enough (Baker and Edwards, 2012). Numbers must ultimately yield sufficient data to answer the research question, but this presents a problem in the sense that decisions must be made at the recruitment stage of the project. Literature suggests that the methodology selected guides the initial decision on numbers, but warns that other factors often come into play obliging the researcher to act pragmatically:

*'...inside determinants of projects (methodological and epistemological considerations) should be more important in answering the question of 'how many', it is often the outside factors that play a more central role'* (Flick, in Baker and Edwards, 2012: 6)

In designing this research, it was envisaged that two or three institutions would be willing to participate and that at each university it would be possible to recruit three or four mediators, i.e. eight to nine interviewees and 16 or more interviews over Phases Two and Three. This was felt to be a number consistent with a co-constructivist methodology and within the resource constraints of the researcher (King, 2004a). In the event, six institutions engaged in the research, and including the two

pilot interviews, a total of 20 Phase Two interviews were conducted. However, only two Phase Three interviews were conducted where a mediation had taken place shortly after Phase Two interviews were conducted with the two mediators involved. The reasons for this shortfall are not entirely clear. At the end of each Phase Two interview each participant expressed an interest in participating in the subsequent phase, but cautioned that this would need to await the assignment of a case. The subsequent dearth of volunteers for Phase Three suggests that, in the delay ensuing between the Phase Two interviews and the next case, enthusiasm waned.

What was learned from this shortfall in Phase Three? Clearly no longitudinal data could be adduced, and communication between researcher and participants was curtailed. However, Becker proposes that *'...a single interview is adequate in order to establish if something is possible'* (in Baker and Edwards, 2012: 6). In this study, two interviews were obtained that demonstrate the effect of reflection that is guided rather than open-ended, a point examined further in Chapter 9. Further, the data gathered from these Phase Two interviews were subsequently used to supplement that of the Phase Two interviews enabling the analysis of certain aspects of interaction to be amplified as described in Chapter 4.

Beyond the question of quantity of interviews is the issue of quality. Did the 20 interviews provide sufficient depth? In particular, could the structure of the interview overcome a pitfall, observed initially in group work with U1 (where the first group session took place) whereby mediators typically reflect on technique and micro practice whereas the study needed to access meta-level thinking? The response from interviewees suggests the interviews were effective in accessing depth, as illustrated by one exchange:

(Researcher): *'Indeed so, if you use the term narrative it invites that type of view and again you can juxtapose that with a more transactional approach to it. And I wonder, do we adopt a different style depending if that is emerging to us, or is that how we, as individual mediators, perceive of what's going on in the mediation room?'*

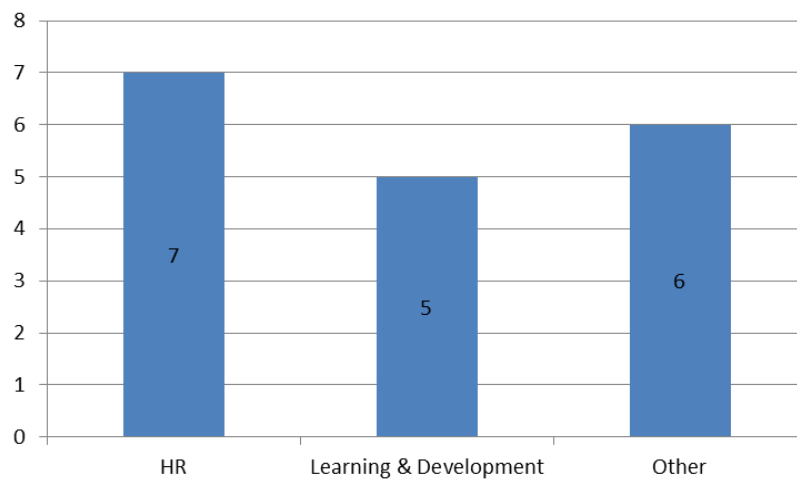
(John): *'Yes, I think the reflection on this is interesting because I think we tend to reflect on things from quite a functional level, what works, what didn't work, do we get the outcome we were hoping to get rather than on the theoretical backgrounds to it and the way that people come into the room and have approached it. So, it's useful to start to thinking about it in that way.'*

A further consideration is the question of what or who the 18 interviewees who participated in the main study represent. Clearly, they represent a set of workplace mediators with limited experience,

as shown in Figure 1, but are they typical of mediators in universities? More particularly, is any one mediator representative of the institution in which they practice? For instance, can the one interviewee recruited from U3 be considered representative of the practice of mediation at that institution? To address the question of representation, we turn to further details of the interviewees as provided by Figures 4-7.

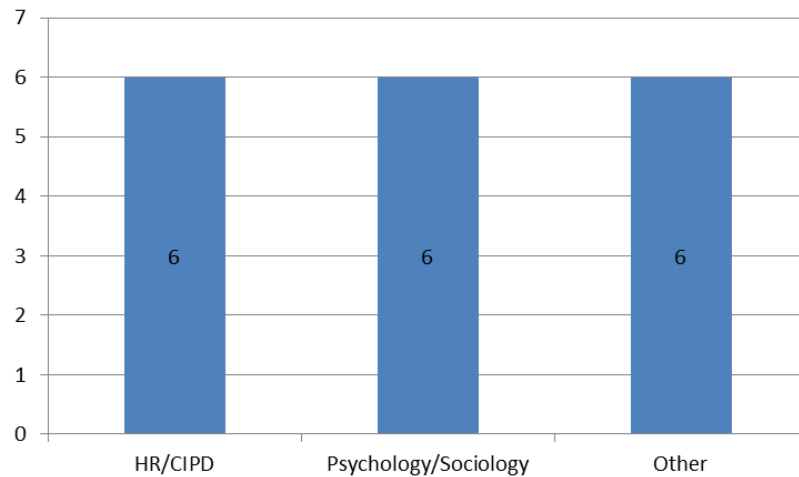
Previous research, involving 18 institutions, suggested that while the Human Resources department in a university is often in charge of the mediation service, mediators are drawn from across the institution (Poyntz, 2012). However, in the present study, participants were more likely to be performing an HR role, as illustrated in Figure 4, reflecting Bennett’s observation that only 25% of HE institutions chose not to train HR staff as mediators (Bennett, 2014). The main role performed by interviewees fell into one of three areas: Human Resources (HR); Learning and Development (also known as Organisational Development and often a subgrouping within HR); and then an eclectic mix including just one academic and three administrators. Amongst those interviewed were three mediators who also act as scheme coordinators and one who had retired from such a position but continued to practice as a mediator.

**Figure 4 Participants by Main Role**



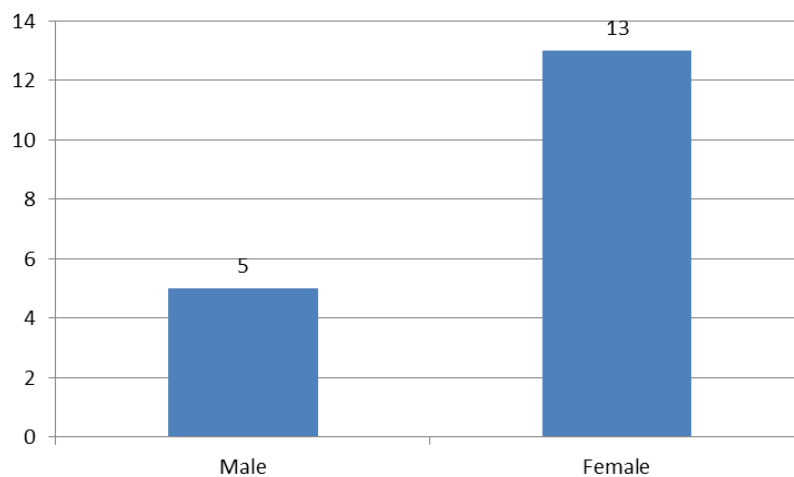
Mediators included in this study did not, with one exception, practice outside of their university, and this narrow focus limited their opportunities to learn from external experiences. All but one of the participants had received higher education or completed a professional route equivalent. Of these, six had studied HR Management or the CIPD equivalent and six had studied courses that had significant elements of psychology and or sociology. A contrast can be drawn here, based on the experience in a workshop conducted by the researcher with Acas mediators, where the comparable figure was 50%.

**Figure 5 Participants by Education**



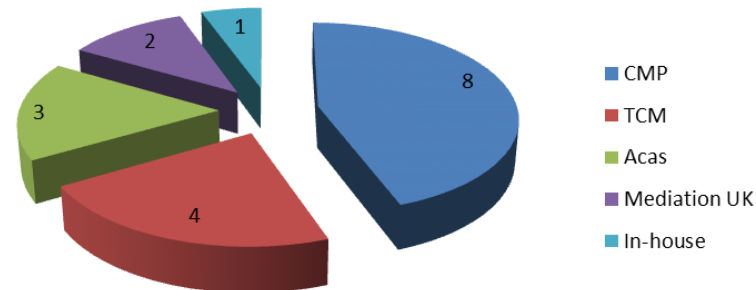
This reliance on mediators from HR may explain a gender imbalance in the participants that is characteristic of this management function, as shown in Figure 6. Such a gender imbalance in workplace mediation has been noted in other research (Latreille, 2011) and, it has been argued, is potentially problematic.

**Figure 6 Participants by Gender**



All participants had received formal training in mediation from one of the main providers of such training (Bennett, 2014), although this was spread across a number of providers as shown in Figure 7. Typically, a university will use a single provider to train a cohort and initiate a mediation service. Thereafter, mediators trained by other providers may join the service. Pairing mediators who have received different basic training can introduce a challenge in building an effective partnership, an aspect which is discussed further in Chapter 6.

**Figure 7 Participants by Training Provider<sup>4</sup>**



Further variations between the universities were observed. Two of the universities (U2 and U4) were heavily reliant on two mediators who took the bulk of cases. U4 was characterised by a preponderance of mediators drawn from Organisational Development who had a coaching background. U2 was heavily reliant on mediators from HR and there was a particular concern expressed in this university as to mediation sitting within HR; a concern that was voiced in the previous study (Poyntz, 2012). U6 had the widest mix of mediators and the researcher had previously run (in 2012) a workshop for these mediators on transformative mediation. U5 was the only institution practising solo rather than co-mediation.

Nonetheless, analysis of the data suggested that personal schema as proposed by Kressel (Kressel, 2013) have the greatest influence on personal style. Accordingly, the data have been considered as one set: a case study of less experienced mediators who probably are a reflection across the university sector and whose span of experience enables the theorising of a developmental process of practice integration. Clustered as one set, it is suggested, the twenty interviews provided the necessary and sufficient basis for research.

Having set out the methodology and method deployed in the research, we now turn to the first of the chapters containing empirical data.

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<sup>4</sup> CMP, TCM and Mediation UK are organisations specialising in the training of workplace mediators and providing consultancy services in workplace conflict. Acas is the Advisory, Conciliation and Arbitration Service, a statutory body that trains workplace mediators and offers mediation services.



## Chapter 4 – Mediator Goals and Drivers

### 4.1 Introduction

The beliefs and perceptions that mediators hold about mediation, its goals and how success is measured are important drivers of their behaviour (Herrman *et al.*, 2003). Simple control systems like a thermostat enable a heating or cooling system to ramp up until a set (goal) temperature is achieved. Looking at mediation as a control system, mediators are said to continually adjust their interventions and judge the interaction in a mediation until goals are reached (Wall and Dunne, 2012). Goals are addressed in basic training and further refined within each university mediation service, but how well do these stated goals match the beliefs and perceptions of individual mediators?

Goals are not fixed static points for either the parties or the mediator. As mediators interact with parties in mediation, wants, needs, and expectations surface and mediators need to adjust their own sights accordingly; goals in mediation are emergent. Moreover, goals may be multiple and potentially conflicting. Faced with complexity, mediators may make choices as to which goals they pursue in order to simplify matters to a manageable degree. Such simplification eases cognitive immobilisation – the animal caught in the headlights effect – but can lead to prioritisation of the transactional goal of agreement (Wall and Dunne, 2012); a partial achievement which, as Cyert and March theorised in the field of behavioural economics, is deemed good enough and satisfices rather than maximises (1963).

In an earlier study of Israeli mediators, researchers developed a range of standard statements about mediator goals, perceptions, practices and criteria for success based on semi-structured interviews with 30 mediators (Zarankin, et al, 2014). These statements were subsequently used in quantitative research with a group of 189 mediators where participants answered each question on a six-point scale. Participants were drawn from the fields of family, business and community in addition to workplace mediation with a span of experience from three to eleven years. This current study builds upon the foundation of the Israeli study using it as a point of departure, for working with interviewees, and as a reference point for analysing results.

For this present research, working with a group of 18 university workplace mediators, a mixed approach was adopted, as described previously, which forms the basis for the analysis presented in this chapter. Participants were presented with a selected sub set of the questions, invited to respond on the six-point scale but additionally asked to add explanations for their choice. This method provided participants with a frame for their engagement, enabling them to add context to their

answer, and critically built a rapport with the researcher which paved the way for the subsequent semi-structured segment of the interview.

This chapter examines how mediators make sense of goals and how they communicate that sense to parties, both explicitly and tacitly through their practice. The material adduced here comes from two sources. Firstly, the structured part of the interview where participants responded to the questionnaire and augmented their answers by expanding on the reasons behind their scoring. Secondly, the two Phase Three interviews which provide a guided reflection on a specific recent mediation. In the analysis, comparisons are drawn with the results of the earlier Israeli study and with the responses of the two experienced mediators interviewed in the pilot study.

## 4.2 Context

Context is important to understanding how participants answer survey questions. Participants construct a meaning for each statement which reflects their own points of reference and experience. Questions that might serve to explain mediation to a fellow mediator are not necessarily used when conversing with the parties. Mediation as negotiation is a case in point:

*'I think you're right, it [negotiation] is the word. In essence it is exactly what you're carrying out, but that word has got a certain connotation for people and a certain context and that's not where we've looked to position it'* (Nicola)

Where participants are drawn from differing fields of mediation, differences of interpretation may arise. The 18 mediators interviewed in this research, however, shared something in common; all practised mediation in the same type of setting, the university workplace. There were two exceptions: one mediator had further experience in neighbour (community) mediation and another in employment mediation, a dispute which is heading towards an employment tribunal and where consequently mediation had been used *'much more as a negotiation tool'* (Diane).

A particular aspect of context is important when seeking to compare mediation across different fields of practice and that is the extent of voluntary participation. Voluntariness is often viewed as an essential criterion for successful engagement in the mediation process (Irvine, 2007; Latreille, 2011), but may in practice be limited or perceived to be limited; mediation may operate in the shadow of some alternative adjudicative process that conditions how the parties engage (Feuille and Kolb, 1994; Latreille, 2010). In the university workplace, parties are routed to mediation in ways that stretch the notion of voluntary participation: *'Voluntary is a very loose term. It's kind of forced voluntary'* where parties have been directed by HR Operations and *'they've already had*

*conversations and the word 'grievance' has been bouncing around and it's like before we go down that formal route let's try this'* (Rachel).

Allowing participants to reflect on and explain their numerical answers revealed a certain dualism in their thinking between what mediation could or should offer and what actually occurs in practice. This dualism points to two themes that recur throughout this study: firstly, that mediators face challenges in translating what has been learned in the classroom and reinforced in role play into the reality of practice; and secondly, that personal schema influence this translation and the development of individual theories of practice.

As mediators experience practice they gain insight into the potential of mediation but also the constraints of the context in which mediation operates. Mediation has the potential to empower the parties, but this does not always occur: *'that's a hideous contextual one. I can think of some people for whom it hasn't'* (Lynda). Mediation can encompass relational intentions, but transactional realities may prevail: *'the circumstances in the university means that it doesn't always seek that. It's about finding resolution in a work-based context rather than a broader relationship context'* (Frank).

#### **4.3 Survey Analysis**

The original Israeli research was designed to investigate the role schema of mediators, *'the mental filter or interpretive lens that shapes individuals' understanding of their role and their subsequent behaviour'* (Zarankin et al., 2014: 141). Mediators were surveyed in a series of 33 statements, designed to explore attitudes in three categories: the purpose of mediation, the goals of mediation and success criteria in mediation. The first category examines what is described as mediator orientation, their macro level view of mediation, their *'perceptions of the essence of mediation'* (Nelson, et al, 2010: 295). Goals and success criteria represent the enactment of this macro view in practice.

Factor analysis was subsequently used to cluster their results into three groups for each category as shown in Table 5 (Zarankin et al., 2014: 144). There is a degree of correspondence across the three groups: an instrumental orientation in the purpose of mediation matches with an agreement emphasis in goals and success criteria. Similarly, a transformative orientation aligns with a relationship approach. This correspondence echoes a division noted in the literature between a settlement and a relational approach to mediation (Wall and Kressel, 2012), a theme which is examined further in this thesis.

**Table 5 Factor Analysis in Original Research (adapted from Zarankin et al, 2014)**

<i>Purpose of mediation</i>	<i>Goals of mediation</i>	<i>Success criteria in mediation</i>
Instrumental Orientation (I) <i>Interest in settling a specific dispute</i>	Agreement Emphasis (A) <i>Settlement focus</i>	Agreement (A)
Transformative Orientation (T) <i>Interest in strengthening disputants and their relationship</i>	Relationship Goal (R) <i>Communication and mutual recognition</i>	Relationship (R)
Social Positive Orientation (SP) <i>Strengthening weak groups and lessen power inequality</i>	Process Emphasis (P) <i>Focus on process not conclusion</i>	Process (P)

In this research, the full set of statements was utilised in the pilot study before excluding four on the grounds of relevance and the time available with interviewees (a full list of statements is provided in Appendix 6). Each participant in the main study was therefore presented with 29 statements and asked to respond from 1 for ‘strong disagreement’ through to 6 for ‘strong agreement’. Although participants were provided with the questionnaire in advance, all except one interviewee chose to answer during the course of the interview. In the tables below, the mean score for each statement is shown in ranking order from high to low. Alongside each statement is the score recorded in the pilot study for the two experienced mediators each with more than 20 years practice (Paul, a facilitative mediator and Ciara, a transformative mediator). Numerical responses were entered into the data set accompanied by two additional parameters, the gender and experience (number of mediations undertaken) of the participants. Analysis was subsequently undertaken using SPSS, producing a correlation matrix which is shown in Appendix 7 and a one-way ANOVA which is shown in Appendix 8.

The analysis of results in this present research utilises the analytical framework of the earlier study and examines each of the three categories in turn. Under each category the numerical data are presented and then discussed in the light of explanatory comments, where these were made by participants, and Pearson correlation coefficients, where these were significant.

### 4.3.1 Purpose of Mediation

Table 6 illustrates two aspects of mediator orientation. Whilst the highest priority is assigned to communication: *'that's what we do'* (Paul), *'one of the key features'* (David), mediators conceived the purpose to be a mix of transformative and instrumental elements. Conversely, a relatively low ranking is accorded to social positive statements which rate the impact of mediation on society. Mediators clearly believed in the potential of mediation to make an impact beyond an individual case (Carolyn, Frank) but doubted it actually made that contribution in the context of their own practice: *'I struggle to see how we're improving society by using it in the setting that I'm using it'* (John).

**Table 6 Purpose of Mediation**

Statement: 'Mediation is...?'	Mean Score (n=18)	Paul	Ciara
A tool to create communication between people (T)	5.5	6	5
A technique for resolving a conflict (I)	5.3	6	3
Enhances people's ability to recognize and attend to the other's needs (T)	4.9	4	6
An economical procedure to resolve a conflict (I)	4.9	6	4
A flexible procedure to resolve a conflict (I)	4.6	6	4
Is an educational experience (T)	4.6	4	5
Encourages one to help oneself (T)	4.4	6	5
Empowers the parties by strengthening awareness of their self-worth (T)	4.3	4	3
A way of life (T)	3.4	5	5
Allows for participants' moral growth (T)	3.1	3	5
Changes the character of the parties, and of society as a whole (SP)	2.8	4	2
Reduces power inequality in society (SP)	2.7	1	2

Bush and Folger propose in their transformative model that the achievement of recognition and empowerment is essential, in combination necessary and sufficient. However, interviewees in the

present study ranked recognition (4.9) higher than empowerment (4.3). Examining interviewees' commentary on their scoring, this difference appears to arise from viewing recognition as integral to a good mediation (Diane), *'a huge part of why it works, when it works'* (John), one of the most important aspects of mediation because it paves the way to ongoing longer relationships (David). However, empowerment is viewed more as a by-product of mediation rather than a primary focus for the mediator. It is *'not necessarily the main purpose for mediation'* (Susan), but something that might occur within the process in the form of self-worth arising from parties being listened to (Carolyn) and being *'given a voice'* (John).

Mediation as education was scored moderately (4.6) because interviewees again saw it as a by-product of mediation: *'Can be, it isn't always'* (John); something that may occur but is not the focus or prime goal of the mediator:

*'I think it can be for some people, very educational I think, others pass through it without necessarily reaping the benefit that could accrue... introspecting now that I enter a mediation more with the intention of helping other people resolve a dilemma than I do thinking that I'm going to help them to learn'* (Tim)

Mediation as a *'Way of Life'* (3.4) was answered in terms of its impact on the life of the mediator external to mediation. Whilst one interviewee saw mediation as philosophy, *'a way of practising your life'* (Michael), most were more pragmatic: *'it can be a useful discipline... I wouldn't describe it as a way of life'* (John), *'I would like it to be, but I don't see it as so'* (Lynda), and saw skills that could be transferred into a main role (Sarah) or *'to negotiate everyday conversations, everyday situations'* (Frank), and applied in *'all kinds of contexts'* (Marian). Such pragmatism may stem from accumulated practice, as the statement showed a negative correlation with experience ( $\rho=-0.586$ ,  $n=18$ ,  $p<0.05$ ). This might indicate the onset of *'weltschmerz'*, the experience of practice tempering the enthusiasms of the novice. This result contrasts with the scores given by Paul and Ciara, who strongly identified with the statement, each scoring it at five. However, Paul and Ciara had chosen to make mediation a core, rather than occasional, activity and consequently mediation has become an expression of professional life.

Commentary often focused on a single word in a statement that had a particular resonance for the interviewee and shed light on their orientation. For example, two interviewees focused on the word *'procedure'* in the statement *'mediation is a flexible procedure to resolve a conflict'*. This reflected how they wanted to position themselves within the interaction. Procedure was seen as *'top down*

*and dictatorial*' (Erica) and *'as something you do to somebody'* (Lynda), indicating a preference to relate to the parties at a level of equals, a power-with perspective, as described further in Chapter 4.

The proposition that mediation is an economical procedure to resolve a conflict begs the question, addressed in interviewee comments, compared to what? Mediation was seen as economical compared *'with the damage that is done if you don't do the mediation'* (Tim), or *'people leaving the business, not being as productive at work as they otherwise would be'* (David). Nonetheless, mediation was viewed as *'resource intensive'* (Lynda), and also *'not cheap'* (Tim) once the salaries of those involved are accounted for (Marian).

Curiously, the data analysis suggested two unexpected gender effects in comparison to the earlier Israeli study. The original study concluded that females were more likely to express a transformative orientation than males, but both were equally drawn to an instrumental orientation. However, this did not hold true for the group of university mediators engaged in the current study. In terms of recognition, the statement *'Mediation enhances people's ability to recognize and attend to the other's needs'* (T) (M=1; F=0), produced a positive correlation with gender, i.e. male mediators were more likely to agree ( $\rho=0.471$ ,  $n=18$ ,  $p<0.05$ ). Further, the statement *'Mediation is a technique for resolving a conflict'* (I), produced a negative correlation ( $\rho = -0.483$ ,  $n=18$ ,  $p<0.05$ ) with gender (M=1; F=0), i.e. female mediators were more likely to agree.

Additionally, an analysis of means was carried out to test the null hypothesis that gender has no effect on the responses to each of the 29 statements. The one-way ANOVA with the statements as dependent variables and gender as the independent variable, showed that in three cases the null hypothesis could be rejected, i.e. that there is a significant difference between male and female responses to these statements. As indicated in Table 7, the statements identified were the two commented on above and a further statement discussed below and thus confirm what was highlighted by the correlation analysis.

**Table 7 One-Way ANOVA examining Gender Effect**

Statement	Statistic
Mediation is a technique for resolving a conflict	F (16) = 4.878, p = 0.042
Mediation enhances people's ability to recognize and attend to the other's need	F (16) = 4.563, p = 0.048
Success in mediation is achieving an agreement	F (16) = 5.848, p = 0.028

### 4.3.2 Goals of Mediation

Mirroring their response to the initial statements concerning the purpose of mediation, participants again ranked communication as their highest priority goal. Moreover, this ranking is supported with the highest degree of consensus (see Table 8 below) and fully aligned with the views of the experienced mediators Paul and Ciara. By contrast, getting agreement between parties has a lower score (4.1) and a higher dissensus amongst the university mediators (see Table 11 below). This dissensus is echoed in the respective scores of Paul and Ciara, an expected effect when comparing a facilitative with a transformative mediator; ‘... *resolution of the dispute? Not really*’ (Ciara); ‘*resolution of dispute... it’s got to be a six*’ (Paul).

**Table 8 Goals of Mediation**

Statement: ‘The Goal of Mediation is...?’	Mean Score (n=18)	Paul	Ciara
To create communication between the parties (R)	5.8	6	6
To bring about the resolution of the dispute (A)	5.3	6	2
To build trust between the parties (R)	4.8	6	5
To empower the parties (R)	4.8	4	5
To create behavioural change between the parties (R)	4.7	5	5
To help parties understand the alternatives for resolving the conflict (P)	4.7	3	5
To get the parties to agree (A)	4.1	6	3
To help parties reveal their interests (P)	4.1	4	4
To create a better society	3.1	4	1

Participants prioritised relational goals (R) over those focused on agreement (A). However, there was a sense of contingency in doing so; goals recognised as aspiration rather than achievable. Consider the goal of rebuilding of trust. Parties come to mediation ‘*when something’s broken down*’ (Carolyn) and trust is at a low ebb, and so rebuilding trust is seen as a legitimate aim for the mediation. Nonetheless, it was recognised that rebuilding trust is not always achievable (Angela, John) or



valued: *'the circumstances in the university means that it doesn't always seek that. It's about finding resolution in a work-based context rather than a broader relationship context'* (Frank).

Relational goals are connected in the mediator mind: *'If you've got some communication and some trust, the third one, there might be some behavioural change'* (Lynda). Moreover, as seen in the scoring in Table 8, these goals are ranked in the order described by Lynda. Mediators ordered their goals, prioritising communication and trust because they are *'more important and mediation is better at dealing with those'* (David). Additionally, they expressed some hesitancy regarding behavioural change as this *'might be an HR goal, but is that the true goal of mediation?'* (Marian).

Similar to their responses to Social Positive statements in the orientation category, mediators again focused on the potential for the individual disputants and their relationship, whilst recognising the effect of mediating a case could ripple further:

*'I don't get a sense of that big picture when I do mediation. I'm more concerned with the immediate impact on the parties involved, and possibly the teams within which they reside. But I can see that if those communications improve infinitesimally, you'll improve society and the more you do the better it gets'* (Tim)

What the numbers in the Table 8 do not show, but interviewees' comments do, is a distinction they drew between a goal and an activity. An activity, whilst important, may happen or be induced by mediator intervention in the course of mediation but is not considered a goal: *'not a goal, it's a means to an end'* (Lynda); *'I don't think (revealing interests) is the goal of mediation, per se ... although it's something that can be explored as part of mediation'* (Carolyn). Thus, changing behaviour was seen as potentially valuable to resolving conflict but not as a goal in itself: *'... in order to find a way forward the behaviours that brought them to the room couldn't continue to exist, so it must be. I wouldn't think of it as a goal'* (Erica).

The contingent nature of mediator intervention is illustrated by one move that may be made in response to an impasse; a form of reality testing which relies on the shadow of formal processes in the workplace:

*'... if you see a mediation case that isn't progressing and you start talking about the other way in which the situation might be resolved... the potential impact, the more long term impact that can have and the more permanence of that particularly on someone's HR record or whatever. Once you start discussing those alternatives to mediation, sometimes, not always... people work through mediation in a more focused way and pay more attention to it'* (Michael)

### 4.3.3 Success Factors in Mediation

Participants' responses to success criteria rated relational statements highest, with process and agreement factors accorded similar ratings, echoing the preferences shown for relational over agreement goals. Set alongside these is a clear difference between Paul and Ciara when considering the achievement of agreement and negotiation as success factors, reflecting again the respective foci of the facilitative and transformative models.

**Table 9 Success Factors in Mediation**

Statement: 'Success in Mediation is...?'	Mean Score (n=18)	Paul	Ciara
When communication between the parties is enhanced (R)	5.6	6	6
When a party feels that his/her narrative was recognized (R)	5.5	5	5
When hostility between the parties is reduced (R)	5.5	4	4
When a party understands his/her own and the other party's interests (P)	5.1	6	6
Achieving an agreement that will show stability over time (A)	4.9	6	4
When parties better understand alternative solutions for resolving conflict (P)	4.8	6	5
Achieving an agreement (A)	4.6	6	2
When a negotiation was carried out between the parties (P)	3.8	6	2

The lowest mean score is accorded to negotiation (3.8), which is accompanied by a weak negative correlation with experience ( $\rho = -0.419$ ,  $n=18$ ,  $p < .10$ ). This arises from an understanding of the term as representing a transactional distributive, rather than an integrative, approach. As examined in Chapter 7, when analysing the metaphors used to describe their practice, university mediators have an aversion to conceiving of mediation as negotiation that points to a relational rather than a transactional conception of the process.

The importance of a narrative being recognised was accorded a high score (5.5), a strong level of consensus (Table 9) accompanied by a weak negative correlation with experience ( $\rho = -0.441$ ,  $n=18$ ,  $p < .10$ ). Discussing the reasoning behind their scoring, interviewees highlighted the importance of

recognition. This was explained as arising from parties *'being heard'* (Erica) and accompanied by tangible emotional benefit:

*'I think that's really important... what came out of my last experience. The fact that, that party's narrative was very much recognised and she felt so much better as a result of that.'*

(Carolyn)

Recognition, moreover, has a dimension of mutuality: of being both understood and understanding, having *'a version or perception of the ways things are being understood'* (John). Mutuality and understanding are key elements for mediators, as *'mutual understanding is what actually leads to agreement and... relationships'* (Diane).

One mediator was distinctive however, in focusing on the narrative aspect of the statement, explaining that narratives are subjective, can change and may be challenged in mediation:

*'[Narrative] implies they've constructed a version of events for themselves which obviously everybody does. Having the narrative understood, of course, doesn't necessarily mean that you've challenged your narrative in any way which I would say is also a part of mediation, to reflect that your narrative isn't the only one. Obviously, everybody tells themselves a story as to how their lives go and how their relationships are and that's not necessarily other people's perception of how they've gone. I think it flags the subjective element of people's views of how they've been.'* (John)

Viewing narratives as subjective and adaptable has echoes of the narrative model but caution is required before labelling practice. The use of a technique such as storytelling can also be employed in the facilitative model. What distinguishes a difference in approach is the reasoning behind the use of any one technique. Is storytelling a means of a party being heard, or to invite recognition or a prelude to the deconstruction of power structures? This point is explored further in Chapter 8 where a comparison is drawn between mediation models.

Finally, a statistical analysis of the data again revealed a gender-based variance with the original study with the statement *'Success is achieving an agreement'* producing a positive correlation with gender ( $\rho = 0.517$ ,  $n=18$ ,  $p<0.05$ ), i.e. males were more inclined to agree, whereas the original study found no difference between the genders.

**Table 10 Consensus in Statements (Top 5 ranked by standard deviation)**

Statement	Mean Score (n=18)	SD
The Goal of Mediation is to create communication between the parties	5.8	0.4
Success in Mediation is when a party feels that his/her narrative was recognized	5.5	0.5
Success in Mediation is when communication between the parties is enhanced	5.6	0.6
The Goal of Mediation is to bring about the resolution of the dispute	5.3	0.7
Mediation is a tool to create communication between people	5.5	0.7

**Table 11 Dissensus in Statements (Top 5 ranked by standard deviation)**

Statement	Mean Score (n=18)	SD
Mediation allows for participants moral growth	3.1	1.7
The Goal of Mediation is to create a better society	3.1	1.5
The Goal of Mediation is to help parties reveal their interests	4.1	1.5
The Goal of Mediation is to get the parties to agree	4.1	1.4
The Goal of Mediation is to help parties understand the various alternatives for resolving the conflict	4.7	1.4

#### **4.4 Broader themes**

In Section 4.3, the results of the questionnaire were examined with reference to the categories utilised in the earlier study. We turn now, in this section, to examine four aspects that extend across these categories: communication; agreement; interests; and expectations.

##### **4.4.1 Communication**

Mediators rated communication as their highest priority because its thread runs throughout a case; communication as problem, means and goal. Parties arrive at mediation because communication has malfunctioned or been absent: *'all of the cases are around miscommunication or mismanagement of*

*some description'* (Michael). Communication makes the conduct of mediation effective; for parties to *'explore and explain themselves and explain why they're there'* (Angela). Finally, mediators focus on a goal of parties leaving mediation with communication restored: *'If you don't aim for that longer-term communication improvement it will just regress and fall back into this conflict again'* (David).

Lack of communication can spark conflict because in the absence of countervailing information parties operate in a vacuum, where assumptions, suspicions and narratives build (John), feeding the misattribution of the behaviour of others. In the absence of effective communication, people can *'create their own reality of what the issue is'* (Penny). Where conflict has taken root, lack of communication can exacerbate matters and damage relationships; *'conflict itself is not necessarily a problem but it's the way that it manifests itself, the way people communicate or talk through a conflict'* (David); *'the breakdown in communication had led to something escalating, a relationship problem escalating'* (John).

Communication within mediation can be viewed as instrumental, facilitating the exchange of information, promoting understanding (David, Diane) and producing agreements that work for both parties, *'which is what the facilitative model does or certainly that's my understanding of it'* (David). It was however, also seen in relational terms; communication as connection. A party's confidence in communication, being able to be free and open, may be impaired. The mediator then acts to establish rapport, rebuilding communication with that party, one-on-one, as a step towards their regaining the capacity to reconnect with the other party (Frank). Restored communication between the parties becomes the *'break through moment... they both individually recognise the worth of the other person and the value of the other person... that's empowering'* (Michael).

Sometimes parties are quite explicit in their need to address communication and mediators will work with parties to secure improvement. However, even when not raised by the parties, mediators expressed a drive towards better communication, *'because we want to get to that end goal and we want to look at ways that we might work better together might be the end outcome... based around communication'* (David). Emphasising communication within mediation is done with the expectation that participants will learn different patterns, that even *'very small changes to the way that they communicate would improve the situation'* (Michael); that the experience is one *'that (parties) could reflect on and use further'* (Erica). Positive communication paves the way for parties to leave mediation *'feeling as though they've resolved some differences, if not all of them'* (Anna).

What happens when parties struggle to communicate in mediation? What role does the mediator play? When asked to comment on their use of reframing in a recent case, two interviewees pointed to the conscious use of this micro practice to combat the use of inflammatory language by one of the parties. The aim was to make the words more palatable to the hearer (David) whilst inviting the speaker to a fresh perspective: *'It's my role to help somebody to see something from a different perspective'* (Angela). To act not as an investigator in search of a/the truth, as might be the case in a grievance process, but to help parties recognise two realities or recollections of the precipitating incident.

In doing this the mediator becomes a translator *'between two people speaking different languages'*, keeping the conversation flowing and outcome driven (David). Reframing seeks to change the way a party communicates their perspective, but hopefully in a manner that does not change meaning:

*'... you need to be sure that you understand what the meaning and the content is that the person who you're reframing is trying to put across... the biggest risk is that lack of understanding or losing engaging with it because you're trying to impose a different meaning on what they're saying'* (David)

But what if communication is the issue between the parties? Does smoothing by reframing side step the problem? Reframing was seen as a legitimate mediator response to short term difficulties in the interaction:

*'I think there is that risk... But that shouldn't preclude the use of techniques to aid the conversation during mediation... the purpose of reframing. It's a short-term way of helping people understand and engage in conversation'* (David).

Reframing is seen as a useful tool, where required, for supporting conversation but nonetheless positions the mediator within the conversational stream. This has implications for interaction that are explored further in Chapter 8.

#### **4.4.2 Agreement**

University mediators drew a clear distinction between agreement (between the parties) and the resolution of their conflict. Agreement was seen as transactional (Frank), *'getting an agreement'* an unwarranted imperative from the mediator (Lynda). Resolution was viewed as relational, connected to mutual understanding. This is reflected in mediator goals: *'I don't necessarily think it is the goal of mediation to get people to agree with each other'* (Nicola); whereas for resolution *'Yes, absolutely, I mean that is the goal'* (Carolyn); *'Yes, that's much more like it'* (Erica). Conflict can be resolved

without parties necessarily agreeing with each other providing they are *'at least considering, understanding the other side'* (Michael). Parties can fail to agree but:

*'... still have an extremely valuable exchange that involves them understanding one another much better and being on a better relationship footing but having failed ultimately to have reached an agreement... I certainly think there are perhaps equally important outcomes one of which is having reached an agreement, but nearly as important is having heard one another, understood one another's position'* (John)

Prioritising resolution over agreement is in contrast to the practice of mediation in the commercial sphere, where resolution is signified by and synonymous with agreement (Herrman, Hollett and Gale, 2006). Agreement, however, had a particular meaning to interviewees in the present context, rooted in past events whereas resolution is about the future: *'it's more about the way forward, they might never agree on an issue they've had but they might be able to work together again'* (Marian). In the university workplace, mediation was seen as providing a way forward or the enabling of mutual understanding, even of difference, by providing the parties *'space to allow them to listen to each other and appreciate each other's point of view, more than they did before they went in'* (Nicola).

In practice mediation may fall short of complete resolution, *'drawing a line under (conflict) and it never coming up again'* (Michael). Consequently, mediators spoke of bringing relationships to a manageable state: *'I think the goal is to find a way forward with which both people can live comfortably and work together which meets their needs. I guess that is resolving the conflict'* (Erica). The mutual understanding achieved in mediation was viewed as enabling parties to cope better when conflict subsequently reoccurs (Michael).

Curiously, mediators made a distinction between conflict resolution as a goal and including its achievement as a success factor: *'if we don't get there it doesn't mean it's failed'* (Sarah), *'I don't think if the issue is unresolved it's a failure of mediation'* (Angela). The journey through mediation was clearly viewed by interviewees as being as important as the destination because *'it may actually bring out some growth and some learning'* (Angela).

#### **4.4.3 Interests**

The identification of interests is an integral part of facilitative mediation (Kressel, 2007), important *'in order to identify areas for agreement'* (Saundry, Bennett, and Wibberley, 2013: 6). Consequently, one might expect a goal relating to interests to be ranked uniformly highly by university mediators trained in this model. However, when addressing the statement *'To help parties reveal their*

*interests'*, there was a low score (4.1) and a major divide within the interviewed group, producing a high level of dissensus (Table 11) and a weak negative correlation with experience ( $\rho = -0.403$ ,  $n=18$ ,  $p<0.10$ ). For some it was axiomatic to anybody practising mediation that *'that's absolutely the goal of the mediation, what I was doing there'* (Diane) and *'the language that's used in mediation around what's driving positions'* (Frank). For others a distinction was required between needs and interests (Nicola, Lynda), a differentiation which is recognised in the literature (Menkel-Meadow, 2013). However, a number of participants expressed incomprehension that interests would be raised in the context of mediation: *'I genuinely don't think it is about that'* (Angela); *'I disagree with that I think ... I don't think it's really about revealing interests'* (Michael).

To these doubters, mediation is not about the parties' interests but about *'finding commonality or finding common ground'* (Michael), *'trying to get them to recognise that they have something in common'* (Sarah), *'listening to what the people are saying and trying to find the common ground'* (John). Common ground is a distinctive metaphor which sheds light on how mediators practice and their meta-theory; finding rather than constructing pointing to a realist frame. Seeking common ground is an example of mutualising, a *'classic mediation strategy taught on any basic training programme'* which acts to reinforce collaboration (Allport, 2015: 1). However, where mediators focus on similarities rather than differences the nature of recognition changes; the push towards common ground, according to proponents of the transformative model, becomes a directive reframing that makes genuine recognition of the other less likely (Jorgensen, Moen, Antes, Hudson, and Hendrikson, 1999). Genuine recognition is rooted in mutuality and found in shared understanding rather than common ground:

*'Getting people understanding each other rather than seeing where there's common agreement... [Not] "You want that, I want that to, let's agree on that bit, let's find a common solution"'* (Frank)

Curiously, when a different statement regarding interests – *'When a party understands his/her own and the other party's interests'* (Table 9) – was put to interviewees, it prompted a markedly higher ranking (5.1). The change to explicitly reference the other was perceived as emphasising mutuality and therefore better received: *'this for me has an aspect of recognition. Not necessarily agreeing but at least considering, understanding the other side'* (Michael); *'a difference between revealing and understanding each other's interests isn't there'* (Anna).



#### 4.4.4 Expectations, Goals and Actions

What happens when mediators are confronted by party behaviour that is extreme and where boundaries are crossed in norms and expectations? A case discussed by Angela and David in their Phase Three interviews was considered unusual in both respects. Mediator expectations were assailed as *'one of the parties did fall into line with what we wanted from mediation and the other, for at least a period of time, didn't'* (David). And the norms of party behaviour were breached with one party shouting angrily and storming out (Angela).

The intention is that the goals of each party are clarified in the course of the preparatory private meetings (Angela) and therefore *'reasonably clear goals proposed at the beginning of mediation by both parties'* (David). Yet in discussing goals individually there is the context of the other: *'I think what the individual tells you is important, but I think also what one tells you about the other... also makes up part of that jigsaw puzzle'* (Angela). Encountering the other in the interaction of the joint meeting may therefore see other goals emerge: *'some of the goals changed throughout the course of the mediation to a more self-reflective approach'* (David).

Mediators are imbued with a set of perceptions about acceptable practice in the university, *'the way that the business operates and our obligations to the university'* (David) and the relationship between the parties, *'what their job roles were, the expectations of [what] working within the university are or should be'* (David). In some cases mediators may have a clear sense that university policy is being infringed by a party but feel obliged, as neutrals, to refrain from comment (Rose). Mediators start with expectations about how mediation should go *'which are not necessarily explicitly shared with the parties'* and encompass *'the framework for how the mediation is carried out, how we allow the conversation to flow, what should happen throughout the mediation'* (David). They mentally have a picture of a *'ten out of ten outcome that we would have liked at the start of the day'* (David).

But as the interaction proceeds mediator goals may need to change, recognising *'there's a significant risk that we're going to get zero out of ten for the outcome'* but *'a six or seven out of ten if we really tighten things up and do pay attention to some of this behaviour that's going on'* (David). In practice this may require a step outside normal practice to a structured, directive approach, the mediator constantly challenging and *'pulling out some of the issues that we felt needed to be brought out'* (David).

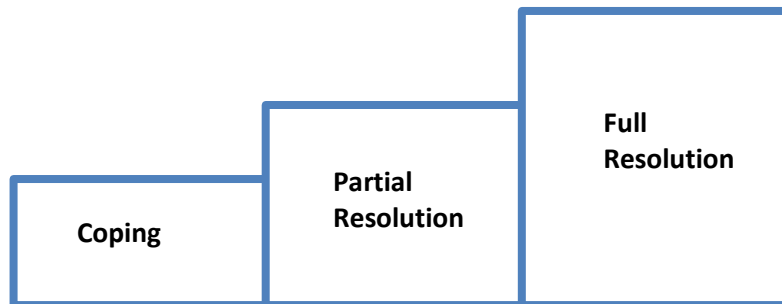
## 4.5 Summary

The result of the standardised survey allows a conclusion that university mediators operate under a range of goals but with a preference for the relational over the transactional or instrumental. This is best seen when resolution – viewed by mediators as a relational challenge – was prioritised over transactional agreement. Their most important goal is communication followed by resolution, in what may be termed the main co-products of mediation in the university workplace. In addition, emerging from their accompanying comments is a further intermediary goal of recognition, a sub-goal that enables the main goals to be accomplished. Finally, there is a category of by-products of mediation such as empowerment. These are effects which may occur but are not goals per se and consequently not prioritised by university mediators.

The emphasis on communication has an echo of transformative practice where dialogue is seen as the path to relational empathy, *'the way in which parties can forge shared new understandings of each other and of the conflict between them, whether or not solutions are found'* (Zariski, 2010: 217). However, where communication is threatened, as reported by David and Angela, mediators can become directive, seeking firmer control of the interaction and deploying micro-practises such as reframing which is anathema to theorists of the transformative model. This behaviour, contingent on how the interaction is functioning, echoes the deployment of mediator power and control analysed in Chapter 5.

The literature suggests that mediators simplify goals into a binary choice between relational and settlement goals (Wall and Dunne, 2012). However, what is evidenced in this chapter is an alternative path to simplification. Communication is an example of a foundational step in a ladder or interconnected goal. An initial goal of communication is mutual understanding; a second goal leads to trust; and then possibly onwards to behavioural change, each step contingent on the success of the previous step. Resolution has a similar tiered structure (Figure 8), mediators seeking to help parties – through mutual understanding – to formulate at least coping strategies in the event of the re-emergence of conflict but aspiring to partial or even full resolution. Conceiving goals in this connected contingent manner enables a measure of simplification that facilitates the management of complexity; mediators can target communication and then incorporate other goals as the interaction allows and the growth in recognition signals.

**Figure 8 Contingent Goals**



Recognition is closely associated with mutuality, a relating to the other. Mediators seek recognition by promoting narrative; parties listening and being heard. An indicator of recognition was said to be the emergence, within the interaction, of mutual understanding. However, there appears to be a divide in practice amongst the interviewees as to what constitutes recognition: does understanding relate to common ground or to difference? Previous studies suggest common ground as paving the way to *'develop possible solutions to the dispute, or at least a way forward'* (Latreille and Saundry, 2014: 6). Does a contrary approach, emphasising difference, suggest a diminished driver towards solutions or a meta-theory that is constructivist as opposed to the realist seeker of communality?

The reflections of Angela and David indicate the emergence of goals both for the parties and mediator contingent on the unfolding interaction. Parties adjust their goals as they start to relate to the mediators and begin to recognise the other and the possibilities of mediation. Mediators set goals by judging how far any mediation can progress; sometimes limited to communication, in the hope that parties at least learn enough to cope in future conflict, at other times it may extend to full resolution. Further, as described by David, mediators have latent goals based on their expectations as to conduct in mediation and the university. These are not articulated or acted upon unless norms of behaviour or attitude are breached.

Many aspects of mediator behaviour and practice examined in this chapter can be traced to the facilitative model acquired in basic training. There are examples of reframing, directive control and the metaphor of the mediator as translator. However, this is a partial and therefore potentially deceptive mapping. A focus on interests may suggest a transactional approach, but interviewees' further comments in Section 4.4.3 indicate that interests are viewed in a relational context. There is thus a clear preference for relational goals which marks these university workplace mediators apart from the problem-solving style traditionally associated with the facilitative model.

Some behaviour highlighted in this chapter might be seen as drawn from the transformative or narrative models but typically in a way that suggests unconscious hybrid integration. For example with John, there is evidence of a narrative approach yet both statements on interests – a marker for the facilitative model – were accorded the highest score (6). In contrast the narrative model *'proposes that people live their lives according to stories rather than according to inner drives or interests'* (Winslade and Monk, 2002: 9).

Mediators wrestle with what they learn in basic training and how they perform mediation. They recognise mediation can operate at different levels but have a preference for the relational. There is a *'... surface level, transactional level of mediation which is desirable but actually it's not turning into its full potential'* (Frank) example of emergence along with tiered goals. What is evidenced in this chapter is such a process of emergence, with each mediator learning from experience and developing their own theory of practice; a process discussed earlier in Chapter 5.

Research on mediators has a long history, stretching back to Riskin and his grid (Riskin, 1997), of seeking to classify mediators and their goals based mostly on observing role play. Imposing such categorisation produces a patina of order, but this chapter illustrates that such clarity may be misleading; mediator style is not readily mapped to models, with mediator behaviour and goals being contingent on interaction. Practising mediation is an essentially personal practice that operates within a number of frames, drawing on but not limited to initial training: *'I'm bringing into that my own experiences, knowledge and way of living life'* (Angela). The desire to classify should be tempered by the observation that:

*'There is rigidity in insisting that mediators necessarily operate entirely within a transformative or an outcome-oriented model. Mediators utilize many variations and combinations of approaches depending on the needs of a case and what each of us brings to the mediation process'* (Mayer, 2013: 37)

## Chapter 5 – Power in Mediation

### 5.1 Introduction

Power is viewed by many as a significant issue in workplace mediation (McKenzie, 2015; Van Gramberg, 2003), shaping relations both inside and outside the process (Latreille and Saundry, 2014). Power can be seen as problematic in mediation, with critics pointing to the possibility to entrench pre-existing power imbalances (Narine, 2017) or structures (Seaman, 2010). However, these perspectives rest upon the assumptions made about the nature and exercise of power in mediation. To proponents of mediation, power is fluid; *'concepts of empowerment and power imbalance are rather slippery to pin down'* (Kelly, 1995: 87) and mediation constitutes a complex social interaction effective in dealing with power imbalance (Gewurz, 2001).

The exercise of power is an ethical issue for mediators. They must conduct the process in ways which are perceived as fair by the participants but equally steer the mediation towards a goal. The use of power to drive towards a goal of settlement may conflict with the empowerment of the parties; mediators must therefore strike an appropriate balance between means (the interaction) and ends (goals). Commentators have noted that mediators have foundational concepts such as neutrality and self-determination as guides to help them plot an ethical path (Coben, 2004; Green, 2005). However, concepts acquired in training are *'potentially nebulous, ripe for manipulation'* (Coben, 2004: 76) and each mediator must make sense of them in practice.

Practitioners are said to operate on the premise that *'power differences can be addressed by the mediation process itself, and by specific mediator strategies and interventions'* (Baylis and Carroll, 2005: 3). A mediator may intervene to balance power by strengthening the weaker party or weakening the stronger (Moore, 2014). To do so, however, requires the mediator to judge who is the weaker and what measures are appropriate to redress imbalance, and to do so continuously throughout the mediation. This runs counter to the mediator's need to project and act in a neutral and impartial manner; *'mediators face a conundrum – they cannot 'do' neutrality, nor can they do without it'* (Astor, 2007: 221). In their analysis of the facilitative model, Bush and Folger conclude that this dilemma encapsulates an inherent problem (Bush and Folger, 2012). They propose that this is overcome or bypassed in the transformative model, by focusing on the enabling of empowerment; opportunities for greater clarity and decision making by the parties (Jorgensen, Moen, Antes, Hudson, and Hendrikson, 1999).

This chapter examines the attitudes, behaviours and practice of university workplace mediators in respect of power, and in particular how they view power, of the parties and their own, their

obligation to balance power, and their enactment of concepts such as neutrality, impartiality and empowerment.

## 5.2 Concepts of Power

Conflict was readily associated with power by interviewees: *'A lot of the workplace conflict we deal with is about who has power and how they are wielding that power'* (Diane). When asked about the nature of power, mediators most frequently referred to the structural or hierarchical nature of the university workplace: *'some people get very hung up on that hierarchy'* (Michael). The significance of hierarchy was epitomised for one interviewee by university grades, something *'they talk about all the time... grades are very important within the university'* (Penny). A hierarchical perspective on power can lead to the view that managers exercise power over the managed. However, that can be misleading: *'That's not always the case'* (Sarah), *'you can easily get a manager who's being bullied'* (Rose), so *'it is very rarely as simple as that'* (Diane). Indeed, managers entering mediation may feel threatened (John), feeling that they should hold power but instead they may *'feel slightly powerless, they feel like they've have lost control of things'* (Diane).

Mediators recognised that power can emanate from other sources. The experienced employee, one *'who's been in the university for decades and knows how it all works'* (Diane) can access a countervailing power resource of information and contacts. Intellectual power impacts conflict, with *'people being afraid to challenge each other if they have a particular specialism or interest'* (Penny). Personal factors such as the facility to communicate effectively are recognised as components of power (Frank). Whilst there was recognition of the diversity of sources of power, mediators relied on native rather than explicit theory in their understanding of power: *'Bits I've picked up, management training and things, thinking about positional power and personal power'* (Diane).

Conceiving of power in this contingent manner, mediators spoke of two types of response. Firstly, as a process controller, modulating power within the mediation process by applying concepts and techniques inculcated in initial training and encapsulated in the mantra that the mediator controls the process and the parties control the content. This is a standardised approach – a foundational default – but more is required to account for the complexity of power. Accordingly, mediators also and secondly, act as an interaction observer, monitoring power as it manifests and evolves within the mediation and responding in support of the process.

## 5.3 Modulation of Power

There was an expectation expressed by interviewees that the exercise of power is affected when parties enter into the mediation process; that parties *'leave power behind'* (Sarah) and recognise

each other as individual members of staff (Michael). To facilitate this shift, mediators spoke of the need to create a *'level playing field'*, a restrictive measure that does not remove *'inequity of power, it's about making it more equal'* (Michael), that balances power but does not *'necessarily completely prevent there being a power imbalance in the room'* (John).

Mediators acted to level the playing field by enacting and enforcing ground rules that stipulate parties *'having equal time to speak and treating each other with respect'* (Rachel). In an exercise of mediator power, such rules are typically imposed upon and accepted by the parties; *'the mediator is essentially saying: "This is how this process will happen, this is how it will work"'* (John). For mediators, communication is a primary goal (a point discussed further in Chapter 6) and hence rules to prevent a speaker being interrupted (John, Anna) and ensure equality of time are presented and enforced: *'Within a mediation discussion you must be quite tight and almost controlled initially with the rules of play in that both have equal time to discuss'* (Frank). Mediators expressed the view that they seek to manage the conversation to ensure an open discussion where parties feel able to speak freely (Rose). However, they expressed reservations about the extent to which they exercise this role as manager:

*'Whether that's legitimate or not is more of a grey area where I guess you need to make more of a judgement call about what's best for the conversation and for the outcomes of the mediation'* (David)

If ground rules are a stick, controlling the interaction, then the provision of a safe space, a place where parties can speak freely and be heard, is the carrot. Mediation as a safe space was seen as a temporary bubble, *'outwith the real world'* (John); an incubator where a different interaction between the parties was expected, creating the opportunity for resolving a conflict and, for parties *'to start to construct a new way of interacting, a new way of working'* (Diane). The building of a safe space started in the initial private meetings with parties, where mediators set expectations for the joint meeting that each party will be heard and will listen, and that the mediator will control the joint interaction to ensure this. Mediator power was seen as critical to sustaining this condition: *'we perhaps demonstrate our power, it's not a word I would use, and by controlling the process and making sure it's a safe process'* (Anna). The initial private meeting was a place where misapprehensions concerning the mediator's role could be corrected. In particular, the discovery that the mediator is not responsible for resolving conflict can impact the power dynamic between the parties *'quite considerably'* as parties realise that *'they have some accountability to resolve the situation themselves'* (Michael).

The safe space, and the ground rules which underpin it, have a particular significance in terms of symbolic interactionism. The creation of the safe space is a ritual of interaction (Jarrett, 2012), providing the opportunity for interactional change (Cobb, 2001). Such rituals frame the process for the audience and shape the relationship between audience and performer. The ritual allows the tacit recognition by the parties of a mediator's authority to enforce the ground rules (Jarrett, 2012). Using the dramaturgical metaphor, rituals such as ground rules become the *mise-en-scène*, the setting, lighting, staging and stage design that set up the performance of mediation.

How the mediator elects to use such authority, how they perform their role, is critical to their relationship with the parties and the parties' expectations of mediation. The safe space has the potential to signal to the parties that the mediation process is collaborative and rooted in dialogue. However, this is best conveyed by the mediator where they jointly construct the ground rules with the parties rather than impose them.

#### **5.4 Monitoring Power**

Modulating power however, was seen to take a mediator only so far: *'the idea that we can just go in there and level that out is somewhat simplistic really'* (Diane). Having laid the foundations for mediation by modulating power, a mediator's attention would turn to the interaction which was playing out before them. Mediators were heedful to the performance of power within the interaction; they *'tune into and observe what's occurring between people... map it as a power interaction... it feels like a constant bit of monitoring'* (Lynda). They listened to *'how things are delivered, what is the language that has been used'* (Carolyn). Exceptionally, two mediators drew explicitly on Transactional Analysis to assist them in monitoring power in communication, to *'identify where the power is sitting at any given time in mediation'* (David). Where communication between the parties diverged from the balanced adult-adult, the mediator might *'intervene and try to re-summarise that person back into a more adult conversation'* (David).

Signals regarding power can be subtle, revealed in a party treating co-mediators differentially. There may be a presumption for instance, that *'one is senior because he's the man or because he's the centre manager... You spot that by who starts to look at whom and who doesn't look at whom'* (Lynda). Such an awareness of power prompted an internal dialogue within the mediator. Noting *'there's something going on about power here'* (Lynda) prompted the search for an appropriate response, one that redirects parties to view the interaction from a different power perspective. Working together, mediators can reset the power dynamic with deft body language:



*'where one of the parties has decided that Tim is the powerful person in the room, Tim will often look much more to me... not just for me to do or say things but where he is placing his eyes... so the other person will eventually stop looking at him and start to look at me, for example'* (Lynda).

Parties may use also referential power, allying themselves to an external source of hierarchical power within the university, and seeking to influence the power dynamic in the room. Where this occurred, mediators sought to draw parties back to the balanced interaction set up within mediation; *'One might just remind people that mediation is going on between us four and we're the people in the room'* (Lynda).

## **5.5 Empowerment**

Empowerment represents a developed sense of self which enables one to participate in interaction, to have a voice and to express oneself (Taylor, 1995: 65). However, parties in conflict may come to mediation feeling or acting disempowered (Bush and Folger, 1994). Empowerment was a term introduced to interviewees in the survey that might not otherwise have surfaced in the interaction between researcher and interviewee. Considered a by-product rather than the main goal of mediation, interviewees nonetheless were able to provide explanations of empowerment and its place in their practice.

Empowerment was viewed as an integral part of communication, the expressed primary goal of university mediators. Mediation represented the opportunity to *'speak up and put their point of view across'* (Susan), for both sides to tell their story (Carolyn), to tell the other side how they feel and to do so in a safe environment (Sarah), and allowed the employee voice in the presence of the manager (Marian). An indication of empowerment was a confidence and openness in communication that allows the parties to experience *'what can happen when open communication occurs between people'* (Erica).

Mediation represents an empowering of parties compared to alternative and more formal methods of resolving conflict where HR procedures are followed (Rachel) and *'you give somebody else your problem and they would go away and tell you whether that was right or that was wrong and what was going to happen about it'* (Angela). In contrast, mediation invites the parties to *'take ownership for outcomes, behaviour, future interactions'* (Penny), to recognise that it is *'within their gift to behave differently as a result of that mediation'* (Nicola), and puts decision making in the hands of the parties (Anna, David). Such empowerment is experiential; the discovery of a new way of relating, in that parties come to mediation *'almost needing permission sometimes to behave differently'*

(Nicola) and receive *'permission to have a conversation that they wouldn't otherwise be having'* (John).

Mediators recognised that parties emerge from the bubble of mediation to face the reality of the workplace, but empowerment is not a means to facilitating settlement and instead the potential for the start of a new relationship: *'they're empowered to continue not working in conflict after that, on their own without the mediator there'* (Marian). Mediation opens up the possibility for parties to recognise they have an equal stake in their relationship, a responsibility to influence it, and possess the tools such as communication, to do so (Frank). Parties, *'often quite passive up until the moment the mediation starts'*, were given back agency, power over their own destiny (John), at least in part:

*'So, you can use it in a practical sense of empowerment but real empowerment, which I think goes deeper to a whole sense of personal agency, a whole sense that you can shape and influence things is how I personally would define it, I'm not sure.'* (Susan)

Empowerment occurs in conjunction with recognition. Mediation enables *'each party to understand and represent his or her own position, wants and needs whilst at the same time recognising that the other person may have wants and needs'* (Tim). Recognition is the break through moment in mediation:

*'... When they both individually recognise the worth of the other person... that's empowering... A lot of the time, the people in mediation are in dispute because they feel undervalued and they feel they've not been recognised... a simple recognition can be quite empowering'*. (Michael)

## **5.6 Mediator Power**

Do mediators exercise power in the performance of their roles? Taxed with this question, some interviewees expressed surprise and discomfort: *'I don't see mediators as powerful'* (Anna). Others, a majority, readily agreed however; mediator power was undoubtable (Tim), not to be underestimated (Nicola), and huge (Diane). This difference in response reflects a balancing act that mediators perform, utilising power for the purposes of mediation but also projecting a collaborative power-with environment.

It is important in discussing power to recognise that mediators are granted power by the parties. Parties enter the process with little appreciation of what mediation entails, *'they've normally never been through anything like this, they're anxious, they're concerned'* (Angela), whereas mediators are trained and experienced (Carolyn), relative experts in the process (David). Parties accept that in the

construction and maintenance of a safe space, control is ceded to the mediator: *'They're looking to you as a mediator to control all that for them, make it safe, make it OK to say certain things'* (Angela). Parties look to mediators to provide a structure or framework that creates this safe space, *'to give a framework, reassurance to the parties about what's going to happen, to ensure that within that control of the process both parties are given some equity in terms of their ability to contribute'* (Nicola).

Within this framework, mediators exercise power in the choices they make. Mediators decide on how the room is laid out (Erica), lead the meeting (Sarah), decide if a joint meeting should take place (Diane), and set ground rules (Carolyn). Where discussions are not making progress (Rose), rooted in the past or veering off track (Frank), mediators may step in to steer the conversation (Erica). Such interventions are intrusive, impacting on how an interaction unfolds but represent a motivation to maintain a structure – *'a firm scaffolding'* (Frank) – that provides parties with a *'firm footing so that they can say what they need to say without fear of it becoming a difficult, damaging experience for them'* (Frank). Mediator power is not static; it evolves during mediation. Where parties are able to utilise the safe space afforded them and interact with each other in a power-with orientation mediators can step back:

*'I think the mediation works best when the role of the mediator diminishes throughout the course of the meeting'* (Frank)

*'I've talked for five minutes... at the start of the mediation...then slowly almost retreated from the situation... It was almost as if I wasn't in the room... as if they'd forgotten that I was in the room'* (Michael)

University mediators were uncomfortable to be seen to exercise power; they recognised that power can be abused (Tim) and must be used cautiously (Nicola). Mediators therefore took steps to *'de-escalate power'* (Tim), redefining its use in support of the mediation process and seeking to *'minimise their presence'* (Erica). This was done by asserting their role as facilitators (Tim), independent of management (Carolyn) and with no power to make decisions. The assertion is in the context of the core principles of mediation and integrated into explanations of the process that parties are entering into; *'power then just becomes about guarding of the process, and making sure that they are getting the chance to talk to each other'* (Angela).

Mitigation and diminution of mediator power is reinforced by how mediators perform their roles. Simple acts by the mediator can project a shared status with the parties, for instance by serving the parties tea, or maybe talking about *'last night's Corrie (a popular TV soap)'* (Angela). Mediators build

trust and rapport with the parties by offering themselves as process experts. During mediation however, there may be times when mediators do not *'know exactly what we're doing'* and project a vulnerability that lowers the power differential between mediator and parties (Lynda).

### **5.6.1 Reframing**

Reframing was a micro practice that several interviewees mentioned. It operated at two levels: helping parties to effectively communicate their perspective and seeking to help them change their perspective: *'It's my role to help somebody to see something from a different perspective'* (Angela). Reframing involved mediators making a judgement as to the impact of a statement made by one party on the other. Where this is deemed negative, mediators intervened and *'reflect it back but slightly adjust the sentence'* (Rose), inviting the speaker to reconsider their words and or perspective: *'we would use reframing to make it a bit more palatable for the other person to hear'* (Sarah). When mediators assessed that the other side had not understood, they were reframing what had been said so that they *'will get a better understanding'* (Rose).

Reframing can involve substantial changes in what the parties have said, *'being able to say things beyond what the parties themselves had said'* (Erica), enabling the mediator to *'recast some of the points that they were making and perhaps put a different spin on what might have been meant'* (Angela). In using reframing, mediators do not intend to change meaning, but rather refocus a statement, for instance changing a demand into a request: *'you're [not] saying this annoys you but rather that party B does such and such instead'*, communicating something in a way that the other party will find more palatable (David).

Mediators considered reframing as a *'way of helping people understand and engage in conversation'* (David), but it clearly involves the exercise of mediator power. This though was considered legitimate: *'I think it reflects a responsible use of power by the mediator in terms of continuing the conversation and making the mediation effective'* (David).

### **5.6.2 Neutrality**

Neutrality underpins mediator power by creating legitimacy for a mediator's role and their actions within the process; mediators *'must assert neutrality, because they believe it to be important and because the legitimacy of mediation depends on it'* (Astor, 2007). Indeed, university mediators endeavoured to project neutrality, to *'be as neutral as possible'* (Michael). But how did mediators perform neutrality? A common approach was to treat each party equally. Ground rules were set that promote a power balance between the parties and then enforced even-handedly: *'they can see that we are being very consistent and we've reiterated what we've said and we stick to it'* (Anna). Balance

in communication was emphasised, *'being very much aware of ensuring both parties have sufficient time to talk, that somebody isn't talking over the other person'* (Michael).

Mediators were conscious, however, that they are never entirely neutral; not *'blank sheets'* (Ciara). They recognise that they are never far from opinions, *'because that's human nature... as human beings, we can't ignore them completely'* (Rose); personal values come into play when judgments must be made, and *'it's almost impossible to take your personal values out of that'* (Diane). They need to interpret what is playing out in mediation and decide on the next intervention. To move matters forward, mediators may shade neutrality in their response to parties by putting *'a little bit of something around it'* (Angela). Even enforcing ground rules requires a judgement as to when to act, how significant an infraction needs to be observed before intervention. Mediators therefore have a dilemma; they espouse neutrality but, being human, they inevitably influence the interaction. How they resolve this dilemma sheds light on the identity and positioning as mediators.

The responses of three interviewees illustrated distinct approaches to positioning: As judges, facilitators and interactionists. Judges see themselves as objective observers sat back somewhat from interaction. For example, Tim described his style as *'objective but sympathetic'*, further explaining *'it's that standing back that I try to bring to bear'* and referring to his experience of acting as a magistrate. In contrast, facilitators see themselves in the stream of the interaction but seek to minimise their impact: *'Observing something you'll influence it, you'll change it. It's about trying to minimise the impact of that'* (Michael). When neutrality is threatened facilitators will act, but do so in ways that downplay the mediator's role. For instance, one of the parties may seek to undermine neutrality by trying to win over the mediator and engage directly with them to the exclusion of the other party. When mediators recognised this, they deflected attention from themselves and redirected the parties, *'getting that individual to talk directly to the other person'* (Michael), thereby reaffirming the primacy of the interaction between the parties.

For interactionists like Frank, the mediator is fully engaged, responding to *'what's in front of me but actually with the aim of creating some equality there'*. Neutrality need not mean treating each party in exactly the same manner, indeed it may mean *'more encouragement for one party than the other'* (Frank). This is because the mediator is trying to develop a *'meaningful relationship with both parties based on how they respond'*; to do otherwise is to be robotic rather than natural in communication. Where parties are not *'starting in the same place in terms of confidence'* the mediator may need to be a *'little bit partial to get people to the same place'* but must nonetheless not *'lose the confidence of the other party'* (Frank).

## 5.7 Mediator Control

Control was a metaphor commonly utilised by mediators as they described their practice. Often expressed in the formulation, '*mediators are in control of the process but (parties) are in control of the content*' (Nicola), it has a range of meanings. These reflect how mediators respond to interaction but also how mediators project themselves in interaction. When used with the parties, control is intended to convey a reassurance that mediation is a safe, structured space. Describing parties as being in control of content emphasises self-determination and seeks to qualify mediator power. This definition of control enables the mediator to convey their role as a guide and facilitator (Anna).

Mediators are not '*control freaks*' (Nicola) with a rigid inflexible grip on the process. Rather, they provide structure and support to the process (Nicola). They intervene to create the conditions where conversation can flow and thereafter endeavour to step back. In extremis however, when flow is not possible, mediators may intervene strongly, becoming directive: '*David and I agreed that we were going to control them very tightly*' (Angela). At this juncture, control may stray over into areas of content, '*Interrupting regularly, challenging a lot of the points that came out, so, 'Is this relevant? Does this relate to mediation? Is this to do with your relationship?'*' (David). Mediators may move from facilitative to directive:

*'In the way that I would seek to respond to the situation, there could be times when you feel it is very facilitative because the parties are engaged and they are able to go with the flow. There are times when it might need to be more directive or prescriptive or times, for me it's got to be flexible depending on the response you're getting from the parties'* (Nicola)

Mediator control is therefore a term which expresses a tension between letting an interaction flow and intervening when flow is threatened. Mediators hope that parties can make the most of the opportunity that mediation affords. However, mediators acknowledge the fear or realisation that patterns established in prior conflict will re-emerge. For an example of how mediators handle this tension the researcher asked interviewees to consider a particular micro practice, the decision as to which of the parties speaks first in the joint meeting, a variant of the question, '*which of you would like to listen first?*' (Littlejohn and Domenici, 2006: 244)

Once mediators introduced the joint meeting of the parties, each party was given an opportunity to speak without interruption for around five minutes. One party will clearly speak first, but how is this decision to be made; by the mediator or by the parties? And what are the implications of this choice for control? If mediators cede the choice to the parties, they risk undermining confidence in mediator control: '*Those individuals would be quite surprised because they anticipate our job would*

*be to make those decisions and to guide them through the process of mediation'* (Sarah). The weaker party, the *'person who's less articulate, less confident, who I think you do offer a degree of protection to'* (Angela), may be disadvantaged by leaving the choice to the parties. Being pre-empted from speaking first may induce the thought *'I would have liked to have gone first and I've been forced to go second by my antagonist as it were'* (Tim). Party choice may be risky; *'At the Acas training they said, 'the first potential piece of conflict you might experience is that neither party will talk or they will both talk at once. So it was recommended that you identify who should go first'* (Rachel).

Consequently, many mediators relied on convention and chose the party who had requested mediation or raised the issue, the 'complainant'. This may be on pragmatic grounds, *'because they know why we're here in the first place'* (John). Or instinct, *'it feels like the right thing to do'* (Penny). Or it may be something learned in initial training but only with certain providers: *'I think this is part of their CMP training... I don't recall it from my TCM stuff'*. A problem however, arises with mediator control of the decision in the need to be seen to act fairly and some universities have adopted a method which may be seen as outside of a mediator's control. One university chooses alphabetically by the first name of the parties, an arrangement agreed *'when we all finished training'* (Anna). Another, *'whoever did the solo set first speaks second, that's the TCM guideline'* (Tim).

However, selecting a party to speak was uncomfortable for some mediators: *'I don't want to be seen in that situation where I might be siding with somebody by directing them to talk first about the situation'* (Michael). Consequently, the alternative was to let the parties choose (Carolyn). A quiet invitation from the mediator and *'they will look at each other and they will have a bit of whether it's non-verbal or otherwise, there'll be something where there's almost an agreement and then one person will start talking'* (Michael). To cede control to the parties positions the mediator in a different power relationship to the parties; *'It's quite levelling'* (John), *'obviously giving the power to them straight away. They're leading it from the start'* (Marian).

Mediators were therefore faced with a dilemma in this micro-practice. Do they err on the side of control, seek to condition the parties to a power-with dynamic or utilise a hybrid of these approaches, *'based on what you've heard in the individual meetings and then you make a choice between whether it's your choice or their choice'* (Frank)? The choices they made illuminate how they wanted to set up power relations and position themselves as mediators.

## 5.8 Summary

Reading any analysis of power reveals as much about the perspective of the analyst as it does of the situation being analysed. Classically, there has been a debate between those viewing power as residing in structure and those emphasising agency, followed subsequently by the theorising of an interaction of the two in structuration (Craib, 2011). Those mediators interviewed in this research were not vested in this debate and drew little, if at all, on theoretical constructs of power in their practice. Nonetheless, their commentary on power points to an engagement with power in both its structural and its relational or agency aspects. Mediation becomes a temporary space for agency and relational repair before parties return to their workplace.

University mediators clearly recognised that power, most prominently in the guise of hierarchy, is an important factor to consider and address within mediation by modulating power in ground rules and the creation of a safe space. Parties enter mediation with a footprint of power relationships in the context of their workplace, and mediators must act to reset the power dynamic; the prerogative of management to instruct is subsumed within the interaction of two individuals. Thereafter, mediators view the temporary bubble of mediation as an incubator where power is relational; an interpersonal phenomenon (Dennis and Martin, 2005). Mediators endeavour to promote a power-with orientation for the interaction by monitoring and responding to the parties, creating an opportunity for the parties to experience better communication and recast their relationship.

Treating mediation as a locus for interactive participation (Kelly, 1995) leads mediators to view empowerment, a restoration of agency for each of the parties, as an important by-product of the process. Empowerment is seen to be predicated on the achievement of recognition, the mutual appreciation of the perspective and needs of the other party, thus echoing the goals of the transformative model. However, what distinguishes practice in university workplace mediation from the transformative model is the degree and means with which these mediators exercise power and control. This point is developed further in Chapter 8.

Mediators exercised power in response to interaction, i.e. what they needed to do to set and sustain mediation on track; they were driven by the process. Techniques such as reframing and ground rules were deployed and the degree to which power is exerted was contingent on the functioning of the interaction. The use of power was considered legitimate in that it supported a well-functioning interaction. In analysing this aspect of power, one is reminded of a parallel within the discipline of surface chemistry. Chemical reactions are facilitated by three types of agent: initiators cause a chemical reaction to start; promoters move that reaction forward, whilst catalysts are required



throughout a reaction to sustain yield. Mediators are required to be initiators, setting the conditions for the modulation of power and a power-with orientation in the interaction. Mediators, thereafter, seek to minimise their presence but monitor the interaction and provide support where required to keep the interaction on track; they are promoters. By exception, where interaction goes off track and the flow of communication is impeded, mediators step in to exert control, and direction, in support of the process; they become catalysts as an active participant in the reaction.

Mediators also exercised power to position themselves within the interaction in ways which revealed their identity or disposition. This is illustrated by their enactment of neutrality and their control, or derogation, of choice of speaker in the joint meeting. Here we can see, in the explanations provided by three interviewees, the mediator as judge, facilitator or interactionist. Such an identity may of course be an emergent: this group of mediators was relatively inexperienced and individuals may have lacked the confidence to run in ways that were contrary to conventional practice. Mediator control is something learned in basic training and then adapted as mediators become more confident (Nicola). The more confident the mediator becomes, the more they might trust and accordingly empower the parties (Nicola).

Mediators are therefore framed by disposition (how they would like to act) and process (how they need to act). They have an ideal for the exercise of power that provides parties with a power-with relationship that affords an opportunity for empowerment. Their expectation is that, properly set-up, the mediation process will provide the conditions for parties to interact in this power orientation; that initial control can provide sufficient structure for the mediator to fade into the background. Nonetheless, this is an invitation that parties may be unwilling or unable to take up or sustain. Under these circumstances mediators may feel obliged to intervene to protect or nurture flow in the interaction.

In dramaturgical terms, mediators are performers; how they perform their role shapes the parties' engagement with the process. This chapter shows that mediator performance can be in tension with the aspiration to enact mediation as a collaborative, power-with process. Ground rules may be imposed rather than jointly constructed, mediators may decide on who speaks first in the joint meeting; micro-practices that follow basic training but emphasise mediator control. This tension represents a dissonance between habitual practice (following the rules) and heedful performance (responding to the interaction) that is explored further in Chapter 8.

Reflecting on the relative lack of experience as a boundary to a mediator's expression of identity returns us to research question 4: in what ways might an explicit understanding of Social Interaction

Theory contribute to a mediator developing a consciously integrated, flexible practice? In particular, how might mediators respond to second- generation mediation models which, unlike the facilitative model, do not attempt a demarcation between process and content (Douglas, 2008), or to replacing the principle of neutrality with the practice of reflexivity (Rothman, 2014). This is a topic which will be returned to and explored further in Chapter 8.

## Chapter 6 – Co-mediation

### 6.1 Introduction

Chapters 4, 5, and 7 in this thesis focus on the interaction between the mediator and the parties. This chapter however, turns the lens onto the interaction between the mediators, exploring both the potential and the pitfalls of co-mediated practice. Drawing on participant responses to questions in the semi-structured interview relating to co-mediation (Topic 2 in Appendix 1), this chapter explores potential sources of tension within the co-mediation partnership and how trust is established and performed between mediators. In doing so, the findings demonstrate that co-mediation is both a challenge and an opportunity.

The performance of mediation is contingent on the personal style of the mediator (Kressel and Wall, 2012). We may therefore expect variance across any set of mediators in how mediation is conducted. Where mediation is led by a single mediator, differences in performance may largely be hidden from view. The process is private, and parties often have no previous experience of mediation. For the parties, mediation is what they experience with their mediator and at that time (Relis, 2005). Individual mediators may be unaware of their individual style and its implications for practice, without necessarily creating difficulties. However, in many instances mediation is carried out by pairs of mediators – a practice termed, co-mediation – and this is common in workplace mediation in British universities (Poyntz, 2012). Style may be unexplored with a single mediator without risk, but may become problematic when co-mediating. This raises the question, addressed in this chapter, as to how co-mediation becomes effective given potentially differing personal styles?

The chapter commences by describing the background of co-mediated practice, why universities typically opt for co-mediation and how the process of workplace mediation is enacted in this setting. The chapter next turns to mediators' understanding of personal style, how conflict may arise within the co-mediated partnership and how mediators seek to handle such conflict. It examines how pairs are selected for co-mediation and how mediators coordinate tasks and roles, and concludes by showing that trust is an essential component of effective co-mediation, demonstrating how this presents an opportunity to prime the parties to respond positively by the performance of trust and relationship, an echo of a dramaturgical approach (Goffman, 1959) to interaction.

## 6.2 Background

The decision as to sole or co-mediation at any university is influenced by the selection of the training organisation providing the basic mediator training. Role plays and assessments follow a solo (Acas) or co-mediated (CMP) format and are a formative experience for the novice mediator and the fledgling mediation service. Thereafter, the template acquired in initial training is adapted to fit the circumstances at each university:

*'We've translated the guidance we've taken from the formal training that we've had and made sense of it in this context... So, there's a study that we've done that's led to a certain process, procedure that's fitted, we feel anyway, the culture here'* (Frank)

Of the five universities participating beyond Phase in this research, three had employed co-mediation from the onset whilst one had switched to co-mediation when the mediation service was re-located within the Human Resources (HR) department to the Learning and Development group. Most mediators in the four co-mediating institutions had only practised as co-mediators and there was limited experience of working as an individual in conflict situations. One participant had prior experience as a sole mediator in the NHS whilst a few had worked solo in what were termed 'facilitated meetings'. In one university such meetings (an experiment now abandoned) offered a less formal service – signalled by the use of a single mediator – to engage doubting or reluctant participants. Finally, one HR participant used the same term to describe utilising mediation skills to handle conflict in her regular role.

Those universities utilising a co-mediator model were strongly supportive, believing that co-mediation offers mutual support and the opportunity to learn from each other. This was seen, by these mediation services, as particularly important when a new or less experienced mediator was participating: *'for a relatively inexperienced mediator it is quite a scary thing as well being on your own'* (Anna). On the other hand, the one university operating an individual mediator model explained this approach as a means of making the parties feel more comfortable in facing just one rather than two mediators: to have mediation feel more informal and less like approaching a tribunal bench. Whilst this set of mediators speculated that co-mediation might be useful in some circumstances – for instance when working with groups in conflict – they emphasised the merits of performing their role solo, free of the need to coordinate with a partner.

There is a silo effect between these two sets of university practitioners when it comes to co-mediation, with a degree of incomprehension of the alternative approach born of limited experience. Angela however, was able to make a connection between the silos. Describing her

transition from sole to co-mediation she echoed the concerns of solo mediators but concluded her fears had abated once she had gained experience:

*'One of the things I was most concerned about when I heard about co-mediation here was, "How's that going to work, there's two of you in the room, who's in charge sort of thing. Who's the lead on this discussion?" But that concern hasn't come to fruition for me. And, actually it's been more beneficial than it has been difficult. And the other concern that I had was that with co-mediation – having two of you in the room – could be quite intimidating for the parties; being faced with two people rather than one. But again, that doesn't seem to have been an issue' (Angela)*

Following the template set by training providers, mediation in universities typically takes place over the course of a single day. Mediators meet with parties individually in the morning for sessions that run from 45 to 90 minutes each, in which mediators prepare the parties and themselves for the joint session. Parties and mediators then have time, separately, over lunch for reflection before convening for the joint session. A joint session, with both parties and the mediator together in a single room, takes place in the afternoon. This session may include breaks but can be tests of stamina and concentration lasting for between one-and-a-half and six hours (David). Prior to meeting the parties, co-mediators convene to assess the case and coordinate their activities. These meetings take place in the morning of the mediation and may run for *'an hour or so'* (Diane), where other duties permit, or be restricted to a half hour squeezed in immediately before the individual meetings (Rose).

### **6.3 Understanding Personal Style**

Co-mediators need to be able to work together and integrate their individual actions in ways which are responsive to the parties and the interaction taking place in the mediation. In interview, mediators emphasised the steps they take to support each other. Nonetheless, frictions do arise. How does this occur in interaction and how does it relate to personal style?

Mediators analyse the interaction unfolding before them in mediation and, drawing on personal schema, start to formulate a response, a plan of action or intervention. In the moment, within the mediation room, on line, this is reflection-in-action, *'an internal conversation about the process, tasks and strategies'* (Lang and Taylor, 2000). For the sole mediator it is a challenging enough task to engage in this conversation whilst attending to the parties. For the co-mediation team, this task is compounded by the need to coordinate with their partner and conflict can arise between mediators.

For instance, if one mediator is taking the lead and decides on allowing a silence, tension may arise if this intervention is not respected by their partner (Michael).

As issues emerge within mediation, a choice must be made as to which to pursue and in what order. This requires coordination between the mediators and relies on them *'sharing similar interpretations of situations as well as the attendant rules for sequencing action'* (Barge and Little, 2008: 506). Mediators may, however, differ in their individual formulations and feel strongly that a particular strategy is appropriate at any given moment.

*'... there have been times where I definitely would have gone in a direction or felt that momentum was building in a positive direction that's then gone, been taken off somewhere else'* (Erica)

For the dissenting mediator, there is the possibility to assert their position at this juncture. However, this presents a risk of undermining the partnership, and interviewees preferred instead to hold open the possibility of subsequently winding back the interaction: *'...at some point I would intervene and maybe pull back to another question and say, "well actually we were talking about this"'* (David). How the frictions that arise are managed is contingent on the level of trust built up in the relationship. If trust is high, then reflection-in-action is possible. If not, mediators have the option to take a break and engage in reflection-on-action, offline and in the absence of the parties.

Beyond formulation, mediators have preferences that derive from personal schema, as to how they interact with the parties. A fault line with the potential to divide mediators and raised by interviewees was that of structure: as a mediator do you let the conversation flow, or do you take a more structured approach?

*'...if it was somebody like me who really likes to let the conversation flow and interrupt as little as possible as a general principle, against somebody who's very, very structured and likes to really manage the conversation very tightly, then I guess there could be more of a conflict'* (David)

*'I've approached it more or less as I would for recruitment interviewing which is normally not that structured'* (John)

The starting point on structure is the drill that trainees receive in basic training. However, attitudes to structure change over time with experience and mediators develop a practice consonant with their own personal style:

*'I think I became slightly more relaxed about structure initially much more focused upon the conversation. You know there are people that I mediate with that are very, very concerned about the structure'* (Erica)

A cautionary note should, however, be made regarding structure and preference. A less structured approach allowing conversation to flow may be the desired approach of the mediators, but circumstances may dictate otherwise. Angela and David, two mediators who were working together for the first time, reported starting their mediation with a less structured approach but found the joint meeting spiralling out of control. In response they called a break, agreed to control the conversation and content tightly and restarted the mediation with a further caucus session.

How do mediators understand personal style? Most of the mediators interviewed had shared a common experience of basic training which facilitated the formation of co-mediator teams. It is here that an appreciation of personal style forms. In training, mediators are taught the component skills of mediation such as listening, summarising, and questioning. This is done within a framework which for these universities was the facilitative model of mediation. Skills are then embedded in the practice of the trainee by playing the role as a co-mediator in simulated disputes. Such role play enables mediators to begin the exploration of personal style and fit with fellow mediators:

*'... When I observed her in the training it was clear that we were coming from the same place. So, I knew, I knew her style, as it were, it matched with mine. So, I think we were quite a good match in that sense...during the five days you get to know them, you get to know their characters, and you get to know their approach'* (Carolyn)

Mediators also learn that styles can differ and that it is important to recognise and work with such differences so that they feel comfortable with their fellow mediator (Sarah). Difference is something that was explicitly valued (Lynda) as bringing something extra to the co-mediation team, a different perspective (Carolyn), a novel question (Nicola), standpoints and experience (Tim) or complementary skills (David). However, this conceptualisation of style is superficial; it encompasses the recognition that mediators practice in different ways but the connection with personal schema is unexplored, a matter of tacit knowledge. This can lead to an expectation that style differences can and should be resolved prior to mediation: *'the key is to sort those things out before you go into a mediation situation because otherwise you end up looking rather stupid'* (Carolyn). However, if personal style is a complex construct based in personal schema and largely hidden from the individual (Kressel, 2013) this may be unrealistic. Exploring personal style is perhaps a journey that

merely commences in basic training. Much remains to be discovered by experience and a process of reflexivity. As Erica noted:

*'I'm not sure any of us are really developed or self-aware enough to be able to say, "This is my style, this is how I like to be in the room" upfront' (Erica)*

#### **6.4 Organising Teamwork**

If mediators lack insight into personal style, they are at least clearer on the need to divide tasks within the team: *'who's going to do what and what roles you're going to take beforehand, that's really important'* (Angela). In training, mediators learn a script of tasks, a step programme that guides them through responsibilities such as setting ground rules and explaining confidentiality: *'...when you do your training, you're given a set structure to follow'* (Angela). This structure provides the mediator with an order and a check list of tasks that can be assigned in their preparatory meeting. This allocation is explicit: *'You can do the housekeeping for party B and vice versa. So, we divide that upfront'* (Erica) and sometimes in considerable detail: *'we'll tend to colour code it or put an issues list so that certain people lead on certain things'* (David). The agreement on a division of tasks and the articulation of roles in advance are particularly helpful where a pairing is new or where one or both mediators are inexperienced. It reduces the fear of the unfamiliar:

*'With a newer mediator, if I was to throw an odd question out or take it in a slightly different direction they might not have a clue about what I'm trying or where I'm going with this, so they might start floundering and it wouldn't be fair not bringing them along'* (Diane)

With experience, the allocation of tasks can be implied and unconscious: *'it's smooth enough that you're almost unconscious that you have actually come to an order'* (Penny). There is a sense that a *'comfortable pattern'* (Rose) emerges without a clear understanding as to how this is accomplished.

*'We've just got into a pattern really. It's quite difficult to put your finger on it. But I think once you get under way with the mediation you fall into a pattern'* (Angela)

However, some experienced teams still take the time to explicitly discuss relative individual strengths and distribute roles accordingly. And, recognising the need to adapt during the mediation there is, critically, agreement on *'how are we going to communicate with each other during the mediation'* (Lynda).

Tasks can be planned in advance for the early, more structured part of mediation, *'... until you get to that fairly open part of mediation that works fairly well; you know exactly what we're going to be doing'* (David). However, beyond these standard steps, the process is unpredictable, obliging the



mediators to improvise their interventions and teamwork. The advent of this open, fluid phase of mediation is outwith the mediator's control as parties respond in unexpected ways, and planned interventions can evoke unexpected responses. In one case, mediators had agreed the normal steps to coax participation from a party only to find the party *'just galloped away and gave us so much without being prompted'* (Carolyn). This fluid phase is a particular challenge in co-mediation: how does the partnership recognise the need to adapt? If the partners are mismatched in experience, how does the experienced mediator 'bring along' their partner?

One method for handling uncertainty was to designate responsibility for leading. One mediator is active, leading the mediation, and the other supporting, with these roles being shuttled between the mediators to underline partnership. This arrangement can be quite structured where the active mediator engages directly with the party (or parties) whilst their co-mediator takes notes. This taking of notes in mediation is instructive from an epistemological perspective as it projects the mediator as an objective observer of the interaction; the mediator as a gatherer of evidence rather than engaging in the interaction. This was explained as a prompt *'to make sure you've picked everything up'* (Rose) but clearly captures what is important to the mediator and not necessarily the parties.

In principle, as discussed below, co-mediation is projected as a partnership of equals. However, this may need adjustment in practice where experience levels are markedly different. Here a leader-follower approach may be adopted. The less experienced mediator leads in the structured part of the mediation with the experienced mediator providing a guiding hand and responsiveness to the unfolding interaction:

*'I would let the newbie do the ground rules bit and they tend to be very meticulous about that and have the check list of things to go through. And that's quite valuable; I've probably forgotten a couple of them by now. So, they would tend to hug the structure more and I would add some professional expertise and some ability to think on my feet during the session'* (John)

## **6.5 Trust in Co-mediated Teams**

When service coordinators need to schedule a case for mediation, an open call would be issued across the mediator pool to establish the availability to undertake the case. Mediators trust coordinators to use their *'judgement on how people have worked together in the past'* (Diane) in matching them. For the coordinators there is an ideal balance in terms of gender, experience and possibly race between the mediators. Mediators who have any working relationship within the

department in question or either party are excluded to preserve impartiality. More particularly, where both parties to a dispute are academics, there is a perceived need to field mediators of a similar background for credibility. Nonetheless, what might be ideal is constrained by those who are able and willing to make themselves available. In one institution, this has led to regular volunteers (Penny and John) undertaking many of the cases and consequently establishing an experienced partnership. Regular partnerships may also emanate from mainstream roles. For Lynda and Tim, their co-mediation is an extension of the working alliance forged in their main role operating together as coaches.

These experienced teams both talked of trust as an essential component: *'We trust each other implicitly'* (Penny), *'I think there has to be trust between the two mediators'* (Tim). But what is meant by trust and how does this operate for less experienced teams? A study of temporary high performance teams, segmented trust into two components; role and relational trust (Moldjord and Iversen, 2015). Role trust is cognitive and relies on the training and expertise of one's partners. For John and Penny, role trust was expressed as a confidence in the capability of one's partner to perform their role and complement one's own: *'... if possible I try to mediate with John because characteristically we're very different and we as a result balance each other out'* (Penny). Expectations and stereotypes from other roles are the key ingredients of role trust, and mediators make the implicit assumption that basic training provides the necessary common set of expectations; that my partner will do what I've been taught (Sarah). Once role trust is established, surface level cues enable tasks to be undertaken within the partnership:

*'And then just taking cues from people, so taking cues from each other, knowing it was a colleague, so I know her, in terms of knowing when one of us might want to ask a question'*  
(Marian)

Relational trust is affective and takes longer to develop. For John and Penny, this is evidenced by their willingness to challenge each other and mutual permission to *'manage each other'* (Penny); a confidence to let either mediator lead or intervene. What characterises relational trust is vulnerability, *'the affect-based experience of team members where positive interactions, stable patterns, openness and good intentions foster a high degree of confidence and care in the relations'* (Moldjord and Iversen, 2015: 232). This is fostered by reflective practice, both in-action and on-action.

Role trust is based on expectations whereas relational trust is rooted in vulnerability. The role playing carried out in basic training is a step towards exploring vulnerability: *'training together and*

*seeing each other's vulnerability because obviously we did various things in front of and acted and we all disliked it'* (Anna). Nonetheless, absent acquiring experience in actual mediations, inexperienced pairs must rely to a greater degree on role trust, the set of expectations formed in basic training:

*'...if you don't know each other, you have to rely more on the process... when you don't have the trust, when you don't have the experience you have no option but to rely a little bit more on the mediation process'* (Lynda)

Mediators are sensitive to the potential for differing expectations where they have not shared basic training but, as exemplified by David and Angela, this need not be problematic for forging an effective partnership. The danger lies at the other extreme, assuming a common set of expectations and then discovering otherwise mid mediation. As Diane remarked of one troubled co-mediation: *'[It was] my fault for having presumed the way I'd worked with other people would be the way we worked together as well'* (Diane).

## **6.6 Co-mediation as Social Interaction**

One lens that can be applied to the analysis of mediation is dramaturgical (Goffman, 1959; Jarrett, 2012), examining how parties in an interaction perform and how they maintain and adapt face. Most obviously, parties in mediation perform with the mediator present to assist them preparing (back stage) in initial meetings and enacting (front stage) their performance before the other party in joint session. However, mediators can also be seen as part of the interaction and enacting their own performance. When co-mediation is practised, there is an opportunity for an extended performance from the two-actor mediation team. The object of such a performance is to project aspects of co-mediation in ways which elicit a helpful response from the parties and supports the mediation process. Mediators may articulate this as modelling for the parties:

*'Because you're modelling something, demonstrating something to the parties; showing that vulnerability in a place where you can be vulnerable and open is important'* (Lynda)

Analysing their accounts of co-mediation, three main areas of performance were apparent; collaboration, difference and vulnerability. Mediation is a collaborative process (Goldberg and Shaw, 2010; Winslade, Monk, and Cotter, 1998; Hedeem, Raines, and Barton, 2010) and there is an importance in mediators demonstrating their ability to work together effectively as a team. Underpinning this, mediators seek to project a partnership of equals even when it may be clear to them, and possibly the parties, that levels of experience may be significantly different:

*'... the impression I would want to give to the individuals would be that [a co-equal partnership] but I wouldn't see it myself as that. I would be looking to learn from them really'*  
(Sarah)

*'working together well does work and it enables the whole environment to be more collaborative... it invites the parties then into that discussion and it all becomes a lot more equal in terms of what's going on in the room at a particular time'* (Diane)

Difference between the parties, in behaviour or beliefs, is a potential cause of conflict (Coleman, Kugler, Bui-Wrzosinska, Nowak, and Vallacher, 2012) but provides the co-mediated pair with an opportunity. When mediators can be seen as individuals yet working as a pair they perform difference to the parties as a positive way of handling conflict and recognising alternative perspectives:

*'We want the participants to see us working as a pair. We want them to see working as a pair, as a very fruitful endeavour'* (Lynda)

Finally, the performance of co-mediation does not have to be perfect; in fact, blemishes are a good opportunity to model the positive management of conflict for the parties. An aspect of this type of modelling raised in the interviews was that of vulnerability; being open and accountable to the mediator you are working alongside. Mediators recognise that enabling parties to move away from entrenched positions is an invitation to enter a different space and become vulnerable with each other:

*'We're getting people to feel more comfortable with feeling vulnerable with each other. And therefore being able to recognise their own vulnerability... Vulnerability increased the relationship, the effective communication between those two people'* (Ciara)

Recognising the vulnerability of the parties, interviewees spoke of creating a safe space. This is done by emphasising confidentiality, impartiality and building rapport, particularly in the initial sessions. However, co-mediators can do more than help create conditions; they can perform vulnerability. Vulnerability becomes something shared in the interaction with the parties rather than created for them (Ciara) and a demonstration of relational trust. A telling example of vulnerability in practice was provided by Diane when discussing how to decide on a potentially sensitive intervention:

*'If it is working well, speak openly in the room with your co-mediator and the parties...If it's not, take a break. Is the space safe for transparency...? That can be because I'm not sure how*

*the mediator will respond to what I've got to say or because what I think we should do next might be particularly challenging for one or both of the parties'* (Diane)

For Diane, if relational trust is high with her fellow mediator, the internal conversation characteristic of reflection-in-action can be externalised, it is safe to be vulnerable. If relational trust is low and the space not safe for transparency, then a break is called enabling reflection-on-action to take place, backstage in the absence of the parties. For experienced partnerships such as Linda and Tim, vulnerability is the norm:

*'If we're not sure we'll ask each other in front of the participants...we'll be quite open about how we approach this'* (Lynda)

The performance of relational trust is an invitation to the parties to respond in kind. Demonstrating vulnerability signals mediation to be a safe place where parties can explore possibilities rather than defend positions. Co-mediation – in providing two mediator actors – offers the enhanced opportunity for dramaturgical performance that is denied to the solo mediator.

## **6.7 Summary**

The analysis presented above has addressed a number of interrelated themes. Firstly, there is the role of the mediator group at each university as a community of practice (COP), which can be a cradle of learning but also a cage, with conformity restricting growth (Wenger, 2000). On the evidence of these interviews, the groups at each university were developing competent mediators and effective co-mediated partnerships. On the other hand they were restrictive of personal development in two aspects: the concept of personal style was largely unexplored and individual development was constrained by the practice of co-mediation.

The literature observes that personal style is unexplored (Kressel, Henderson, Reich, and Cohen, 2012) and so it should not be surprising to see the effect confirmed in this research. Arguably, understanding personal style is important for the individual but also in terms of building relational trust within co-mediation. Tacit knowledge of personal style is clearly difficult for practitioners to describe but may be accessed by *'observation and reflection devoted to that purpose'* (Schön, 1995: 34).

The potential for co-mediation to cramp personal development arises as mediators gain experience and attempt to move beyond basic competence. This may be expressed as a willingness or desire to fly solo: *'I go backwards and forwards with it [co-mediation] as a model for myself personally. I'm certainly not wedded to it. I sometimes wonder whether it's just somebody extra in the room to have*

*to attend to'* (Erica). More practically, this may be seen as a constraint imposed by the need for a degree of uniformity across the COP at each university: *'If I go away and really develop my strengths in the transformative model, I can't apply that very effectively if my co-mediator hasn't done the same'* (David).

Secondly, co-mediation provides an opportunity for performance. In particular, the potential for demonstrating relational trust imbues co-mediation with distinct advantages over sole mediation. This would seem particularly important where the context of mediation in the university workplace is relational rather than transactional, in contrast to what is arguably the case in a commercial mediation. However, one university in this research has elected for solo mediation, raising the question as to how a sole mediator seeks to compensate, and to project trust and vulnerability.

Thirdly, what indications are there that a co-mediated partnership is effective and achieving its full potential? One suggested measure is 'flow', the *'ultimate expression of artistry'*: a state where *'all aspects of the interaction are combining synergistically'* (Lang and Taylor, 2000: 230). It comes when co-mediators are immersed in discourse (heedful practice), demonstrating relational trust, particularly in vulnerability, and are being responsive to reflection-in-action:

*'... flow is the word you come to after you've had the feeling... I've watched all the little interactions, I'm fine tuning everything that feels about right and I'm almost not having to spend too much time thinking about it because it's got itself in its groove'* (Lynda)

Finally, role trust would appear to be a prerequisite for each mediator, an essential step for co-mediators which basic training drills into trainees creating collective understanding. However, as the analysis of their responses to the questionnaire revealed in Chapter 4, understanding of the goals and objectives of mediation is not always common across the community and changes with experience. For the new mediator, role trust is founded in habitual practice and developed by reflective exercises. In contrast, relational trust is found in (positive) experiences and heedful performance and developed by reflexive exercises.

## Chapter 7 – Mediator Practice and its Intersection with Theory

### 7.1 Introduction

A widely held proposition in mediation literature is that theory and practice are intertwined. Theory is said to be embedded in the basic training undertaken by aspirant mediators (Macfarlane and Mayer, 2005) and to provide the concepts, propositions and relationships that underpin mediator techniques and mediation models (Zariski, 2010). More broadly, theory informs how professionals act and, in turn, the experience of practice leads, via experimentation and reflection, to the development of a personal theory of practice (Argyris and Schön, 1974; Susskind, 2015). Nonetheless, reference to theory in training is extremely limited and either implicit or unsourced (Macfarlane and Mayer, 2005). Moreover, research suggests only broad ideas and not specifics are retained by trainees when they come to practice (Goldstein *et al.*, 2008).

Recruits approaching basic mediation training are not clean slates; they bring their own '*unique and implicit 'theory of practice' for resolving conflicts*' (Raider, Coleman and Gerson, 2006: 695). This suggests two sources of theory for mediators: that provided in the context of mediation, primarily in basic training, and theory acquired in other contexts and potentially applied in mediation as lay theory (Zariski, 2010).

How mediators engage with theory and make sense of it in practice is influenced by their personal schema; the values, implicit theory and goals that inform and guide each individual (Kressel, 2013). How mediators choose to intervene at any moment in time draws on an overarching meta-theory, the philosophy that guides mediator choice (Lieberman, et al, 2005); partly a matter of unarticulated choice and partly embedded in the practice model (Zariski, 2010). Practitioners are said to enact their worldviews – albeit unconsciously – when deciding on what is important, relying on ontology and epistemology (Goldberg, 2009: 427).

A mediator's connection with theory determines the tools, methods and techniques that are available for them to draw on in practice, whereas their connection with meta-theory determines the motivation for intervention. For example, empathy is a theoretically well-supported mediator behaviour (Della Noce, 1999; Hedeem, Raines and Barton, 2010; Bollen and Euwema, 2013), but does it emanate from a transactional focus on smoothing the path to settlement or a relational expression of deeper curiosity (Kressel, 2013: 724)? Accessing the meta-theory of any one mediator is difficult, potentially hidden from the individual him or herself. However, if meta-theory drives decision making, then potentially reversing this order, examining the choice of techniques and exploring the underlying rationale for their use may shed light on the individual's meta-theory.

This chapter looks at mediator practices at both a macro and micro level and a metaphor they commonly use to describe practice to shed light on their guiding meta-theory. It examines how university mediators acquire and develop their personal theories, move from simple to complex schema (Kressel, 2013) and create their own integrated practice.

## **7.2 Mediator Identity – a sense of self in the room**

What – or rather whom – do mediators bring to the room when they practice? Interviewees were invited to describe their background and motivation to volunteer as mediators. In addition, they were asked about the extent to which their values influenced their practice.

Values and experience shape a mediator's personal schema (Kressel, 2013) and form part of their identity, their conception of self in the room. All but one of the participants had completed higher education or undertaken a professional route equivalent. Of these, six had studied Human Resources (HR) Management or the CIPD equivalent and six had studied courses that had significant elements of psychology and or sociology. The main role performed by these mediators (the 'day job') fell into one of three areas: Human Resources (HR), Learning & Development (also known as Organisational Development and often a subgrouping within HR) and then an eclectic mix including a lecturer and three administrators.

Whilst all of those interviewed expressed a professional identity in their main role, there was a particular resonance in mediation for those (12) with HR roles. Here, values were unconsciously interwoven across mediation and non-mediation roles; *'I haven't really consciously thought about it a great deal... it's quite tangled up with my professional life as well.'* (John). This arises from the perceived interaction between mediation and their mainstream role; mediation becomes an expression of a desire to help people work together (Anna). For those working in general HR, the acquisition of mediation skills was seen as aiding the performance of their regular role; almost an organisational expectation that competency in mediation is professionally required; *'a lot of the HR managers are trained mediators... it's relevant to the job that we do'* (Sarah). For those in coaching, mediation was seen as a natural progression; *'... prior to that I had the best part of thirty years practice as a team builder coach and occupational psychologist. So, I feel a lot of my background plays into the mediation world'* (Tim).

Nonetheless mediators bring a personal, in addition to a professional, identity into the room: *'all the values that you have, you absolutely bring into the room...parents, upbringing, school, friends, family, personal experience..., all of those things'* (Angela). Moreover, the professional and personal are intertwined: *'my values led me into certain professions probably and I've been in these sorts of*



*professions throughout my working life... around social justice and social exclusion'* (Lynda).

The opportunity for personal growth attracts university mediators to volunteer. This can be in pursuit of a personal interest; *'in human behaviour and psychology and its manifestation in the workplace'* (Michael), or arise from the recognition, by themselves, colleagues or managers, that they possessed a key skill such as listening (Erica, Anna, Angela and Diane) and that mediation represented an opportunity to develop these skills.

Interviewees related how previous negative experiences were important in framing their attitudes to conflict and mediation. Two interviewees spoke of events in childhood. For Carolyn, conflict came to be something to avoid. For Erica, it was an opportunity to develop effective coping strategies: *'my dad used to call me a diplomat'* (Erica). A further two had experienced organisational conflict and had led an initiative to find a more effective way of handling conflict (Penny), *'a less procedural way of having conversations...a safe way to just sit and talk'* (Diane), which subsequently led to the adoption of mediation.

Mediators expressed values that revealed their views of human needs and frailty. These framed their expectations of the people they would encounter in mediation. Good relationships, communications and peace were important (Erica). People want to be loved, accepted and listened to (Carolyn). Individuals need to feel they and their contribution are recognised (Michael). People are valuable, they should be respected and respectful (Tim). People were seen as basically good but struggling in conflict; the mediator privileged to work alongside those in need:

*'I trust everybody till they let me down, it's those sort of beliefs in the good in people, I believe that everybody's got, they're doing the best they can with what they've got is where I come from... there are not many bad people. They just need help sometimes to access what's happening... mediation is quite a privilege because you meet people in a very deep way, very quickly'* (Nicola)

Whilst mediation can serve to enhance professional capabilities, especially for those in HR roles, it also had a strong connection with personal identity. Interviewees saw mediation as a fit with personal values, providing a sense of integration of values and practice:

*'I've absorbed that training and translated into my own beliefs... I think my personal values affect a lot of what I do at work anyway... I have a sense of fair play and justice... a need to give people a chance to put their side forward'* (Frank)

*'... Why I want to do more of it (mediation), has come as much, if not more, from my personal life than from my professional life and qualifications' (Erica)*

This integration was quite explicit for those with religious faith. For the two Quakers, the practice of mediation resonated with principles of conflict resolution and non-violence. For Susan: *'mediation itself encourages some of those values anyway... in Christianity, treating people well or respectfully is important regardless of any differences or anything like that'*.

### **7.3 Sources of Theory**

The mediators interviewed in this research were asked, *'in what ways, if any, does theory inform your practice?'* Their replies revealed there was little explicit connection with theory when undertaking their initial training; indeed little expectation that theory be referenced in training. For Sarah, theory held little relevance as she saw *'the training very much as just another training course not that it was backed up by any particular theory'*. What was received in training is to be taken on trust; a set of techniques and a process to follow: *'that this is the way you do it and this is the way we do it at the university'* (Sarah). Theory is assumed to be embedded in the practices taught in the training; *'the theory we employ is the training we've been given'* (Rose). Theory was seen as somewhat abstract and removed from the practical need to master basic skills (David). Theory was associated, particularly in a university, with academic research (Penny), whereas what mediators are seeking is a *'mental framework'* (John), a practical guide through the process.

Less experienced mediators often referred back to their original training manuals in order to address questions about theory. Aside from the assistance of a manual, interviewees were generally uncertain as to the model of mediation they were deploying, rarely able to identify it unprompted as facilitative mediation or to cite principled negotiation as a component on which this model is founded (Fisher and Ury, 1997):

*'I can't remember what it was called... positions-interests model I guess. I can't remember what it was called' (Frank)*

*'I don't know whether I could name it for you. I could describe it to you; I don't think I could name it' (Angela)*

Even where key concepts such as BATNA (the Best Alternative to a Negotiated Agreement) are utilised in training, only a subset of trainees could recall the term even when prompted. In contrast, interviewees readily recalled the distillation of practice into the acronyms coined by each training provider. TCM provide trainees with SING (Situation, Impact, Needs, and Goals) whilst CMP utilise

DESC (Describe, Explain, Show Understanding, Communicating an Alternative). For university mediators, model is a term which describes the process they have learned in training, not something theorised in the literature: *'I absolutely do use a model, of five steps...following the FAIR (Facilitate, Appreciate, Innovate, and Resolve) TCM model around...'* (Lynda).

Basic training for these mediators had been provided by a limited number of organisations (see Figure 7). These training providers seek to project mediation as *'a mind-set; a framework; and a competence'* (TCM, 2016). Competence centres on the acquisition of a set of key skills, e.g. questioning, summarising, and listening. These are set within the context of a proprietary mediation model and supported by an integrating framework or process. This model can ostensibly represent an ambitious synthesis across a number of theoretical models:

*'CMP talk about their own model... they call it the interactive mediation process... which combines the best elements of facilitative and transformative mediation with the clear problem-solving orientation of evaluative mediation'* (Sarah, quoting from the CMP manual)

However, what is outlined in training is not necessarily well understood or translated into practice. When queried further on any evaluative aspect in her practice, Sarah acknowledged: *'the way we practice is we are much more neutral than that. We don't have an opinion, we can't give a hint, we can't guide'*.

### **7.3.1 Theory of Conflict**

If theory in general is a distant connection for mediators, what happens when the questioning is framed more specifically around conflict? Theorising conflict is important as it forms the basis for intervention as a mediator, a meta-theory to guide decision making. Thus the facilitative model of mediation is predicated on an understanding that conflict arises from disputants being locked into positions with resolution to be achieved in the exploration of interests (Fisher and Ury, 1997). This principle is clearly flagged in initial training:

*'In facilitative mediation, the mediator structures a process to assist the parties in reaching a mutually agreeable resolution. The mediator asks questions, validates and normalises the parties' points of view, searches for interests underneath the positions, and assists the parties in finding and analysing options for resolution'* (Penny, citing the Acas training manual)

However, when initially asked about her theory of conflict, the same interviewee responded that there was a relational aspect to each conflict: *'every issue I've dealt with has been due to a*

*breakdown in interpersonal relationships... often due to a misunderstanding, which has then led to communication breaking down'* (Penny). This is a significant difference, as Penny's espoused theory reflects the relational philosophy underpinning the transformative model whilst her training is rooted in the interest-based understanding of the facilitative model.

A different slant on the relational was expressed as conflict arising from a lack of communication (Penny) or miscommunication as the root of conflict:

*'... all of the cases are around miscommunication or mismanagement of some description. So my background, my interest in how people interact and how people perceive each other and how things can be misinterpreted or perceived differently by individuals, it plays a big influence on that'* (Michael)

Conflict was also seen as arising from difference in individuals: *'people have got different values, they've got different things that they want out of life; they've got different ways of expressing themselves and so on'* (Angela). For a few mediators, conflict was specifically connected with theoretical constructs such as the Thomas Kilman model of conflict (Frank) or the Myers-Briggs Type Indicator (MBTI) (Lynda). These seek to categorise individual traits or styles and explain how these interact in conflict situations. However, commonly there was a vague recollection of matters learned in training which had been subsumed in the practical techniques of mediation:

*'I have a vague recollection of some diagram that shows the beginning of a conflict and then it gets to a middle bit where tensions are very terrible, then it goes round. But do you know I can't remember'... 'God knows. There's not a particular theory at all that I draw on or relate to or try and match in any way shape or form.'* (Marian)

*'I will have covered this when I did my CIPD qualification for HR and all sorts of things. But details dribble away and you're left with this sort of practical application of the theory rather than where you started which was in the theory'* (John)

Sources of conflict theory external to mediation emanated from a wide variety of fields, often with a linkage to sociology or psychology: *'... it comes down to either power or it comes down the old (question)... of resource, finance, monetary loss or gain'* (Diane). Some interviewees linked this to knowledge acquired in prior higher education study; *'psychological theory... and also social interaction theory from both psychology and sociology as well'* (Carolyn); *'Goffman...'* (Lynda); *'years of psychology'* (Tim); *'interpersonal communication, the stuff I studied a long time ago at university'* (Michael). For others there was an accretion of theory in their main roles - *'...a little bit of Rogerian counselling'* (Carolyn); *'Transactional Analysis, MBTI types'* (Lynda); *'Situational Leadership'* (Penny);

'Thomas Kilman... Myers Briggs' and 'personality stuff called FIRO Element-B' (Nicola). In particular, those with coaching as their main role saw opportunities for cross fertilisation into the practice of mediation:

*'... within the mediator world, within the coaching world, and within the learning world, we have lots of opportunities to attend short seminars, breakfast meetings, bits of new research that come out...remarkable what you can draw from one side and use somewhere else'*  
(Lynda)

#### **7.4 Personal Integration**

How does the integration of practice and theory take place for these university mediators? For the inexperienced, there is a need to get the basics right before seeking to engage explicitly with theory. If what is practised now is working, there is less impetus for change:

*'I've not looked a great deal into other mediation theory. Interests me, but lately I can't find the time to do it... I'm not sure how much that would influence my practice at the moment being a relative rookie and I guess wanting to develop the techniques I have and get really effective at delivering those... the model that we have works quite well for our organisation and we've got some really good results out of it... gives me a bigger picture around what I'm doing but it doesn't necessarily directly shape every decision I make throughout the course of a mediation.'* (David)

More experienced mediators echoed this pragmatism, seeking to learn and develop by means of reflective learning that focused on what is or is not working well in mediation; a Type 1 learning (Argyris and Schön, 1974). Such reflection does not seek to draw on theory or on 'models to confirm or to confirm what I do' but 'what appears to have worked... should I do a bit more of this? This is not working should I do less of that?' (Lynda). Post-mediation reflection was said to address two questions: 'how did the case go?' and 'how did we cooperate as co-mediators' (U4). This inevitably produces a discussion centred on micro practice; 'understanding what your best techniques might be in particular cases and adapting accordingly' (John). What is missing is the reflexive question, 'what was going on inside of me?' (Lynda).

An alternative is to come into contact with theory that is found to be useful and then consciously look to experiment in practice; Type 2 learning (Argyris and Schön, 1974): 'When I think about an idea, I digest it and make sense of it first and then consciously try to do something different based on that...only typically when the theory challenges me in some way' (Frank). There appears however to be no systematic search for useful theory; that is with one notable exception: 'it's quite handy being

*part of a university actually. And so I've signed up to Conflict Resolution Quarterly, and get some papers sent through...'* (Diane).

Does this loose connection between theory and practice matter? For these mediators there was a crucial test of pragmatism: Does what I learn help me in my practice? Are there are there other areas I can draw on that might help?

*'I just take what's useful to me, to be perfectly honest. And just because I've been taught a particular theory and a particular model I mightn't adhere to it 100%. I just take what appeals to me and disregard the rest'* (Carolyn)

*'I've used other thinking to inform what I think is right in mediation without really considering how closely it relates to my original training'* (Frank)

Approaching theory in this manner leads to a personalised, albeit eclectic, integration and one which is dependent both on personal schema and theory drawn from other areas. This can lead to a particular personal integration which is further honed with the experience of practising mediation:

*'... you latch on to the bits that interest you or you recognise or you value and you take it away and you sharpen it and change it, interpret into your own thinking and off you go... So, arguably that's a limitation of how mediation is trained possibly, if the way it's been interpreted by a particular mediator is the way it is intended. So, it's that tension between the way you should do it and the way people translate it'* (Frank)

For those with able to draw on a wide background of experience this can lead to relatively complex schema:

*'I absorb the models if I find it useful I do something about it. I'm very pragmatic... the group psychotherapy approach that I developed... in the institution I worked in, you could only call eclectic. You made use of the bits you can and discard the rest. So, there wasn't a great sense about exactly what the model was you were using. It was much more: what was effective with the clients you were working with at this particular moment in time?'* (Lynda)

Are there dangers to such a personal integration? For these mediators, theory was largely unexamined; a condition that on reflection was seen as having potential consequences for practice as there can be no assurance that underlying premises and assumptions are common:

*'I certainly wouldn't say that I, or others I talk to, have been consciously discussing the kind of models and approaches we have. And it may be that we all have quite different assumptions; we're just not articulating them to each other; I don't know'. (John)*

## **7.5 Social Interaction**

How do mediators conceive of the interaction that plays out in mediation? Do they see themselves as engaged in a dialogical intersubjective process, as subjective observers or as objective process experts? What light does mediator practice shed on the interaction that takes place in mediation? Consider the issue of mediator style, and in particular how stylistically flexible mediators are case by case. When interviewed, the university mediators recognised that every case varies and that mediator responses should therefore be responsive to the interaction. Flexibility in style is therefore required: *'I think, if you're a mediator you have to be prepared to be flexible'* (Anna); *'it's about judging your audience really and changing your style accordingly'* (Michael).

Flexibility is, however, tied to experience. An inexperienced mediator may lack the confidence to deviate from standard practice: *'for people who have just been trained and don't have a lot of experience. There's that temptation to follow...I must follow the procedure'* (Susan); *'...given my relatively limited experience ... I would want to agree any flexibility in advance. I would find it probably quite difficult to be flexible on the day, at this stage of my experience'* (Angela). Equally, there may be no realisation of the need for flexibility. For example, one inexperienced mediator reflected that engagement with this research had caused her to recognise that mediation has multiple goals; it can be about more than resolution:

*'... I always felt that the aim was always to get to a solution, to get resolution. I feel that left me to be inflexible, so now I'm more aware of it, I'd like to think I'd be more flexible in the future'* (Sarah)

Conversely, flexibility is seen as acquired with experience and the opportunity to practice variations on the basic techniques; *'the more I practice the more flexible I am'* (Diane).

### **7.5.1 Metaphors as pointers**

Metaphors are a means of conceptualising experience and bringing coherence to practice (Lakoff and Johnson, 2008), enabling mediators to explain their practice to each other and to the parties. Metaphors are a manifestation of particular world-views (Smith and Eisenberg, 1987) and thus connect to the personal schema of individual mediators. More particularly in the field of mediation, metaphors represent *'particular ways of viewing conflict'* and moreover *'specific individual roles that*

*are to be enacted'* (Borton and Paul, 2015: 264). Examining the metaphors mediators deploy, and in contrast those rejected, can therefore shed light on their practice, the conception of social interaction that guides such practice and the meta-theory that underpins it.

In the course of interviewing, the metaphor of 'conversation' was popular, utilised unprompted by seven (of 18) interviewees. For these mediators it conveys a sense of how they conceive of mediation: *'I honestly feel that I go in with my co-mediator... and we have a conversation'* (Susan). Mediation is seen as an *'honest conversation'* (Nicola), in contrast with the fractured communication which has preceded mediation and enmeshed the parties in conflict. Such a conversation enables parties to appreciate the perspective of the other party even where positions differ (Nicola). Conversation, in mediation, is where the *'magic happens'* (Erica). Establishing and promoting conversation therefore become important goals to achieve if the potential of mediation is to be realised. Indeed, mediation may be conceived as the means to an end, a process which begets and supports a conversation:

*'I tend to think of mediation as a sort of framework around a conversation really.'* (John)

The use of conversation as a metaphor is distinctive but personal; an expression of their individual schema for a sub set of mediators. This was demonstrated, strikingly, in the case of David and Angela. Their Phase Three interviews, conducted separately, reflected on a case which they had recently co-mediated. For David, 'conversation' was readily deployed to describe the interaction with the parties and used on 36 occasions. In contrast Angela, over the course of a one-hour interview, had a narrative in which the word 'conversation' was entirely absent.

What do mediators mean when they employ the term 'conversation'? Conversation points to a conception of social interaction, a means for the parties to explore and find meaning; an *'interesting whole world of conversation about what common sense is'* (David). But what role does the mediator play in such a co-construction between the parties? For David the mediator is *'somebody who can keep the conversation going and make sure it is a 2-way conversation'*. To perform this role requires decisions on structure and control.

Some mediators like to *'let the conversation flow and interrupt as little as possible... against somebody who's very, very structured and likes to really manage the conversation very tightly'* (David). The degree to which individual mediators are comfortable with allowing conversation to flow is an aspect of personal style. This may evolve as mediators become more experienced and achieving a conversation is recognised as a primary objective:



*'I think I became slightly more relaxed about structure... there are people that I mediate with that are very, very concerned about the structure and the check lists, the agreement and the exact placing of everything. And I think all of those things are very important but to me my focus became much more on getting into the conversation'* (Erica)

Letting the conversation flow does not mean the mediator fulfils an entirely passive role. Mediators steer conversations: *'you listen and ultimately you steer the conversation'* (Erica). They do so to enable a conversation between the parties but also to push towards an outcome, *'... directing it to more outcome driven conversation and something that the other party will find more palatable'* (David). They exercise control to offset power and intervene if a conversation is becoming unproductive. They analyse conversations and tighten or loosen structure as they assess the interaction of the parties. They choose what to re-enforce in a conversation: *'That's a big theme that I'm hearing out of this conversation'* (John). Nonetheless, there is a degree of detachment, the mediator as objective observer, the expert in the mediation process.

*'... they're the experts if you like in what's going on and they should understand that process better than the parties in the room... Well I don't feel like an expert mediator. So, but I guess that I, it's relative, so the... in terms of who has the knowledge and expertise, for want of a better word, of the process, how things are going to work, I think that will remain with the mediator and you do have to, you do have to shoulder the responsibility'* (David)

'Conversation' arose as a metaphor unprompted during the course of interviewing the mediators. In contrast, the metaphor of 'negotiation' was prompted in the survey by the statement *'Success in Mediation is when a negotiation is carried out between the parties'*. Responses to this statement evinced some to a cautious acceptance that there is *'an element of negotiation within mediation'* (Tim). More commonly however, 'negotiation' evoked a negative response: *'negotiation is just a foreign term'* (Michael). For this group of university mediators negotiation is not a frame which fits well: *'I don't think it has anything to do with the parties negotiating, I think that's a bit irrelevant to me. I see negotiation as not being part of this at all.'* (Angela)

This is perhaps surprising, as principled negotiation is a foundational concept in the facilitative model (Soliman, 2014; Avruch, 2003; Morris, 2015; Bush and Folger, 2012). Moreover, negotiation is a metaphor that is commonly used in commercial mediation settings where the facilitative model is deployed (Zimmerman, 2009; Reuben, 1999; Goldberg, 2005a; Picard, 2004). Framing mediation as negotiation is adduced as a shortcoming of commercial mediation (Gewurz, 2001). What accounts for this seeming anomaly?

Firstly, there is an issue of context. Negotiation is an acceptable way of explaining mediation in certain circumstances, typically those where monetary compensation is involved or an Employment Tribunal process sits in the background. These, more properly labelled as employment rather than workplace mediation, are the exception in university mediation services and not experienced by the majority of those interviewed:

*'... some of the cases I've been involved in mediation have been used much more as a negotiation tool...we have been looking at exit packages or means by which, heading down the route of a grievance or an industrial tribunal. So what can be done to get us off of that road?'* (Diane)

Secondly, for those interviewed, negotiation is viewed as *'basically a transactional discussion where parties try and get what they want'* (John). Negotiation conjures up an image of *'to-ing and fro-ing, offer and counter offer... you reach a compromise a win/lose... That for me is not what mediation is about'* (Erica). Negotiation is conceived as a distributive and not an integrative process.

This antipathy to the metaphor of negotiation has two consequences. Firstly, how mediators conceive of their practice where conversation becomes the metaphor of choice:

*'It's just being able to try and get two people, very often who haven't been able to communicate for months properly, actually to just have that conversation, to share how they feel and what they want. So, there hasn't been a need for what I would define as negotiation'* (Anna)

Secondly, how mediators explain their practice to the parties based on a perception they will have hold similar negative connotations with negotiation: *'In essence it (negotiation) is exactly what you're carrying out, but that word has got a certain connotation for people and a certain context and that's not where we've looked to position it'* (Nicola).

## **7.6 Decision Making**

Mediators may have a checklist of activities to carry out in conducting mediation but need continually to take account of how the interaction is unfolding before them. Decisions must constantly be made as to how and when to intervene, yet the personal schema utilised by mediators to guide their decision making are said to be largely hidden from them (Kressel, 2013). When interviewed, mediators struggled to explain how they made their decisions: *'I can't tell you why I would intervene at a certain time or how do I make decisions during mediation. It's a very unconscious thing for me'* (Penny). Attempting to describe their cognitive process, interviewees

referred to intuition (Carolyn, John) or instinct (Frank, Nicola, Penny, and Ciara). This was intended to convey a sense of immediacy, responding *'in the moment'* (Erica) and unreflective, *'an instinctive way rather than a considered way'* (Frank); in short, Type 1 thinking (Kahneman, 2012).

Comments from the two experienced mediators illustrate the unreflective embedded nature of mediator intuition, a skill that is an unconscious competence. Ciara spoke of *'being a mediator rather than doing a choice'*. Paul provided a golfing analogy:

*'I think it's rather like when I play golf. If I try very hard and think about it, I probably play very badly indeed. If I just relax and let the whole thing wash over me, I play quite naturally. And I suspect that's how I do mediation.'*

The development of intuition was ascribed by interviewees to experience. Experience was seen as essential to break free of the strictures of initial training and be more attuned and responsive to the interaction: *'initially I was conscious of procedure and training whereas now... there's a framework there or a few goals in mind, but actually more receptive to what's happening in front of me'* (Frank). Experience enabled mediators to shape their practice by developing patterns and respond to their emergence in each case. In the interaction they recognised patterns and drew on their own experience to select the appropriate course of action:

*'No answer to that other than actually that's always what I've done and instinctively it feels like the right thing to do'* (Penny)

*'I rely upon intuition and I rely upon reading the people, reading their body language and listening, listening to what's really being said... I think intuition is developed from experience, as well as having that gut feeling I never know where it comes from... a certain type of cloud in the sky and my experience tells me it might be snow or whatever... it's your experience, it's your observations over several years'* (Carolyn)

In developing their theory of practice, mediators adopted a heuristic, deductive approach. They trialled the usage of a technique and they judged the impact on the interaction: *'put something out there and then reassess'* (Diane) or *'that didn't work, I won't try that again'* (Frank). Practising mediation in this way places the interaction as an object, an experimental place to test hypotheses; decision making drives the interaction.

Contrast this however, with Lynda's account of how she inductively approached decision making. There is recognition that an intervention or change of direction is required because parties have become stuck. The focus is on the parties and the interaction drives the decision making.

*'What's going on in you that says this is a good time and place to do this'... 'I think that will be by observing what's happening with the other party... Or a sense that something is stuck'* (Lynda)

*'...a sense that something is stuck, that's the first intimation that I need to, maybe alter my interventions'* (Lynda)

*'it's deliberately thinking I'm going to the process now...get the participants to focus on the process because that gives them a breather away from the conflict...just changing that dynamic slightly and when you go back to the task at hand which is the conflict sometimes a teeny-weeny thing has changed'* (Lynda)

What might explain this difference between Lynda and the others? A degree in sociology and an ability to invoke Goffman when discussing interaction suggests a disposition towards the importance of the interaction. Moreover, there is theoretical anchoring for this approach:

*'The mediator's role is facilitative and non-directive, focusing on the moment-to-moment unfolding conflict interaction, and offering support for its transformation'* (Folger, 2008)

## **7.7 Micro Practice**

Beyond a strategy, framework or process lays the micro practice of mediation, those techniques deployed by the mediator in the course of each case. Choices must be made as to when these are used but underpinning this choice is a meta-theory. In the course of their interviews, mediators illustrated aspects of their practice by reference to techniques such as note taking and questioning and were asked what lay behind their thinking?

Note taking is a technique introduced in basic training where information gathering is emphasised. Mediators explained its purpose as *'... to keep track of the issues as they are raised. So as to form the formative agenda for the joint meeting'* (Erica) and *'scribbling some notes and taking something down that perhaps you might forget after some many minutes of talking and listening'* (Anna). The focus here is on the mediator ensuring that what is said is duly noted, but to what purpose? Is the mediator seeking to become better informed about the 'facts' of the case, a positivist ontology with the mediator positioned as expert deciding what is or is not important? Alternatively, is the mediator seeking to assisting a party to articulate what is important for them; a constructivist approach where the mediator's role is *'to help increase parties' understanding of their own views and the views of the other party'* (Folger, 2008).

Note taking appears to be a comfortable activity that demonstrates attention to the parties, but it inevitably draws the mediator attention away from the interaction. A choice must therefore be made. Attend to notes, in which case the mediator is central, or to the interaction where the parties are central. With experience, mediators are able to reflect on these two approaches as illustrated by one exchange:

Rose: *'(note taking) is a prompt really to make sure you've picked everything up. So, if that person is making some notes and then I'm feeding back to the party what I've heard, if I've missed something my co-mediator can chip in and say, 'and there is also this'*

Researcher: *'OK and what would happen if that had been missed by the co-mediator?'*

Rose: *'Then hopefully the party would say, 'no, there was this'. Otherwise it's lost'*

Another possible way of categorising mediator moves is to divide them into monological and dialogical approaches (Glenn and Kuttner, 2013). Is meaning determined by the hearer, or jointly constructed between parties. Indicative of the approach is the motivation behind asking questions:

*'We'll ask questions, we'll try and get information, we'll both be trying to get the information'* (Marian)

Here the focus is on the mediator obtaining the facts, becoming informed and subsequently enabled to make decisions based on this information. The focus is on finding information, whereas a dialogical approach would see questioning as co-constructing information which has meaning for the parties within their interaction.

## **7.8 Summary**

Development as a mediator is said to require a *'commitment to the notion that theory shapes practice'* (Lang and Taylor, 2000). These university mediators initially assume a reverse connection; that the theory they need is embedded in basic training. In such training mediators acquire a common set of skills and a common process but not necessarily a common set of assumptions. Without an explicit connection with mediation theory there is little to anchor their practice, and mediators clearly draw on multiple other sources whilst discarding theory no longer seen as relevant. This can lead to mismatches where what is practised differs from the underlying premises of the originally taught model. Thus conversation and not negotiation is the metaphor of choice, pointing to a theory-in-action which is relational and not transactional and where the self is formed in dialogue (Glenn and Kuttner, 2013).

This mismatch between practice and model is significant as it points to a difference in underlying philosophy which is analysed further in Chapter 8. Principled negotiation proposes that the people are separated from the problem; that conflict is resolved by identifying interests (Menkel Meadow, 2006). However, as described in Chapter 4, for university mediators the focus is on the people and conflict is resolved by enabling and repairing communication.

Mediators do develop their own theories of practice although gaining experience is an issue for many. Competent habitual practice, mastering the rules of mediation, takes precedence over the development of heedful practice, a focus on interaction. Habitual performance is the '*outcome of drill and repetition*', whereas heedful performance is the outcome of '*training and experience that weave together thinking, feeling, and willing*' (Barge and Little, 2008: 512). Learning is effected by reflective exercises with a focus on techniques – what should I do? – rather than on reflexivity – who am I? Integration is personalised, idiosyncratic and eclectic, relying heavily on the disciplines practised in their main roles. The practice of mediation assumes an importance for both personal and professional identity.

Mediators were not attuned to meta-theory and the drivers of decision making were largely unexplored by them. Intuition and instinct were offered as explanations, whilst exploring their meanings revealed a deductive approach where pre-conceptions, hypotheses as to the participants, the case and good techniques or patterns in mediation are tested (Rooney and Ross, 2012). Social interaction becomes an object, the place of experimentation. There was however an exception: Lynda, who took an inductive approach drawing information from the interaction of the parties. This begs several questions; do mediators have a predilection for either deductive or inductive approaches? Does that change with experience or respondent to emerging goals; say relational or transactional? Does the philosophy of root causes (TCM, HR practice) drive this choice? Are mediators seeking information, mutual understanding and common ground as paths to resolution or the co-construction of meaning as the basis for change and new ground?

Intuition, as outlined in Section 2.2.3, is a spontaneous response to interaction that can lead to patterned behaviour or creative improvisation. The former is a manifestation of habitual practice, the mastery of basic mediation skills; the latter represents heedful practice, a heightened attenuation to interaction. What is evidenced in Section 7.6 by interviewees' comments is intuition which leads to action which is patterned. However, there is in addition, evidence of improvisation: Frank moving beyond procedure and training to be receptive to interaction; Lynda's willingness to be inductive, to let the interaction drive her decision making. This is evidence of the emergence of personalised practice, a theme that is developed further in succeeding chapters.

## Chapter 8 – Discussion

### 8.1 Introduction

In the literature review, mediation was examined as a complex social interaction that can be understood from a symbolic interactionist viewpoint and mapped to practice models. Conceiving of mediation as an intersubjective process which defines and shapes the self is a theoretical approach that is distinct from other approaches emphasising the individual and their interests. Such distinctions are important because they operate at a meta-level; an overarching framework for models, techniques and micro-practices. How mediators conceive of social interaction is said to affect how they conceive their role and their performance of mediation; a *'social/communicative view of conflict fosters significantly different visions of the nature of conflict processes than does the psychological/economic view'* (Della Noce, Bush, and Folger, 2002: 50).

Mediators are said to respond to the complexity of their task by developing an individual style (Wall and Kressel, 2012) which draws on formal models and personal schema to produce an integrated practice. Integrating practice without a connection to theory can however be problematic, producing syncretism, an *'uncritical and unsystematic combination'* of *'pet techniques'* (Norcross and Goldfried, 2005, 15). Understanding a mediator's engagement with the concept of social interaction is a means of analysing their development of an integrated practice. Accordingly, the first cluster of research questions addressed the theme of social interaction:

1. *How do mediators conceive of interaction?*
2. *What theory do mediators draw on to shape their practice?*
3. *How do mediators make decisions?*
4. *In what ways might an explicit understanding of Social Interaction Theory contribute to a mediator developing a consciously integrated, flexible practice?*

The concept of personal style suggests that each mediator will practice mediation differently. The practice of mediation in universities, however, is predominantly co-mediation (Poyntz, 2012), which therefore raises a further aspect of interaction, namely that between the mediators. A second set of research questions – relating to the theme of co-mediation – was therefore formulated:

1. *How does co-mediation become effective given differing personal styles?*
2. *How do mediators coordinate their actions and cognitions?*

In general, university workplace mediators are relatively inexperienced in the practice of mediation and moreover practice infrequently (Poyntz, 2012). The mediation services who engaged in this study had been in operation for at least five years, and yet the most experienced interviewee in this study had accumulated just 20 cases over a period of seven years. The mediators were therefore relatively reliant on what they had learned in initial training to guide their practice. Initial training, as has been shown in Chapter 7, is light on explicit theory in general and on social interaction theory in particular. Nonetheless, university mediators are not devoid of connection with theory, as the interviews showed, but draw on other experiences and frameworks external to mediation, especially in their main roles.

Asking mediators directly about theory, as described in Chapter 7, tended to elicit a limited response. Consequently, this study adopted an inductive approach, inviting mediators to describe their practice and then seeking to locate these responses in the context of interaction theory. Earlier chapters drew a number of tentative conclusions as to the practice of university workplace mediators about their goals, engagement with theory, orientation to power and their endeavours to make co-mediation effective. This chapter develops these themes further and discusses the inferences that may be made from these accounts of mediator practice of their conceptualisation of the interaction that takes place in mediation.

## **8.2 First and Second-Generation Models of Mediation**

Formal models of mediation differ in their treatment of social interaction. In the facilitative model, interaction is implied. The model provides a framework in which parties, assisted by a mediator, can interact to reach an agreement. Second-generation models such as narrative or transformative mediation are intentionally explicit in their treatment of social interaction. They function on the premise that a change in the interaction between parties in conflict is foundational in the achievement of sustainable resolution. The transformative model provides a framework in which parties can improve or restore interaction (Bush, 2008). The narrative model provides a framework where discursive reasoning, the disruption and rebuilding of narrative by the parties can occur (Hansen, 2004).

Two important features of these second-generation models are a distinctive meta-theory, which underpins practice, and the use, or avoidance, of techniques utilised by the facilitative model. A basic tenet of second-generation models is that mediation is more than the assembly of techniques into a process which can be flexed to meet different goals, as noted by Della Noce (2002):



*'Bush and Folger's analysis was tying practice differences to theories of practice embedded in value-laden ideological meaning systems, and the attendant argument that mediators' preferred approaches were more a matter of deeply held values and assumptions than a matter of any strategic selection process contingent on party and case characteristics'* (Della Noce et al., 2002: 55)

Such an approach brings an epistemic clarity. Akin to the qualitative researcher, the mediator is enjoined to practice in line with an explicit epistemology. Narrative mediation is a subjectivist, post-modernist approach where the mediator engages directly with the parties in a process of co-destruction and subsequent co-construction of narrative (Winslade and Monk, 2002). Transformative mediation is an intersubjective approach premised on an explicit view of parties in conflict:

*'that human beings have inherent capacity and desire for both agency and empathy, and therefore flourish in processes like transformative mediation that support these capacities'* (Bush and Folger, 2013: 235)

### **8.3 The enactment of the Facilitative Model**

When asked about theory, some interviewees expressed their expectation that any theory they required was embedded within the formal model introduced in basic training. Even more experienced mediators expressed a reliance on the 5-step process acquired at this stage. Accordingly, examining the facilitative model as described by interviewees is a useful point of departure in revealing their implicit understanding of social interaction.

Looking at a macro level, it is necessary to observe that facilitative mediation can, in practice, be enacted in a number of ways. One particular feature distinguishes differences in approach in facilitative mediation to interaction: the use of caucus, the mediator meeting parties separately, and its relationship to joint meetings (Picard, 2000). The strategy behind the use of caucus – what the mediator is seeking to achieve in those separate meetings – highlights the importance placed on interaction, the nature of that interaction, and the power exercised by the mediator in performing their role. If interaction is deemed essential, joint meetings, where parties are in direct contact, will be emphasised and the caucus will be used to prepare parties to make effective use of joint meetings. In dramaturgical terms, caucus becomes a place where performance is rehearsed; the joint meeting where perceptions are shaped in interaction (Goffman, 1959) and the potential for change created. Where a more individualistic approach is practised, interaction is curtailed and filtered via the mediator. The joint meeting becomes a formalised prelude to a rapid retreat to

caucus (Coben, 2004) where the mediation remains until conclusion (Goldberg and Shaw, 2010). Caucus is where goals, particularly of settlement, are reached, and the mediator is firmly in control of the process and information flow (Moore, 1983; Gerami, 2009).

The use of caucus follows a norm, a set of expectations as to how mediation is performed in any given context. Consider for example the use of caucus in commercial mediation in the United States; an important reference point in that the focus on caucus has underpinned a settlement driven approach to mediation. This, in turn, elicited a critique as to the purpose of mediation, leading to the development and establishment of the transformative model (Bush and Folger, 1994). The norm for US commercial mediation is for the joint meeting to yield quickly to caucus, responding to the expectation of lawyers that separation of the parties is the appropriate path to drive a negotiation to settlement (Stipanowich, 2016). This positions the mediator, shuttling between the parties, to exercise power in shaping or determining settlement. The embodiment of such power is the mediator proposal, a mediator-determined basis for resolution, that is reported to be used in precipitating settlement in 90% of cases (Klerman and Klerman, 2015). A safe space is created in this approach, but it is located in the caucus where parties are invited to interact and share confidences with the mediator.

This practice is in stark contrast to the account given by interviewees of workplace mediation in British universities. Here, following the process laid down in basic training, mediators spoke of a caucus as a preparation for the joint meeting. Caucus is used to construct the joint meeting as a safe space for the parties to meet on an equal footing where they will be able to speak and be heard. The expectation is that the mediation will continue in joint session as this will enable the parties to interact or, as the interviewees termed it, to communicate with each other. Only by exception where, in the mediator's judgement, parties are unable to communicate effectively will a joint meeting be paused for a break or possibly a further caucus. The safe space created in this approach is located in the joint meeting where parties are invited to interact with each other directly.

What accounts for this difference in practice? One possible explanation is to attribute it to the strategic selection of techniques and a re-ordering of the process to achieve relational rather than instrumental goals, i.e. same (facilitative) model, different process. In essence, interviewees articulated a realist approach where there is a right answer to interventions and as, they explained, you just needed to follow the process. Skilful mediation becomes the ability to make the correct choice of technique in response to interaction; a form of bricolage, the handyman or woman making use of the tools available to complete the task at hand (Kincheloe, 2001).

An alternative is to view interaction in the context of epistemology; to acknowledge that a mediator's worldview or meta-theory influences how they practice, i.e. same model, different epistemic enactment. To adopt such a perspective questions the notion of the mediator as an objective neutral and admits to wider possibilities:

*'If I see the world as an objectivist then I'm managing structures, systems, and human assets or resources. If I see the world from a subjectivist perspective, I manage people with different interpretations of situations, and I am careful about the language I use because it shapes "realities." If I believe in intersubjectivity, then I am careful about relationships with people—who are human beings—and skilfully attuned and responsive to what is happening around me'* (Cunliffe, 2016: 744)

Practice as epistemology constitutes an approach where knowledge and doing are connected (Gherardi, 2009). In the legal field, epistemic understanding is the conception that lawyers have of their work which is distinctive and differs from *'other ways of knowing, being, and doing'* (Menkel-Meadow, 1999: 787). This epistemic understanding can shape practice in profound ways. Relis (2005), in her study of lawyer participation in the mediation of personal injury claims, found that lawyers and parties inhabit parallel universes. A lawyer's epistemic understanding, as applied to mediation, can readily lead to the enactment of the facilitative model in settlement mode as described above for US commercial mediation.

#### **8.4 Alternative Benchmarks**

The transformative model represents one such alternative point of reference as an explicitly non-realist, intersubjective approach to mediation. Direct and sustained interaction between the parties is important for university mediators but how is the nature of this interaction conceived? Symbolic Interactionism proposes a self that is shaped in interaction with an 'Other', by a threefold process of communication, interpretation and adjustment; a process which is both intersubjective and co-constructive. The transformative model adopts a similar approach which is termed relational and centred on human interconnection. This may be contrasted to what is seen as the individualistic pursuit of interests and settlement in facilitative mediation. The goal of transformative mediation is to enable recognition (of the Other) and empowerment (of the Self), to enable interaction between parties in conflict to function effectively (Folger and Bush, 2014). Settlement and even relationship repair are not precluded as the outcome of transformative mediation but adjuncts; goals that are contingent on the restoration of interactional capacity, and which parties are free to choose or decline.

Despite their basic training in the facilitative model, those interviewed provided accounts of practice that map to the transformative approach in several aspects. The use of a preliminary and preparatory caucus before conducting the mediation in joint session is identical (Tereanu and Quattrocchio, 2011). As detailed in Chapter 6, interviewees regarded recognition, the ability of one party to recognise the perspective of the other, as an essential step in the mediation process. This was achieved in interaction (communication) with the mediator taking the responsibility to facilitate the change of perception that enables recognition. Empowerment of the parties was, however, only viewed as a by-product rather than an essential product of mediation. Relational goals were prioritised over settlement goals. Goals were tiered, each step contingent on the outcome of the previous step. An initial goal was communication, but this can lead to partial or even full resolution and relationship repair. Interviewees eschewed the use of negotiation as a metaphor in favour of a conversation, mapping with transformative practice where we find the *'metaphor of "constructive conversation" as a way to describe the mediation process'* (Della Noce et al., 2008: 213). In terms of the relational/problem-solving watershed theorised by Bush and Folger, the practice of mediation in British universities can be seen as falling on the relational side. The facilitative model can clearly be practiced in a way which is not ineluctably centred on problem-solving or settlement.

The mapping of university mediation practice to the transformative model was more equivocal in the exercise of mediator power. On the one hand mediators endeavoured, as discussed in Chapter 5, to create a power-with environment echoing Habermas' concept of Communicative Action (Chilton, Cuzzo, and Stalzer, 2005). Having facilitated the construction of safe space, the ideal next step was for the mediator to fade into the background. On the other hand, interviewees described the use of techniques that fall outwith transformative practice. Actions that interpose the mediator between the parties redefine the interaction and affect the course of the mediation. In the transformative model, parties are said to control the process whereas interviewees explained that, in their practice, the mediator controls the process. Imposing ground rules on the parties, even in good faith in the construction of safe space, constrains their interaction. Calling breaks or fresh caucuses physically separates the parties. Adapting or translating communication between the parties, which occurs when mediators reframe, similarly modifies the interaction.

What do these differences and similarities tell us about interaction as conceived by the mediators participating in this research? Transformative practice is premised on an optimistic view of the human capacity to interact (Folger and Bush, 2014). Mediators provide support to the parties but do so in the specific context of empowerment and recognition. Practitioners are charged with observing the interaction and when opportunities for empowerment and recognition arise, working with the

parties to amplify or highlight these. Mediators are instructed not to invite, or worse to urge, recognition from the parties: *'Although the mediator's goal may be party empowerment or recognition, urging responses are attempts to orchestrate it, on the mediator's terms not the parties' terms'* (Jorgensen, et al, 1999: 4). In contrast, university mediators are prepared to take a more active role. When for instance describing their responsibility in reframing:

*'... It's my role to help somebody to see something from a different perspective'* (Angela)

Here the mediator is cast in the role of helper, suggesting the possibility that parties may lack the capacity to make progress without some direction or assistance. This may of course be an entirely valid judgement, but it emanates from a different view of human capacity to that associated with the transformative model.

Equally, the generation of ground rules for mediation may reveal an alternative view of interactional capacity. University mediators believe ground rules are an important part of structuring the mediation as a safe place; an underlying assumption that, in their absence, parties may lack the capability to interact effectively. A transformative practitioner may simply operate without ground rules (Gaspar, 2014). Furthermore, mediators may set ground rules with the consent of the parties or, taking an even more pessimistic view of capacity, by imposition.

The narrative and transformative models of mediation are distinctive in emphasising interaction and a relational approach: *'... the creation of the relational conditions for the growth of an alternative story'* (Winslade and Monk, 2002: 9). Paralleling university practice, both rely on the creation of a space for the parties, *'a psychologically safe environment'* (Hansen, 2004: 303). Both of these approaches share a common assumption: mediation must achieve relational depth if it is to lead to the sustainable resolution of conflict. In the transformative case, parties returning to the workplace are able to function effectively because relational depth is achieved in empowerment and recognition. In narrative mediation, relational depth enables a conflict-free narrative to be co-constructed; a shared experience and understanding that can endure beyond mediation (Hansen, 2004). By contrast, an emphasis on settlement in mediation with an attendant focus on solving problems, may not allow for interactional depth. Herein lies a challenge in university mediation; mediators may be disposed to allow for, or promote, relational depth but they do not act in a vacuum. They may be constrained by the expectations of their mediation service or the parties:

*'... It is a time limited solution focused intervention'* (Erica)

*'... the parties in conflict are just looking for a time limited focused technique for resolving conflict'* (Lynda)

Where the transformative and narrative models differ is in the role created for the mediator and the implications for the relationship with the parties. The transformative mediator is an observer of, rather than a participant in, the interaction between the parties, seizing on opportunities to amplify empowerment and recognition but yielding control of outcome and process to the parties. The transformative model positions the mediator outside of both process and outcome; the mediator is a follower not a leader, responding to the interaction rather than leading it. Transformative mediators enact neutrality by seeking to impinge as little as possible on the interaction.

The narrative mediator, however, is part of the interaction: *'a strong alliance with the conflicting parties is paramount and becomes the foundation for the work to follow'* (Hansen, 2004: 303). This 'strong alliance' is more than simply rapport, a feature of the facilitative model cited by interviewees. The 'work to follow' is a co-construction, the mediator actively working with the parties in demolishing a conflict narrative and rebuilding a new narrative. There is no differentiation between process and outcome, with the mediator exercising an *'explicit role... as a party to the conflict'* (Hansen, 2004: 307). Narrative mediators abandon neutrality and are actively engaged in the interaction.

University mediators do not, however, practice such sharp delineations. They are participants in the interaction but, maintaining a distinction between process and outcome, not to the extent required of the narrative mediator. Moreover, university mediators vary their degree of engagement in response to the interaction. Willing to act purely as initiators, they replicate the degree of engagement of the transformative mediator. However, if the interaction requires more support, they are prepared to engage further as promoters or even catalysts, a move that transformative mediators would consider dis-empowering.

To participate in the interaction to any degree, but especially as a catalyst, begs the question as to how a mediator influences the interaction. There is a parallel here with the researcher articulating their epistemology, their relationship with the object of their research, and engaging in the practice of reflexivity:

*'Reflexivity refers to the recognition that the involvement of the researcher as an active participant in the research process shapes the nature of the process and the knowledge produced through it'* (King, 2004b: 18)

From a Symbolic Interactionist perspective, reflexivity is *'a particular kind of internal conversation'* that enables the self to continually re-assess the adequacy of understanding and theory (Milliken, 2012: 690). It can be enacted as *'doing reflexivity'*, a means of controlling *'one's professional,*

*personal, and cultural biases in order to understand the standpoint of the other*' (Bagshaw, 2001: 218). In practical terms diminishing the effect of bias enables the mediator to listen to the parties with a *'respect for differences, an attitude of openness'* that underpins rapport (Feldheim, 2004: 352). Reflexivity can however be practised relationally, producing *'an understanding of how we create ourselves and others in conversation'* (Barge and Little, 2008: 528), in what is a constructionist perspective.

The facilitative model, as described by interviewees, seeks to position the mediator as a neutral, influencing the 'how' of mediation (the process) but not the 'what' (the outcome). The stance of neutrality has been linked to positivist thinking, *'that argues that an observer can be separate from the subject observed; that a mediator can intervene without having his or her values or experiences affect the process'* (Wing, 2009: 390), so we might expect neutrality to be enacted as an objective observer, with the mediator distant from the interaction. However, what was found in this study was a range of interpretations of neutrality, from detached objective observer through supportive facilitator to directive interactor. University mediators endeavour to enact neutrality but recognise that values and experiences do come into play. Consequently, they enact neutrality in idiosyncratic ways that reflect their own disposition and identity as mediators.

There is thus a dilemma for each university mediator between their espoused theory of neutrality and their theory in action. Do they continue to assert neutrality, because this is the practice norm, or do they adopt a different epistemological position that is more attuned to their actual practice? Adopting an alternative epistemological position could bring coherence but needs to work for the individual and also broadly fit within the practice of the mediation service for which they work. Narrative and transformative mediation each offer an alternative to neutrality but might be considered too radical a departure, requiring an entire mediation service to migrate to a different model. A third possibility lies in the concept of the reflexive mediator, being rather than doing reflexivity (Rothman, 2014). Acting reflexively the mediator takes account of *'the relationship between self, other, and context'* (Rothman, 2014: 443), an intersubjective, constructionist epistemology. Neutrality is set aside as a positivist notion because mediation is viewed as an interpretative process. The mediator is positioned as integral to the interaction, *'part of an interpretive and intersubjective process in which "truth" is co-constructed'* (Rothman, 2014: 442), modelling reflexivity for the parties.

## 8.5 Locating Practice

In Sections 8.3 and 8.4, the practice of workplace mediation in universities was compared with both first and second-generation models. It now becomes possible to locate the practice of university mediators in the context of these models and their epistemic underpinnings in three interim findings.

1. Practice in British Universities is distinct from the facilitative (problem-solving mode) model practised in the United States. Such a difference could be attributed to a strategic choice of technique to fit relational rather than transactional goals. However, examining the ways university mediators approach interaction suggests a plausible alternative is a difference in epistemic enactment.

The facilitative model, as the dominant model of mediation practice, has a privileged position. This absolves it from a need to be explicit in stating its meta-theory; as interviewees explained, you just need to follow the process. Skilful mediation becomes the ability to make the right choice of technique in response to interaction. The core of the facilitative model is based on the four elements of principled negotiation: “interests, not positions”, “separate the people from the problem”, “invent options for mutual gain” and the use of “objective criteria” (Menkel Meadow, 2006: 485). Yet these precepts are unrecognised by university mediators and their practice is relational; their focus is not the problem but the communication between the people. Interaction is not the search for objective criteria but the construction of intersubjective meaning. University mediators are positioned between a model acquired in training which is realist and a practice which is intersubjective and relational.

2. Practice in British universities is relational, intersubjective and co-constructive, sharing aspects of but distinctive from the transformative model of mediation. A major difference between the two approaches is that they make different assumptions about the capacity of humans in conflict to interact. University mediators are prepared to provide structure and support to parties whereas the transformative model proposes that such support is unnecessary and, an inappropriate role for the mediator. This discrepancy translates into differences in the exercise of mediator power and positioning.

The various models of mediation discussed above can now be categorised according to how they treat interaction, as shown in Table 12. The Transformative Model can be seen as intersubjective and a co-construction. However, co-construction is between the parties with the mediator sitting



outside the interaction as a follower. The Narrative Model can be considered as relational and co-constructed but not intersubjective as the focus is on structure (the dominant narrative) rather than agency (the parties). Here the mediator sits within the interaction, leading the process of deconstruction and reconstruction. The Facilitative Model – in its US problem-solving mode – is viewed as individualist rather than intersubjective, with the mediator positioned between the parties enacting neutrality by ‘doing’ reflexivity. Rothman’s Reflexive Mediator – more an invitation to be reflexive than formal model – is a co-constructive approach that positions the mediator as part of the interaction.

**Table 12 Models of Mediation Practice**

Model	Intersubjective	Co-constructive	Mediator Position in Interaction
Transformative	Y	Y	External
Narrative	N	Y	Internal
Facilitative (US)	N	N	Controller
Facilitative (UK uni)	Y	Y	Varies
Reflexive	Y	Y	Internal

The practice of mediation in British universities is intersubjective and co-constructed. However, the positioning of the mediator varies reflecting disposition and situation. In analysing power in Chapter 4, it was suggested that mediators perform as initiators, promoters or catalysts. Interviewees described an aspiration to exercise as little power as possible; they are disposed to be initiators. On occasion the mediator is able to step back fully from the interaction, performing much as a transformative mediator-follower might. However, if the interaction requires support the mediator becomes part of the interaction as a promoter. At an extreme, mediators feel an obligation to act as catalysts, to step in and provide control to keep the mediation on track. Mediators may be disposed to a minimalist position but necessity, how a mediator needs to act in response to the quality of interaction, may dictate otherwise and require the mediator to intervene.

Disposition, namely how a mediator would choose to act, is both personal and emergent. Mediators learn from experience and formulate a style which is personal, or as one interviewee described it, authentic for them (Carolyn). Interviewees described how with experience their practice had changed. Practising mediation at first is ‘*like learning to drive*’ (Diane); intense concentration is required to implement the practice model acquired in basic training; mediator control is paramount and neutrality an objective. Thereafter, with experience, interviewees talked about becoming relaxed about following guidelines (Rose). Mediators gain the confidence to loosen control and let interaction flow (Erica, David, Nicola); to become ‘*more relaxed at letting a situation develop*’ which in turn allows ‘*more head space to think about what approach I’ll take*’ (Diane). What is evidenced

here is the emergence of what Kressel terms 'complex schema', less reliant on the formal model and with more nuanced procedural scripts (Kressel, 2013: 726).

This process of learning enables the university mediator to take a path which emerges in practice as intersubjective and co-constructed, consonant with their meta-theory. However, this introduces a tension with the original model, most visibly seen in the issue of neutrality. Is it coherent to position oneself as a co-constructor whilst holding to the premises of neutrality advocated in basic training? Is it consistent to exercise mediator power in ways which corral or constrain the interaction? More specifically, is reframing still a legitimate technique and, if so, under what circumstances?

3. Practice in British universities has an individual dimension; each mediator approaches interaction in ways which reflect their own worldview or disposition. As mediators develop more complex schema, as their disposition emerges, there is growing tension with the structure in which they practice.

If individual mediators formulate a personal style which is consonant with their disposition, they also recognise a tension with the necessities of mediation. They must work with the expectations of the parties, the community of practice represented by the university mediation service and (typically) alongside a co-mediator; a tension explored in the second cluster of research questions. It was noted above that a characteristic of second-generation mediation models is relational depth, but mediators may feel that the structure within which they operate necessitates a focus on solutions, to help the parties discover common ground rather than explore differences. One might depict this as a balloon (of disposition) inflating towards a co-constructive, intersubjective practice within a box that represents the constraints of structure.

One particular aspect of structure that has been noted in this study is the micro-practices deployed by mediators. Superficially, these practices tell us how mediation is performed. However, they do not tell us why these techniques are used, that is, about the underlying meta-theory behind their deployment. For instance, mediators may use questions to improve their own understanding of the case, to discover the facts or root cause of conflict. Alternatively, they may use questions to promote collective understanding or encourage storytelling and invite recognition. As outlined in Section 2.4, these different uses of questioning represent respectively, a monological and dialogical conception of interaction which in turn can be linked to a settlement or relational approach to mediation. What is evidenced in this chapter is the emergence of relational practice. However, emergence is coupled with the vestiges of micro-practice that operates under a monological conception of interaction. What the university mediator experiences as relational practice emerges is a dissonance between

rival meta-theories, one embedded in the formal model taught in basic training and the other emerging in practice. Mediation, as evidenced in Chapters 4 and 7, is taught as an uncovering of interests – part of principled negotiation – but practised as a restoration of communication. Mediators reported being trained to be in control of the process but are evidently disposed to practice in a power-with orientation (Chapter 5). When being trained, they are drilled to position themselves as neutral observers but recognise that they do not stand apart from the interaction.

Table 13 – an updating of Table 2 – shows how micro-practises, power and neutrality can be mapped to monological and dialogical interaction. In monological interaction, the mediator is detached from the interaction, an objective observer reading the interaction, seeking facts, before formulating a course of action. In dialogical interaction, the mediator becomes a co-author alongside the parties helping to construct meaning. The emergence of practice as relational means a potential mismatch between micro-practice and meta-theory; mediators disposed to practice relationally but deploying practises that support a settlement approach. We now turn to a discussion as to how mediators can address this dissonance and bring coherence to practice.

**Table 13 Dissonance in Practice**

	Monological	Dialogical
Approach	Settlement	Relational
Mediator positioned as	Reader	Co-author
Interaction viewed as	Place of experimentation where hypotheses and formulations are tested	Place of relationship
Parties viewed as	Single agents	Inter-related
Information sought to	Uncover facts	Construct meaning
Questions are	Solution Focused Promote mediator understanding Seeking the cause of conflict	Interaction focused Promote collective understanding Inviting recognition
Neutrality seen as	Simple, mediator as objective observer	Nuanced, mediator as participant
Mediator Power	Wielding control	Ceding control
Joint Meeting viewed as	A perfunctory prelude to private sessions (caucus)	The essential core of mediation

## 8.6 Learning and Integration of Practice

Having analysed how university mediators conceive of interaction, we now examine how they seek to integrate their practice by learning from experience. A mark of professional competence is the

development of one's own theory of practice (Argyris and Schön, 1974); an integration of theory and the experience gained in practice. In the literature review, alternative routes to integration utilised in the field of psychotherapy were outlined (Boswell, Nelson, Nordberg, McAleavey, and Castonguay, 2010). The underlying premise is that the practitioner starts with an initial model or theoretical framework. Through experience, a practitioner subsequently recognises gaps in the efficacy of their model, and thus they draw on other models either in whole or part to supplement their practice. This conception of integration rests on three assumptions: that the practitioner is attuned to their basic model, is aware of alternative models or techniques and, finally, is engaged in a process of critically examining their practice for gaps.

As discussed in Chapter 7, the manner in which university mediators are trained means that they lack an explicit connection with the theory underpinning the mediation model they practice. They are able to describe their facilitative model in terms of practice, the process they apply and the techniques they use, but not explicitly in terms of theory. Where thought is given to theory, it is assumed to be embedded in the process learned in basic training. With one exception, mediators had no knowledge of other models of mediation. However, university mediators entering the field of mediation each have a start point in the theory and experience acquired in other fields and roles. Thus, Lynda acknowledged a contribution from group psychotherapy supplemented by theory acquired from coaching, whilst amongst the interviewees there was experience of interaction as a football referee, a magistrate and a Childline counsellor. Learning how to mediate in basic training becomes a further layer in their personal portfolio.

University mediators do not practice frequently, so they have few opportunities to test the efficacy of their practice and to identify gaps. However, when they do undertake cases, mediators in the study revealed they actively seek to learn by way of reflective practice. This is conducted with their co-mediator, service coordinator or within their mediator group. Two types of questions typify such reflections: 'what' and 'how'? The former questions allow the less experienced mediator to ask what they should (or should not) be doing, seeking confirmation that techniques acquired in training have been correctly applied. They also act as a check on the carry-over of practice from a mainstream role such as coaching.

*'... We had to probe a bit more. Was it the question I'd asked? Was it the language? Was it the way I'd said it? We talked around the fact that I was a coach, which is why the first session I ever did was so difficult because as a coach you're using certain style of questions and the first stage meeting is just getting the information, isn't it, and probing' (Marian)*

More experienced mediators were confident enough to focus on 'how' questions: '*... how did it work for you, how did you feel it went... was there anything on reflection you would do differently, what worked really well?*' (Nicola). How questions address micro-practice, examining which techniques should be used and when they should be deployed. Mediators recognise 'what' and 'how' type questions operate at a functional and practical level: '*we tend to reflect on things from quite a functional level, what works, what didn't work, do we get the outcome we were hoping to get rather than on the theoretical backgrounds to it*' (John). Reflections on interaction in mediation are restricted to questioning how the co-mediation partnership has worked. Such conversations however have their limits.

*'... the other thing we tend not to do very much is to question how did I do, do you have any feedback for me? Which is obviously quite an exposing thing to ask, if you don't get the answer you wanted'* (John)

Professional learning has been conceptualised as taking place at two levels: single loop and double loop (Argyris, 1991). Reflection, centring on what and how questions, operates as single loop learning, '*problem solving, identifying, and correcting errors*' (Cunliffe, 2004: 412). Double loop learning involves reflexive learning encapsulated by 'why' and 'who' questions. The first are a form of practical reflexivity; a testing of taken-for-granted assumptions (Pässilä, Oikarinen, and Harmaakorpi, 2015) going beyond technique to examine the meta-theory which integrates practice. Why questions challenge the purpose of any technique and can shed light on the mediator's conception of interaction and their role. For instance, one could ask of ground rules, 'what constitutes an effective ground rule', or 'how to apply them', but asking an individual mediator 'why they use ground rules' prompts a deeper analysis of beliefs and assumptions.

'Who' questions are a form of self-reflexivity; an examination of '*our own beliefs, values, and so on, and the nature of our relationships with others, what we say, and how we treat them*' (Cunliffe, 2016: 741). They enable the mediator to consciously examine their role in the interaction and their relationship to the parties. They also involve a challenge to taken-for-granted assumptions. Neutrality, for instance, subjected to self-reflexivity, turns from being a given that the mediator must enact, to an invitation to examine how the mediator positions themselves within the interaction.

Engaging with reflexive questions is unsettling, and deliberately so, as it admits to the possibility of change; '*practical reflexivity means unsettling conventional practices*' (Cunliffe and Easterby-Smith, 2004: 31). As John's experience of reflection above illustrates, answers are not always comfortable. Organisations are said to have an epistemology of learning (Schön, 1995); a way that learning is

done. In university mediation practice this stops at reflection ('what' and 'how' questions). Why should this be? One possible explanation is pragmatic: there is simply inexperience both at the individual and organisational level. Seeking to master the basics is a necessary and sufficient level of learning, especially where a service is effective and practitioners occasional. Reflexivity, opening up possibilities, may feel an uncertain place whilst still attending to foundations. As Kressel notes, developing a complex schema brings the challenge of 'decisional stress'; equipped to adapt to interaction the mediator must now make choices rather than follow a set script (Kressel, 2013: 726).

An alternate explanation is epistemic. There is a taken-for-granted assumption that what is needed to be able to mediate effectively is contained in the basic model. New techniques may be added to practice in an eclectic manner by each mediator, but this can be done without recourse to any broader meta-theory. What and how questions are necessary and sufficient to master mediation; an underlying assumption that reflexive practitioners posit as realist:

*'Reflection is a collective rather than primarily individual learning process... Reflection is based on a realist view of the world, while reflexivity is grounded in constructionist and deconstructionist view of the world'* (Pässilä, Oikarinen and Harmaakorpi, 2015: 70)

*'Reflexivity is very different from reflection, which can be regarded as a modernist idea that searches for patterns, logic and order'* (Gray, 2007: 13)

*'... reflective analysis draws on traditional assumptions that there is an objective reality that we can analyse using logic and theory, critically reflexive questioning draws on social constructionist assumptions to highlight subjective, multiple, constructed realities'* (Cunliffe, 2004: 214)

To engage in reflexivity is to recognise that what and how questions are necessary but not sufficient. Why and who questions are required if an epistemic approach that is non-realist is to be accommodated. As Argyris observes, double loop learning requires a change in thinking; *'the cognitive rules or reasoning they use to design and implement their actions'* (Argyris, 1991: 100). Reflective practice can produce the *'rule-governed interaction'* of habitual performance but heedful practice, responding to the complexities of interaction, requires reflexivity.

*'The question becomes what practices allow them to engage in such creative weaving and improvisation. As a starting point, we would suggest that the practices of "holding one's tools lightly" and deconstruction may provide practitioners two important resources to engage in bricolage'* (Barge and Little, 2008: 521).

For university mediators, integration is hindered by three factors. A lack of opportunity to practice; reflection that is single loop learning and focused on technique; and a lack of theoretical framework to anchor the integration. University mediators are effectively limited to Assimilative Integration (Boswell *et al.*, 2010), practice which is rooted in the facilitative model but includes techniques from other non-mediation sources. Given that theory is individually acquired, it is inevitable that integration is eclectic and idiosyncratic, with each mediator formulating their practice in different ways.

### **8.7 Relieving the Tension**

Is such integration problematic and if so how might this improve? On the one hand the practice of mediation in universities is – according to the accounts rendered by interviewees – flourishing, and mediators and the services they work within are functioning effectively. Nonetheless, this study has revealed an underlying tension. Mediators have an ideal of practising in a relational way but are wedded to techniques that can be used either relationally or in a problem-solving mode. Just following the process may be effective in developing basic competent practice but mediators go on to develop more complex practice schema. Unanchored by an explicit grasp of meta-theory, mediators can unwittingly use techniques or exercise power that is inconsistent with a relational approach. A prime example, raised in Chapter 5, is the choice of who speaks first in the joint meeting. Without reflexive practice it is difficult for the mediator to develop a clear concept of their identity and their position in the interaction; to understand their personal schema and the influence this has on integration.

Engaging in reflexive practice can lead to clarity about who the mediator is within the interaction and the role they will play. This enables the mediator to be attuned to their self (knowing themselves) and the parties (empathising with their attempts to know the self and understand the other). Introducing a reflexive dimension into interaction enables the reflexive mediator *'to achieve a kind of resonance with the disputants... a sympathetic vibration'* with the parties (Rothman, 2014: 447). For the mediator, being attuned to self involves congruence between personal schema and practice, something which Gaspar describes in her switch from a facilitative to a transformative model (TM):

*'TM resonated with my worldview and how I experience people as a therapist. I allowed the 'therapist' to integrate with the 'mediator' and remain separate at the same time'* (Gaspar, 2014: 3)

Reflexivity can also be considered to have an ethical dimension; it involves a challenge to self-identity and a willingness to test assumptions. It is best conducted in a safe supportive space. As such it parallels mediation practised in a relational approach. If mediators are inviting the parties to be reflexive, then arguably they have an ethical obligation to be reflexive in their own practice, to understand themselves and their positioning within interaction.

### **8.8 Impediments to Reflexivity**

A number of barriers exist to reflexive practice. The first is a lack of recognition for the role of meta-theory. Given that mediation is a part time activity, mediators take a pragmatic view; ‘what I have learned is effective so why should I change?’ For the least experienced, there is the challenge of mastering the basics and in any event the theory that is needed is embedded within the model. At the heart of this antipathy is the philosophical question: is mediation a collection of techniques ordered into a set process or a meta-theory that provides the basis for practice? In a sense this is a juxtaposition of the first-generation (facilitative) model and subsequent second-generation models which are explicit regarding meta-theory; a debate about what drives mediation that continues to echo within the practitioner community:

*‘We are disappointed that our view that sound practice must be based on coherent underlying theory has not gained wide acceptance in the field’* (Folger and Bush, 2014: 28)

A second impediment is the means of acquiring an understanding of theory. Having outlined a five-step process much of basic training is subsequently concerned with role play. Continuous simulation of practice produces mediators who can functionally perform their roles, but who lack a grasp of the concepts involved:

*‘Role-play exercises enhance student motivation when compared with the more traditional learning approaches of lectures and case studies but do not significantly improve concept learning’* (Druckman and Ebner, 2013: 62)

This manner of training may assume that reflective practice will augment learning. However, an improved use of techniques still leaves the mediator without theoretical anchoring. Reflection hones the development of the habits of good practice and the habitual is somehow comforting, a ‘*well-worn groove*’ (John), whereas reflexivity is discomfiting, a challenge to identity. Even so, reflection is not always a preferred route for learning: a ‘*least preferred style*’ (Nicola), ‘*not a strong point*’ (Lynda). Nonetheless, participants in this research readily acknowledged the value of reflecting on practice and doing so at a level deeper than technique:



*'I think it is so powerful. It's really interesting to try and understand well why does it happen... [However] reflection is one of my least preferred styles, although this [mediation] is an activity that's pushed me into that more than anything else I think'* (Nicola)

*'I think that it's an opportunity to spend a whole hour talking about one's practice which would be rare. We don't often get the chance to do, so I find that enjoyable'* (Lynda)

*'It was really interesting; it's very interesting to ask yourself these questions... But, to be honest, it's interesting having talked some of these things through with you. I'll be more mindful when I go into the next one about things like flexibility and reframing. I'll be watching out for it more...'* (Angela)

Reflexive change is a challenge not only for the individual but also the service for which they work and the co-mediators they work alongside. It requires a change to *'the cultural grammar of the community and [to] move the community in a particular direction'* (Barge and Little, 2008: 516), and therefore requires a collective engagement. Mediators need permission to examine the values of mediation, the *'...much deeper more intangible value behind mediation that maybe we don't talk about enough'* (Frank) and challenge its nostrums; for instance, is mediation *'... a time limited, solution focused intervention'* (Erica) or a relational process?

### **8.9 Integrating theory and practice**

Mediators are said to have a practical bent when it comes to theory (Macfarlane and Mayer). They try it out *'in practice to see if it is really valuable and then translate it into something concrete and practical'* (2005: 8), a sentiment echoed by Frank when describing his application of new theory to practice. The research question raised the possibility of social interaction theory impacting on practice, particularly on consciously integrated practice. What this chapter has demonstrated is that university mediators have a theory of practice for interaction that is emergent, and best understood from an epistemological perspective. To support this emergence, and consistent with the co-constructed intersubjective theory of interaction inferred from practice, reflexive practice has been proposed; a set of why and who questions that enables the mediator to understand their theory of interaction and their position within it.

Gaining sufficient insight to be able to develop is a challenge for all professionals as we may lack the perspective and the context to learn; *'Tacit knowing that practitioners usually cannot describe (at least without observation and reflection devoted to that purpose)'* (Schön, 1995: 34). Consequently, what is proposed by this researcher is a series of focus questions that draw on aspects of interaction

revealed in this study. These can be used in two settings: the collective gathering of mediators and the post-mediation reflective process.

Mediator responses to the interviews showed that even the less experienced can gain from reflexive process when it connects to practice in ways which mediators can relate to:

*'I have found this really interesting and you've actually given me a lot of food for thought particularly around...style and values, power of the mediator's role. Yes, it's just been really, really interesting and it's just given me, like I say, an awful lot of food for thought really. Because it's funny, you're so busy in your day job and mediation is just another string to the bow, what you go out and do. I don't really think I've sat back and thought in great detail, how I do it, why I do it, what the outcomes are. I kind of just go off and take quite a practitioner's viewpoint. So, I think I might just need to step back from that'* (Rachael)

*'It's just been really interesting to revisit it all again and to question, question things a lot more. I think we get bogged down in just the work and the to-do list and you don't have time to evaluate and reflect. And this has given us the opportunity to do that'* (Sarah)

### **8.10 The Fourth Chair**

The second set of research questions introduces the issue of co-mediation. As described above, experience enables university mediators to develop a personal style, to enact more complex schema of practice that deviate from the simple script acquired in basic training. However, this creates a possible tension between mediators, especially where levels of experience differ.

In Chapter 6, effective co-mediation was seen as being based in trust and having two dimensions, role trust and relational trust. Role trust, the mutual understanding between co-mediators of what mediation entails, is secured by mediators engaging in basic training in the facilitative model. Having a common understanding of techniques and process steps enables the establishment of role trust even where co-mediators have been trained by different providers as evidenced by David and Angela. We might speculate, however, that role trust might be under threat where one mediator had been trained in the facilitative model and another in one of the second-generation models where meta-theory is made explicit to the trainee practitioner. Role trust underpins habitual practice.

In universities, relational trust is often underpinned by established partnerships, mediators becoming extremely familiar with their co-mediators over time. Four of those interviewed had such experience and spoke of the opportunity to play off each other's strengths. Confidence in the tacit

knowledge of how your partner responds in mediation enables an established pair to move beyond habitual practice to heedful performance, a focus on the interaction rather than following a script.

Co-mediation is seen by university mediators as an opportunity to perform, with the mediators enacting collaboration or vulnerability in interaction with each other as a model for the parties. Disparities in levels of experience in the co-mediated pairing may become apparent to the parties but present an opportunity to demonstrate the valuing of difference. This practice again represents a taken-for-granted assumption about the capacity of parties in conflict to interact and the position that mediators take within the interaction.

Co-mediation is valued by mediators as a means of providing support for each other, within the process and subsequently in reflective practice. In particular, interviewees spoke of the helpfulness of having a second perspective, somebody to pick up on something that might otherwise be missed. However, this emphasis on the mediator as the fulcrum between the parties is at odds with an intersubjective and co-constructed approach. Moreover, what acts as a supportive cradle for the less experienced mediator might become a cage that restricts the mediator's progression along a path of reflexive personal development.

### **8.11 Performance, Improvisation and Vulnerability**

In Section 2.6, attention was drawn to two theories which conceive of mediator development as a three-stage process. In stage one, the mediator seeks to master habitual practice, relies on basic training and adopts simple goals. In stage two, the mediator develops a theory of practice by reflecting on their experience of mediation. This theorisation is personal and linked to their individual beliefs and values. This enables the mediator to engage with a more complex set of goals. Finally, in stage three the mediator progresses to heedful performance where there is mastery in or with interaction. At this stage there is a bifurcation of practice. One path of heedful performance is predicated on a monological conception of interaction that, as argued in Section 2.5, maps to a settlement approach to mediation. In contrast, the second path involves a dialogical conception of interaction that is relational in approach.

This study, drawing on Goffman's dramaturgical approach has pointed to mediation as a performance. Performance takes place at both the habitual and the heedful level. At the habitual level there is *mise-en-scène*; the setting, lighting, staging and stage design that frames the mediation for the parties. This has particular importance for the parties as they come as newcomers to the performance and their expectations must be shaped. The provision of a safe space – analysed in

Chapter 5 – is an example of such stage setting. Mediators perform mediation in ways that maintain and promote that safe space, primarily from the establishment and maintenance of ground rules.

Where habitual performance sets the stage, heedful performance is a focus on interaction. Heedful performance can be conducted in ways which support settlement or discourse (Jarrett, 2012). In a settlement approach, the focus is on finding a solution and principled negotiation proposes that the route to agreement is by the uncovering of interests. Parties are vulnerable in that they are invited to reveal interests and expose a negotiation position. Mediators recognise a transactional vulnerability and respond with the creation of a safe space. In a relational approach the focus is on the interaction between the parties and the route is via communication and recognition. Parties are vulnerable in that they are invited to reveal the self. Mediators respond by performing vulnerability, revealing themselves in an openness to their co-mediator and the parties that was described in Section 6.7.

In Section 2.2.3 reference was made to intuition, a term used by mediators to describe the basis for their decision making, and improvisation, a creative way of acting upon intuition. In Section 7.5, interviewees described their decision making as guided by intuition, reading cues such as body language to discern patterns and act upon them. Intuition that leads to patterns is habitual, an ability to skilfully execute the rules and select appropriate interventions. This is spontaneous but lacking the creativity implied by improvisation.

Where habitual practice elicits a patterned response to interaction, heedful performance represents a creative improvisatory approach. Once mediators can master habitual practice there is an opportunity to be creative. In Chapter 7, there is evidence that with experience and the emergence of a personal style mediators are prepared to move beyond the structures and processes taught in basic training. A relational performance of improvisation is seen in vulnerability, an articulation of openness and an invitation to the parties to interact in ways previously blocked by conflict. More experienced university mediators perform vulnerability as evidenced in Chapter 6. To do so prioritises the relational over the transactional. Improvisation is however a skill that operates within a meta-theory or epistemic enactment. As noted in Section 2.2.3, a mediator's creativity can be settlement directed, the performance of improvisation eschewing process in favour of outcome, looking for creative solutions.

What distinguishes heedful monological and dialogical heedful performance is shown in Figure 9. Where settlement prevails, conflict is seen to be resolved by the uncovering of interests. Parties are recognised to be vulnerable, but improvisation is focused on outcomes. The safe place created by

mediators facilitates the revealing of interests. In a relational approach, mediators perform vulnerability, revealing their selves. The safe space becomes somewhere the parties are willing to reveal themselves and recognise the other.

**Table 14 Monological and Dialogical Performance**

Monological	Dialogical
Settlement Approach	Relational approach
Improvisation as outcome	Improvisation as process
Recognising vulnerability	Performing vulnerability
Disclosing interests	Revealing self

### 8.12 Summary

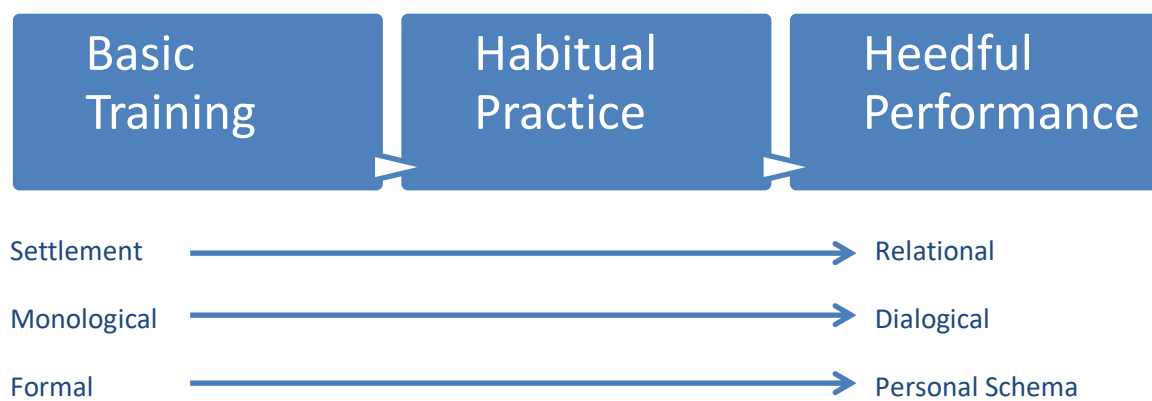
One advantage of the facilitative model is its potential to be used either in a transactional or relational way. Embedding practice by setting role plays in context – that is, using workplace cases to train workplace mediators – would seem to be effective in equipping mediators to start practice. As they gain experience, mediators learn from reflective practice and become more adept at selecting and utilising technique. All of this is entirely coherent within a realist conception of practice and professional development. However, the practice of workplace mediation in universities can be viewed through other epistemic lenses.

The accounts provided by university mediators indicate they had embarked on the development of more complex schema moving away from the strictures of the formal model. They practiced an approach which can be seen as intersubjective and co-constructive. This induces a tension between the unexamined theory embedded in the formal model acquired in basic training which interviewees espouse and their theory-in-action: how, in practice, they conceive of interaction and their position within it. As they seek to develop professionally, these mediators have a choice: to focus on technique through reflective technique or allow for meta-theory and seek a personalised epistemic clarity in reflexive practice. Proponents of the narrative model may urge us to accept *‘there is no overarching truth and there are no universal principles, metatheories, or metanarratives’* (Bagshaw, 2001: 217). However, it is still possible to acknowledge the impact of individual meta-theory and look to produce a coherent integrated practice, an individual style for each mediator.

What is evidenced in this study is the emergence of practice that is relational and dialogical, that represents a progression from the formal model that occurs over time as mediators gain experience and a sense of their identity in the role. The mediators who were interviewed had a range of experience, some with little more than basic training and others who were clearly developing a

personalised theory of practice. Figure 9 is a representation of such progression. Mediators move from basic training, through habitual practice and onwards to heedful performance. Basic training equips the novice mediator with a formal model that is rooted in monological interaction and a settlement orientation. The trainee emerges with a set of rules that with practice form the basis for competent habitual practice. With further experience, mediators become confident to draw on personal schema to shape their practice and become heedful in interaction. They move from executing rules to being comfortable to operate with decreasing levels of structure and, a growing ability to draw on intuition and improvisation.

**Figure 9 The Emergence of Heedful Performance as Relational**



In this chapter, the practice of university mediators has been identified and analysed as emergent, relational, intersubjective, and co-constructive. Parallels have been drawn with second-generation mediation models, but it has been shown where university practice differs. The development arc for university mediators has been plotted and the reflexive practice that can promote such development explored. The final chapter of this thesis presents the conclusions of this research, discusses its implications for practice discussed and suggests possibilities for further study.

## Chapter 9 – Conclusions

### 9.1 Introduction

This research has examined the practice of workplace mediation in universities as performed by 18 relatively inexperienced practitioners. Drawing on data generated through group work, questionnaire and interview, it has analysed mediators' practices through the four lenses of power, theory, goals and co-mediation. This final chapter draws together the main findings presented of the research, examining these in the light of current knowledge and the research questions. The chapter concludes with recommendations for practice, future research and a brief reflection.

The premise for undertaking this research was that viewing mediation through the lens of interaction could advance knowledge of the practice of mediation. This final chapter demonstrates the importance of understanding interaction for the theoretician and being intentional in interaction for the practitioner.

### 9.2 Findings

The findings of this research are collected under three main headings which are explored further to underpin the argument which is being made.

**Finding 1** The first finding of this research is that university mediators have a distinctive approach to interaction that is relational, intersubjective and co-constructed.

This finding accords with previous research that has demonstrated mediators make a choice between a relational and a settlement approach to mediation (Kressel and Wall, 2012). A relational approach is associated with second-generation models of mediation (Kressel, 2007). However, proponents of these models question whether the facilitative model, rooted in individualist ideology, can be practised relationally (Bush and Folger, 1994). At issue between these different views is whether mediation is a set of techniques that are strategically applied – a first-generation conceptualisation of mediation – or alternatively sits within an overarching meta-theory, a second-generation conceptualisation. It is argued in this thesis that meta-theory, an epistemic enactment of mediation that is intersubjective and co-constructed, is a compelling explanation for the relational practice found in university workplace mediation: a first-generation mediation model can be practised in a relational approach.

Categorising mediation practice as relational conveys an approach where the mediator's focus is on the interaction between the parties rather than the solution to a dispute or conflict (Folger, 2008).

Relational practice is frequently linked with dialogical communication, the co-construction of meaning and an intersubjective process (Cunliffe and Easterby-Smith, 2004; Fox, 2007). In contrast to the control exerted by a mediator engaged in a settlement approach, relational practice may be viewed as non-directive (Kressel et al, 2015; Folger, 2008).

Differences between models of mediation can be difficult to observe as similar skills are deployed, albeit for different purposes (Picard and Siltanen, 2013). University mediation shares some of the attributes of second-generation mediation models, but is distinctive in both its goals and mediator positioning. For instance, recognition is perceived as an important sub-goal, and empowerment a possible by-product of university practice; in the transformative model, recognition and empowerment are twin and primary goals. This distinction was explored in Chapter 8, where university practice was compared with both first and second-generation models and a map comparing practice (Table 12) provided.

The approach taken in mediation is rooted in the mediators' conception of goals: purpose drives practice (Folger and Bush, 2014; Jorgensen *et al.*, 1999). Moreover, *'there cannot be a good how to mediate without knowing what purposes the process is intended to serve'* (Menkel-Meadow, 2016: 24). A settlement approach is predicated on substantive rather than relational goals (Hansen, 2004). Underpinning the conclusion that university practice is relational, is the finding that mediators prioritised relational goals over settlement goals such as agreement (Chapter 4). This is further illustrated by a mediator preference for the metaphor of conversation, a relational approach, over negotiation, a transactional approach (Chapter 7).

The mediators studied in this research were relatively inexperienced, and so it might have been expected that their goals were simplified to a primary goal (Wall and Dunne, 2012). Moreover, one might envisage that primary goal to be agreement, as the *'most usual performance indicator in workplace mediation is whether or not an agreement was reached'* (Poitras, 2013: 26). However, the study found that university mediators adopted goals that are more complex and contingent, where relational and settlement goals interact. Communication, a relational goal, was the highest ranked goal but seen as a contingent step to the possible achievement of resolution, as illustrated in Figure 8. Significantly, even the achievement of settlement goals has a relational aspect: mediators viewed their role as fostering resolution rather than agreement, pointing to a relational perspective where *'resolution is more in the dialogue than it is in the agreement'* (Lewis and Umbriet, 2015: 10).

The finding that university workplace mediation practice is intersubjective and co-constructed is supported by the analysis of how mediators exercise power and position themselves within the



interaction. This finding was outlined in Chapter 5 and elaborated further in Chapter 8. It was argued that mediators have a disposition to exercise power in ways which share power within the interaction rather than control the process. This power-with orientation accords with Habermas' concept of Communication Action (Finlayson, 2005), fostering collaboration and opening up the possibility of the integrative outcomes conceptualised by Follett (Feldheim, 2004).

To exercise power-with requires the mediator to make a step change within mediation, as the process commences with an exercise of power-for. Mediators create a structure for the interaction by facilitating the construction of a safe space buttressed by ground rules. The need to provide such structure arises from a worldview of human capacity that is less positive than transformative practitioners; a legacy of basic training. Working in a more structured way, exercising control, offers the less experienced mediator the comfort of following the process, but – in an illustration of emergence – mediators attested to becoming more relaxed about structure as they gained experience. Whilst mediators may be disposed to share power, any particular case may oblige mediators to divert from their ideal and to impose or renegotiate structure. This may be seen as directive and thus, in conflict with a relational approach, but such mediator action is in support of relational goals – allowing the parties to communicate – rather than transactional goals.

Drawing on metaphors from surface chemistry it was suggested, in Chapter 5, that mediators could be understood to perform as initiators, promoters or catalysts. Mediators aspire to exercise as little power as possible; they are disposed to be initiators. On occasion the mediator is able to step back fully from the interaction, performing much as a transformative mediator-follower might. However, where the interaction requires support, the mediator becomes part of the interaction as a promoter. In facilitating the creation of a safe space, the mediator acts as a promoter, exercising power in pursuit of the process. At an extreme, mediators feel an obligation to act as catalysts, to step in and provide control to keep the mediation on track. Mediators may be disposed to a minimalist position but necessity – how a mediator needs to act in response to the quality of interaction – may dictate otherwise.

The practice of workplace mediation, as revealed by those universities in this study, is relational although emergent, situational and distinctive from other second-generation models. While it has been argued in this thesis that university mediation practice is relational, it is overly simplistic to view matters in purely dichotomous terms, i.e. either relational or settlement. It is better to view practice as a journey of emergence from habitual practice, a rule-based practice that links to basic training, to heedful performance, a focus on interaction as shown in Figure 10. Understanding

practice as relational has a significance for how mediators develop as professionals. This is discussed further in Finding 2.

**Finding 2** The practice of mediation in universities represents an emergent, relational, second-generation approach to mediation but arises from the legacy of first-generation mediation training.

This finding follows from the analysis presented in Chapter 7, where the intersection of mediator practice and theory was examined. It is evident that mediators have little explicit relationship with mediation theory, placing a higher emphasis on the mastery of practice. Where mediators did report drawing on theory, this emanated from fields outside of mediation, either from earlier study or in other contexts such as coaching. Approaching theory in this manner leads to a personalised, albeit eclectic, integration of practice. This has implications for co-mediation, discussed below in Finding 3, and mediator development. On the other hand, the lack of theoretical anchoring found in this study enables university mediators to confound the expectations of Bush and Folger and practice mediation in a relational, second-generation approach.

The looseness of theoretical anchoring leading to relational practice, leads to a further question. Is this the situation in other workplace mediation contexts and practices, i.e. outside of universities? It might be reasonable to speculate that a relational approach is the norm where similar conditions prevail; a public sector setting with internal mediators who have received broadly similar training. In support, it should be noted that the main application for the transformative model, a relational approach, was in the public sector – the US Postal Service – as is its UK manifestation, a National Health Service Trust. However, it is not possible to assert with confidence that a relational practice will ensue in other conditions. HR interviewees in this study with experience of the private sector attested to a marked difference in culture, with conflict being tackled head on and resolved quickly without resort to mediation. Where mediators are external to an organisation they may well be trained and practise as commercial mediators; unfamiliar with staff they may well have a transactional relationship with the parties. Success for the external mediator may be measured as delivered agreements rather than the tiered goal of communication that drives university mediators. Under these circumstances, it is easy to envisage the facilitative model being deployed in settlement mode when applied in private sector workplaces.

A common assumption – made by interviewees – was that theory is embedded within the practices and techniques taught in basic training; an attitude reported in earlier research (Macfarlane and Mayer, 2005). Theory is not completely overlooked within basic training as mediators were able to

attest by reference to their manuals. However, recall of specific points such as theories of conflict was limited; an effect observed in training professionals (Goldstein *et al.*, 2008). This was in contrast to mnemonics such as DESC and FAIR, which were well remembered. These act to turn declarative knowledge, '*knowing about the steps of the mediation process*' (White and Agne, 2009: 85) into procedural knowledge, enabling the mediator to respond in interaction: '*what to say and do in a specific mediation situation*' (White and Agne, 2009: 85). Role plays conducted in basic training provide a path towards procedural knowledge, providing a store of espoused theory that enables trainees to commence practice. However, further development awaits experience and learning: mediators must develop theory-in-action, the tacit knowledge that determines action contingent on conditions (Argyris and Schön, 1974).

Learning rules, applying rules in role play, adapting them from the experience of mediation, enables the university mediator to deliver competent habitual practice. However, this is just one step in a path of professional development. Beyond this stage of development lies the ability to act flexibly, to be engaged in heedful performance (Barge and Little, 2008). Heedful performance can draw on a monological (Lang and Taylor, 2000) or dialogical (Bowling and Hoffman, 2000) view of interaction. Ultimately, as argued in Chapter 8, this is an epistemic choice – a way of viewing mediation and how it is performed – that is akin to a researcher's selection of methodology and which draws on the personal schema of the mediator. However, university mediators lack the knowledge to make this choice explicitly. Moreover, they are constrained by two further factors: their legacy of basic training represents a point of departure in learning that is realist and monological; reflective practice, the means to learn from experience, is similarly realist, focusing on what and how questions.

In basic training, university mediators are taught to uncover information rather than act as co-constructors, a key differentiator between the monological and dialogical perspectives that is described in Chapter 2 and discussed in Chapter 8. Micro-practices such as note taking and questioning (Chapter 7) are directed towards mediator understanding rather than the parties. Interpersonal understanding becomes what Broome describes as a product, in contrast to relational empathy, '*a tensional, emergent, relational process*' (Broome, 2017: 6). Accordingly, university mediators (Chapter 7) appear deductive in their decision making, using the information gathered to formulate hypotheses as to how to proceed. From a first-generation perspective, questions, reframing and summaries are useful techniques to accomplish the purpose of mediation. However, from a second-generation perspective, in using these techniques '*mediators participate in the social construction of meaning*' (Cobb, 2001: 28).

One particular legacy of basic training is the taken-for-granted assumption about interaction that is contained in neutrality; a realist concept of interaction which situates the mediator as a detached observer working within a defined structure. Evidence of emergence in practice occurs when such concepts are challenged and modified. Thus, we find Lynda adopting an inductive approach, making decisions based on the interaction; Frank re-interpreting neutrality; Michael and Carolyn allowing parties the choice as to who speaks first in the joint meeting; David and Erica becoming more comfortable with a less structured approach. Here we see a willingness to improvise, to be creative in response to interaction, a feature identified in Chapter 7 and analysed in Section 8.11.

What emerges from mediator accounts is a depiction of practice that is relational in enactment. However, the extent to which any one mediator has travelled along the path from the legacy of basic training to heedful performance is personal. Individual development can create a tension between the precepts of the formal (facilitative) model and the personalised theory of practice being developed by each mediator, particularly where a dialogical approach is emergent. In Chapter 8, the learning process for university mediators was examined and it was argued that this tension can be addressed by the use of reflexive practice; a route to personal and community development that makes explicit the nature of interaction and the mediator's position within it.

**Finding 3**      The building, enactment and performance of trust is fundamental to effective co-mediation.

Co-mediation was employed in four of the five institutions studied and seen as valuable in providing mutual support and the opportunity to learn from one's partner. Co-mediation pairs two mediators with potentially different styles of mediation and raises the issue of how university mediators perform effectively as a partnership. Mediating with divergent processes is problematic (Charkoudian and Ritis, 2009) and mediators are advised to choose a partner with a similar vision of mediation's goal and compatible strategies (Love and Stulberg, 1996). It was found (Chapter 6) that university mediators have an intuitive rather than explicit understanding of personal style. They recognise, from observing their partners, that others may practice differently, but have not examined the drivers behind such difference. Commonly, university mediators have trained as a cohort enabling them to observe potential partners in role play and subsequently seek to work alongside those whose style appears compatible. In principle, universities select their pairings for co-mediation to reflect a balance of experience and gender. In practice, selection is often determined by availability, the sub-set of mediators willing to mediate. In two of the universities this had led to established pairings, who were also colleagues in their mainstream roles. They co-mediated together more frequently and had become familiar with each other's style.

Mediators spoke of simple measures that are used to coordinate activities within their pairings such as the allocation of tasks in advance. Tasks were readily divided for the initial structured phase of mediation where, say, one mediator would take notes and the other implemented ground rules. Thereafter, as the interaction becomes more fluid, mediators recognised the task of coordination becomes more complex. Mediators relied on formulation, an analysis of the interaction and a decision on a strategy to follow. However, formulation is the cognition of the individual mediator and not necessarily shared by their partner. Structure, an expression of personal style, was viewed as a potential point of conflict since mediators have different dispositions towards structure and a range of comfort in allowing the parties to interact with greater or lesser control from the mediator. To surmount these challenges of coordination, mediators relied on role and relational trust.

Role trust, a shared understanding of the purpose of the task to be performed, is an essential ingredient in team performance (Moldjord and Iversen, 2015). University mediators assume that the shared experience of basic training leads to a common understanding of goals and strategies. Where training differs, but is still based on the facilitative model, there remains sufficient commonality for effective practice as exemplified by the account provided by the Acas trained (solo) mediator paired with a mediator trained to co-mediate. However, as the analysis of their responses to the questionnaire revealed (in Chapter 4), understanding of the goals and objectives of mediation is not identical across the community; the assumption that goals are shared is unarticulated and untested (Chapter 7).

A common understanding enables university mediators to be confident in the capability of their partner to perform their role and to complement their own. For inexperienced mediators, there is an expectation that their partner would utilise the same techniques taught in basic training. As pairings experience practice, there is a growing recognition of their partner's cues and a pattern of working together develops. Role trust leads to habitual practice, the ability to follow the mediation process competently and is founded on commonalities. Relational trust however, points to heedful performance, a heightened responsiveness to interaction and difference.

Relational trust between mediators has a particular significance in university mediation as it underpins the relational approach to mediation. Mediators spoke of modelling behaviour and attitudes in their partnership. In effect, they perform or enact co-mediation before an audience of the parties, an echo of Goffman's dramaturgy (Smith, 2006; Jarrett, 2012), inviting the parties to interact collaboratively and openly. Where relational trust is high, mediators spoke of vulnerability a willingness to be open with each other in front of the parties that accords with earlier research (Moldjord and Iversen, 2015). The performance of vulnerability provides an empathic connection

with the parties' own sense of vulnerability in entering the mediation space. Being open before the parties, articulating formulations, expressing doubts as to the next intervention is a dialogical approach, an antidote to the individual mediator acting on a monological understanding. Relational trust enables mediators to recognise and work with difference arising from an emergent sense of personal style.

### 9.3 Research Questions

The research questions in this study were formulated under two themes relating to interaction: interaction within mediation, and co-mediation – the interaction between mediators. This section provides the reader with a signposting of where the study has provided answers. The first theme was explored under a cluster of four questions (RQ1-4):

1. *How do mediators conceive of interaction?*
2. *What theory do mediators draw on to shape their practice?*
3. *How do mediators make decisions?*
4. *In what ways might an explicit understanding of Social Interaction Theory contribute to a mediator developing a consciously integrated, flexible practice?*

Mediation is a process of interaction. However, mediators often take interaction for granted; it becomes simply the medium in which dialogue occurs (Lang and Taylor, 2000: 153). The path to flexible integrated practice lies in the practitioner being intentional about interaction and the implications of a relational, dialogical approach to mediation that this study has highlighted in university workplace mediation. Intentionality is served by the adoption of reflexive practice.

This set of research questions was premised on the assumption that mediators practice in an unconscious way and that theory – in this case interaction theory – could provide a framework for the development of coherent practice. Underpinning this line of inquiry was the framework provided by Kressel which proposes that mediators draw on twin pillars to enact their practice; a formal model of mediation and their personal schema (Kressel, 2013).

The study has shown (RQ1) that the practice of workplace mediation in universities is relational. However, the facilitative model can also be practised in a settlement mode. The university mediator starts with a model that can be enacted either in a relational or settlement mode, but a process of emergence leads to the former. Emergence sees the tenets of basic training reworked as mediators gain experience of practice, commencing with a prioritisation of relational goals. What is happening in emergence, this study demonstrates, is a growing sense of meta-theory, a mediator's overarching concept of mediation that facilitates a personal theory of practice. A relational practice of mediation

could be attributed to a strategic choice of technique to fit relational rather than transactional goals. However, as outlined in Chapter 8, examining the ways university mediators approach interaction suggests a plausible alternative is a difference in epistemic enactment.

The study has shown (RQ2) that university workplace mediators are pragmatists, looking to acquire the skills to practice mediation but unconcerned with theory. Their initial theoretical framework thus comprises the theory embedded within the formal model of facilitative mediation encountered in basic training. This, it was argued in Chapter 8, is realist and, in terms of interaction, monological. Added to this foundation is theory that mediators acquired in other contexts, experience of interaction in other non-mediation roles, their beliefs and identity – their personal schema.

One aspect of unconscious practice uncovered in this study is the role mediators ascribed to intuition in making their decisions (RQ3). This was discussed further in Chapter 8, where intuition was linked to a habitual patterned response to interaction. However, it was shown that – with experience – mediators can progress to a heedful relational approach to interaction represented by improvisation.

The arc of mediator development – outlined in Chapter 2 – is a journey. It has a point of departure, in basic training which prepares the mediator to practice competently. Mediators initially aspire to habitual practice; an ability to follow the rules in response to interaction. However, habitual practice is only a way station *en route* towards heedful performance; a heightened attention to interaction that can be either monological or dialogical. Basic training in the facilitative model provides sufficient theoretical anchoring for the mediator to deliver habitual practice. The theoretical framework is open enough to allow for the development of meta-theory which sees practice enacted as relational. However, in contrast to second-generation models, the facilitative model is not explicit about interaction or meta-theory. The lack of theoretical anchoring provided by basic training is not problematic when seeking to master basic skills but is a barrier when a mediator seeks to develop further. Basic training provides a commonality of understanding that enables the practice of workplace mediation in universities but is limiting when difference and personalisation are required (Curran *et al.*, 2016: 21). As mediators develop, they must move from implementing rules such as neutrality to interpreting them as they seek to develop their own personal practice; a mediator needs to set micro-practice in the context of their own meta-theory. To do so requires understanding theory and becoming intentional in interaction. This study demonstrates how reflexive practice can contribute to understanding and heedful performance (RQ4).

Mediator learning currently centres on reflective practice, posing what and how questions that focus on techniques and the mastery of basic skills. This approach leaves the underlying realist assumptions within basic training unexamined. Consequently, mediators may continue to apply micro-practises that are in tension with a relational power-with approach to mediation. In the interviews however, mediators acknowledged the value in examining practice at a level deeper than technique. In Chapter 8 an alternative, reflexive practice was outlined and illustrated in the use of why and who questions. Why questions enable underlying or taken-for-granted assumptions to be challenged and can be utilised to explore further the implications of relational practice or the monological or dialogical creation of meaning. Who questions assist the mediator to examine their own role in the interaction, their dispositions to power and structure, and allow them to personalise their practice.

The second theme of the research – co-mediation – was represented by a cluster of three questions (RQ5-6):

5. *How does co-mediation become effective given differing personal styles?*
6. *How do mediators coordinate their actions and cognitions?*

Co-mediation becomes effective because mediators build and rely upon trust. Role trust underpins habitual practice and enables the individual mediator to learn by reflective practice. Role trust is, however, necessary but not sufficient for effective practice, and mediators additionally develop relational trust. Relational trust allows heedful performance and relational practice and enables the partnership to learn by reflexive practice.

This set of research questions was premised on the assumption that pairing mediators with differing personal styles could be disruptive, with mediators pulling the interaction in conflicting directions and impairing the delivery of mediation. In practice however, whilst tensions can arise between university mediators, difference in personal style ostensibly has little impact on the practice of co-mediation in universities. Personal style is largely unexamined by mediators, recognised as potentially problematic but subsumed, in the first instance, by a reliance on commonality (RQ5). Shared basic training provides the platform for the establishment of role trust founded on common assumptions as to the goals and purpose of mediation. Mediators seek to pair with those who they perceive have a similar style to their own. Coordination of activities is planned in advance. Interventions that might be unexpected by a partner are avoided; mediators reported a conscious effort to follow the rules learned in basic training. One of the merits of co-mediation is the opportunity for apprenticeship (Bowling and Hoffman, 2000), such that the individual is supported



as they learn their trade. Reflective practice becomes the means to develop habitual practice. Subsequent to mediation, pairs of mediators utilise reflective practice to promote learning. However, this is directed more to an examination of skills rather than the effective working of the partnership, with reluctance to critique another's performance.

Habitual practice is however, a constrained enactment of co-mediation. It requires the mediators to find common denominators, to subordinate individual style to the presentation of a united front. From a performance perspective, this signals to the parties an invitation to compromise, a potentially slippery path towards a settlement orientation (Sergeant, 2005: 20), mediation as reasoned compromise (Menkel Meadow, 2006: 501), as a mid-point between winning and losing (Bennett, 2014: 3). To perform mediation as compromise undermines its potential for integration (Kolb, 1995: 340) – the discovery of value in difference – and *'merely rearranges what already exists; it produces no new values'* (Follett, 1924: 1).

For the inexperienced mediator, the desire to get the basics right and master habitual practice may mean that subordinating their style is not viewed as a sacrifice; Sarah for example, becomes the follower to John's leader (Chapter 6). However, a danger with an emphasis on commonality is that it becomes a brake on the individual's development. The experience of practice allows the emergence of personal style but there is little opportunity to experiment where the imperative is to stick to a known process. Accordingly, ambivalence was expressed as to the merits of co-mediation as mediators gain experience (Erica in Chapter 6).

Fortunately, co-mediation offers the opportunity to perform in ways that recognise difference and underpin the relational approach practised in universities (RQ6). Experienced mediators spoke of demonstrating vulnerability and thereby enacting relational trust. This permits the mediator to develop a personal style which may contrast with their partner but work effectively by communicating openly in what is a form of dialogical interaction. This performance of relational trust signals to the parties the value of difference and invites an integrative approach. Relational trust leads to a type of heedful performance where there is a conscious focus on the interaction between the mediators. The possibilities for building relational trust are improved where pairings are established and able to practice together frequently. However, relational trust requires a willingness to learn that is reflexive, moving beyond the execution of skills to pose why and who questions.

The study identified the regular practice meeting of university mediators as the embodiment of their Community of Practice. These practice meetings represent an opportunity for mediators to learn from each other and also to learn about each other. Such learning can foster role trust, creating a

clear sense of the tasks that the mediators must perform but may come at the cost of conformity in practice, a restraint on personal development noted by Erica and David. A potential counterbalance to this effect is to deploy reflexive practice in the COP as discussed below in Section 9.6.1.

#### **9.4 Limitations and Context**

The findings in this research have been developed within the context of the methodology and analytical framework deployed. The constructivist methodology – outlined in Chapter 3 – means that data were generated in interaction between researcher and mediator. This allowed interviewees to both account for and reflect on the messiness of practice. The data generated covered the mediators' experience of practice in the round rather than any particular case. Micro-practice, metaphor, power and goals were examined and interpreted as a means to analyse meta-theory, the overarching framework which enables the enactment of practice. The findings capture the emergence of practice for a group of relatively inexperienced mediators; a process of uncovering personal style or disposition whilst wrestling with the legacy of basic training. This is in contrast to positivist approaches to mediator research where hypotheses are set and experienced mediators observed in action, often under controlled conditions. The purposes of mediation are assumed, taken-for-granted, and research demonstrates how mediators enact micro-practice in pursuit of meta-theory. A recent study, for example, examines the use of solution-focused questions by community mediators to steer disputes towards resolution (Stokoe and Sikveland, 2016); a contrast with this study in that it shows the enactment of the facilitative model in pursuit of settlement.

The finding of relational practice in this study draws on empirical evidence from six universities. From this limited sample, it is impossible to assert that practice across other universities will be similar. However, the finding of relational practice in this study is a point of departure in addressing the research question as to how (interaction) theory can contribute to integrated practice. The claim to generalise these findings arises from data that represents inexperienced mediators and their emergent practice. Moreover, the construct of heedful performance as an interaction that can be either monological or dialogical has relevance for both a relational and a settlement approach to mediation. It is an invitation for mediators to be explicit in their epistemology and coherent in their practice but not prescriptive in the path which is chosen.

A point regarding limitations must be made in respect of the statistics presented in Chapter 4. Clearly the sample size (18) used in this research is low in comparison with the earlier Israeli study (189) (Nelson, Zarankin and Ben-Ari, 2010) and only a limited number of results (3) were found significant at the 95% level. However, it should be recognised that these tests were an ancillary part

of the research, carried out because the method of data gathering permitted this within the context of the primary method of interview. The differences found in some gender effects, between this study and the Israeli study and highlighted in Chapter 4, should therefore be treated as indicative of the possibility for further investigation.

### **9.5 Contribution to Knowledge**

The finding of the epistemic enactment of the facilitative model in relational practice contributes to the conceptualisation of mediation, challenging the demarcation between first and second-generation models of mediation. This finding supports the contention of Bush and Folger (1994) that meta-theory drives practice. However, it contradicts their assumption that mediators operate solely in accordance with the meta-theory, or ideology, embedded in the formal model. In this regard it is confirmation of Kressel's view that personal schema are influential in the enactment of practice (Kressel, 2013). Conceptualising mediation as an enactment of meta-theory rather than a collection of skills and techniques, draws the parallel with the academic researcher where clarity on methodology should precede the deployment of methods. Thus, the mediator needs to acquire mediation skills but must deploy these skills in the context of meta-theory in order to bring coherence to their practice.

The literature suggests that mediators simplify goals into a binary choice between relational and settlement goals (Wall and Dunne, 2012) as a means of managing complexity. Effectively, the mediator chooses between a relational or transactional approach. Bush and Folger (1994), in their transformative model, argue that relational repair must precede any move to agreement and resolution. The mediator is enjoined to sequential goals. This study, however, demonstrates the possibility of a third approach, the interconnection of relational with resolution goals. In Section 6.5, it was found that university mediators have a foundational step of restoring communication – a relational goal – that can pave the path to further relational gains such as trust and behavioural change. However, the mutual understanding gained in communication can foster the achievement of transactional goals, the generation of coping strategies, and the achievement of partial and even full resolution. This parallel approach to goals utilised in universities draws on Bush and Folger's (1994) insight regarding the importance of recognition as an indicator of progress within mediation. It addresses complexity by conceiving of goals in a contingent connected manner. Mediators can target communication and then incorporate other goals as the interaction allows and the growth in recognition signals.

The findings regarding mediator development explore the nature of relational practice and the basis for integration. As shown in Chapter 8, mediators progress to habitual practice and then onward to heedful performance; the former supported by reflective and the latter by reflexive practice. Further, the nature of heedful performance has been developed by drawing on two contrasting theorisations outlined in Chapter 2 (Lang and Taylor, 2000; Bowling and Hoffman, 2000) which lead respectively to monological and dialogical interaction. As discussed in Chapter 8, monological interaction prioritises the individual (Habermas, 1970), the voice of the other is not respected (Winslade, 2002) and maps to a settlement approach to mediation. In contrast, dialogical interaction emphasises the intersubjective, the joint construction of meaning and a relational approach.

In practice, as the study demonstrates, university mediators experience dissonance between what is acquired in basic training – the formal model – and what is required in relational practice. Techniques such as questioning and precepts such as mediator control are deployed differently in monological and dialogical interaction as illustrated by Table 14. The study shows that for the university mediator, relational practice is emergent rather than fully developed. Mediators are on a path of transition to relational practice; in Kressel's (2013) terms, they are developing personal schema which lead to relational practice. However, there are still vestiges of the formal model in evidence and mediators lack the reflexive practices that would aid their understanding and development of relational practice. As illustrated in Figure 10, emergence is a process whereby the mediator transitions from a formal model which is settlement based and predicated on monological interaction to a personalised theory of practice which is relational and dialogical.

The study provides a further framework for understanding habitual and heedful performance by examining mediator decision making: what alerts the mediator to respond to interaction and how they respond. In Chapter 7 it was shown that university mediators rely on intuition to trigger their decision making, using their experience to read cues such as body language and be alerted to the need for action. The use of the term intuition by mediators captures the spontaneous, unreflective process of responding to interaction that is noted in mediation literature (Lang and Taylor, 2000). Intuition however, as discussed in Section 8.11, can lead to a patterned response to interaction where mediators look to find the appropriate technique or intervention and apply this. The interaction becomes a place of experimentation where hypotheses are tested. Relying on the mediator's unconscious cognitions in this manner is a monological approach to interaction and characterises habitual practice. Intuition can nonetheless, lead to improvisation, a flexible response to interaction which moves beyond the norms and structures laid down in basic training. This flexibility in response is evidence of interactional competence, a fluency in interaction that

characterises heedful performance. Improvisation is a skill however, that operates under a meta-theory. It can be deployed in pursuit of a relational-dialogical or a settlement-monological approach as illustrated by Figure 9.

This study has found evidence of both habitual patterned and heedful improvisatory performance. Less experienced mediators strive for competence in applying the rules of mediation – habitual practice – whereas more experienced mediators seek a competence in interaction, heedful performance. Evidence of the progress to heedful performance was found in preparedness to work with less structure and yield control (Chapters 5 and 6) and a willingness to take an inductive approach to interaction (Chapter 5). Habitual practice is a pre-cursor of heedful performance as illustrated by the mediator’s response to vulnerability that is discussed in Section 8.11. All mediators spoke of the creation of a safe space as being an essential step. This recognises the parties as vulnerable and creates the conditions for habitual practice. More experienced mediators spoke of being open with the parties, demonstrating relational trust by articulating their cognitions. In doing so mediators go beyond recognising vulnerability to perform vulnerability; they enact mediation as relational heedful performance.

The study makes a contribution to the practice of mediation by setting out how reflexive practice can enable embedded, taken-for-granted, assumptions to be challenged (why questions) and the mediator to consider explicitly their role in interaction (who questions). Reflexive practice is of particular importance when the enactment of mediation is relational. Reflective practice assumes an objective reality, a representational rather than a relational view of knowledge (Keevers and Treleaven, 2011). A relational dialogical concept of interaction calls for reflexivity as a matter of congruity, the mediator being relational in both practice and learning. An example of how this might be implemented in university practice is provided below. However, it is argued that accessing learning by reflexive practice is helpful more generally in the field of mediation and should be of interest to mediators who wish to progress beyond habitual practice. As second-generation proponents assert: *‘mediators need a theory of human meaning making and human interaction to guide them as they interact with the disputants’* (Gaynier, 2005: 404).

Finally, the findings on co-mediation make a contribution to an area which has received scant attention in the literature. Examining co-mediation from the perspective of interaction has allowed attention to be paid to the performance of mediation. In doing so, it has shown how trust is developed between mediators and how relational trust underpins a heedful, relational performance of mediation. Moreover, it has demonstrated how mediators working in tandem can position practice as relational in their performance of vulnerability. Adopting co-mediation may originally

have been conceived as a mutual support for less experienced mediators (Chapter 6) or a second listening ear. However, these findings reveal that equally important is the opportunity for performance that is afforded by a second member of the cast who can be a foil for improvisation.

## **9.6 Implications for Practice**

### **9.6.1 Mediation in universities**

This research has focused on university mediators who are in the early stages of their development. Interviews have highlighted their endeavours to enact habitual practice based on what was acquired in initial training. Accounts of practice attest to the emergence of a personalised theory of practice, and this has created certain tensions with the tenets of basic training; an impetus for learning and development. Moreover, interviewees expressed an interest in continuing to practise, to gain more experience so as to become more accomplished. To develop further will however require both individual and collective will and action. Any plan for development must recognise that the excellent practitioner is *'lodged in a community of practitioners who through experiential learning... continually lives out and improves practice'* (Benner, 2000: 9). The Community of Practice – in the first instance the mediator group at each university – is important because it sets the framework for how mediation is performed at the university: *'An individual's work is informed, in part, by the Discourses that inform a tradition or community of practice'* (Barge and Little, 2008: 513). This is particularly important where mediation is practised as co-mediation since it underpins role trust by clarifying what is expected of the partnership in mediation. Individual development is beneficial, but a lasting benefit occurs when learning is embedded in the community: *'Critical reflection must be a social act of collective empowerment if it is to move beyond personal to social transformation'* (Gray, 2007: 497). Based on the results of this study it is suggested that such learning is done in a relational and reflexive way within the practice group at each university.

Three aspects of this study could form the basis for the practice group to draw on the findings of this research. Firstly, the goals that define the approach taken in mediation, on the premise that purpose drives relational practice. Secondly, the meta-theory that represents the enactment of a relational approach, shaping the use of micro-practice and the positioning of the mediator in interaction. Thirdly, the opportunity that co-mediation affords for the performance of mediation.

This research has demonstrated that university mediators have complex interconnected goals that prioritise relational aspects such as communication and recognition. These are distinct from the settlement related goals which originate in principled negotiation and are embedded in basic training. A re-evaluation of goals within the practice group would make explicit this transition in

goals and grant permission, particularly for the less experienced mediator, to act on relational goals. It would additionally contribute to a shared set of role expectations which supports effective co-mediation. Chapter 4 provides a number of resources that can aid the group to reflect on goals: Section 4.3.2 contains the survey data relating to goal prioritisation whilst Section 4.4 explores broader goals such as communication, agreement and interests.

The study has found that university mediators are willing to draw on theory but only insofar as it supports practice. Proposing that practice groups look at meta-theory might therefore be better labelled as inviting mediators to be intentional in interaction, and to be coherent in relational practice. Accordingly, it is suggested that learning is focused on two aspects of practice: mediator power and the purpose of information. Mediator power – detailed in Chapter 5 – is essential to the conduct of mediation but can be enacted in ways which emphasise mediator control or support a power-with relational approach; mediators were found to act as initiators, promoters or catalysts. One touchstone was the question of which party speaks first in the joint meeting. Here we found a range of responses, from enacting what had been taught in basic training – mediator choice – through to trusting the parties.

Examining mediator power helps the group to understand the difference between a relational and a transactional or settlement approach to mediation. Looking at a mediator's use of information clarifies the difference between a monological and dialogical concept of interaction. As illustrated in Table 14, in a monological approach information is sought by the mediator to uncover facts and questions are directed to mediator understanding. In a dialogical approach, information is sought to construct meaning and questions promote collective understanding and recognition.

The study has shown that co-mediation is more than a support mechanism for the less experienced mediator; it is an opportunity for performance that underpins relational practice. The study has found that role trust is essential in co-mediation and leads to habitual practice, but that relational trust is necessary for effective heedful performance. Further, the study has identified that experienced co-mediators perform vulnerability as an enactment of relational trust. It is suggested therefore that the practice group explore the concept of relational trust, and the performance of vulnerability as a means for supporting the development of co-mediating teams.

A reflexive approach requires examining taken-for-granted assumptions which presents a challenge at two levels: firstly, willingness by the individual and COP to allow a critical approach; and secondly, making explicit the assumptions that drive practice, for example the implications for power that flow from a mediator's choice of positioning in interaction. In Chapter 7, this research used metaphor to

examine the theory behind practice; in particular, the significance of using the metaphor of conversation rather than negotiation to describe practice. In collective learning, metaphors can represent a gentle point of departure, a means of disarming taken-for-granted assumptions, as a *'powerful medium for presenting ideas not available through rational discourse'* (Gray, 2007: 506). Paralleling the mediation process, the use of metaphors in group work creates a safe space for discussion and co-construction.

How might this work? In one recent CPD session with community mediators, this researcher asked the mediators, working in pairs, to come up with a metaphor they might use to explain mediation to a party with no prior experience of the process. This input was then gathered and examined as a group exercise. To illustrate, one contribution was mediation as a 'bridge'. This metaphor was then unpacked by asking the group to articulate the implications for practice of viewing mediation as a bridge. The ensuing discussion became a collective and intersubjective search for meaning; a settling on an objective view of community practice that is possible *'when multiple perspectives from a community are made public for articulation and evaluation'* (Benner, 2000: 8).

Using metaphor in this way appeared effective but requires a degree of structure to provide focus and enhance learning. Behind the exercise should be a desire to examine the goals of mediation, or mediator power, or the nature of interaction. For example, asking the group to come up with a metaphor to explain the role of the mediator elicited 'Helper', 'Clarifier', 'Facilitator', 'Listener' and 'Go-Between'; all terms which could be further explored in the context of a settlement or relational approach to interaction.

To emphasise the collective should not however detract from encouraging individual learning. It is recommended therefore that mediation services consider adopting the Reflective Observer approach, as described in Chapter 3. Here the observer makes notes on mediator behaviour during the course of a mediation and then facilitates a post-case discussion. This can be used as a focused means of social learning that can recognise that individuals have different rates and directions of emergence.

### **9.6.2 Wider mediation practice**

This study has found that the facilitative model is practised in a relational, dialogical approach by relatively inexperienced mediators practising in the university workplace. This shows that the practice of mediation is not wholly determined by the formal model and opens up the possibility for re-examining how mediation is enacted in other contexts. The study has also plotted a course of mediator development from habitual practice to heedful performance, demonstrating the use of



reflexive practice as a tool for learning and development. Reaching heedful performance, an artistry in interaction that Lang and Taylor (2000) advocate, requires bringing a coherence to practice – aligning micro-practice with meta-theory – irrespective of the enactment of mediation as relational or settlement. Finally, the study has shown that co-mediation provides the opportunity for the performance of mediation particularly where a relational approach is adopted. These findings provide a number of lessons that have resonance in the wider mediation community.

Commercial mediation, as outlined in Chapter 8, is the prime example of the facilitative model being deployed in settlement mode. This has been ascribed to the parties wanting a cheap, quick means of bringing a dispute to an end rather than relational repair or even creative solutions (Genn, 2012). Where judges take on the role of mediator in UK employment tribunal cases there is perhaps inevitably an emphasis on settlement where the aim is to avoid the necessity for a hearing (Urwin, Latreille and Karuk, 2012). In SEN mediation, the local authority involved is looking for evidence to justify a decision taken in accordance with a statutory framework (CEDAR, 2017), drawing the process to a problem-solving evidenced based orientation.

This current research has two potential contributions to the enactment of the facilitative model as settlement. Firstly, that a relational approach does not preclude settlement. As demonstrated by university mediators, it is possible to use contingent goals that can encompass both transactional and relational ends. This opens up the possibility for a richer return from the use of mediation even where the perceived pressing need is for resolution. Taking a relational approach may challenge professional notions of the purpose of mediation but provides a process that can deliver a wider array of outcomes that may more fully meet the needs of the parties. A relational approach can redress a prioritising of legal remedies such as a payment of monies that a court might order over extra-legal provisions such as apologies and explanations that parties value; a phenomenon that is prevalent in the mediation of personal injury cases (Relis, 2009). A relational approach acknowledges the contribution of second-generation theorists as to the importance of the relational whilst building on the established facilitative model.

Secondly, there is value to the practitioner in being explicit about meta-theory and interaction. The study has shown that uncovering meta-theory can enable the mediator to bring coherence to their practice by being intentional in their interaction within mediation – understanding what they seek to achieve in interaction and aligning their micro practice accordingly. A coherent integrated practice paves the way to heedful performance even where mediation is settlement-monological driven. Conceiving mediation as framed by meta-theory rather than a set of micro-practices strategically applied, which is the conclusion of this study, is arguably too complex a notion for the novice

mediator straining to master habitual practice. However, it should become a topic to be explored in subsequent professional development where the mediator has gained experience and seeks to improve their fluency in interaction.

Co-mediation is seen to provide support for the less experienced mediator, aid reflective practice, and offer cultural diversity. It also has the potential to generate conflict within the co-mediation team and require more effort to ensure role trust, a commonality of expectation about the norms and purposes of mediation. These are effects articulated by university mediators and echoed in the literature (Love and Stulberg, 1996). With coordination, division of tasks and the establishment of trust co-mediation, can – to echo Love and Stulberg – demonstrate that two heads are better than one. However, this study demonstrates that co-mediation has a more creative role to play when viewed as performance. This insight has two applications. Firstly, in situations where co-mediation is currently practised such as community and workplace mediation, mediators should be encouraged to explore mediation as performance; in particular the performance of vulnerability as evidenced in the practice of more experienced university pairings. Secondly, in situations where co-mediation is currently not the norm but a relational approach is required, where for instance workplace mediation is provided by external rather than in-house mediators, cost grounds may dictate solo mediation (Poyntz, 2012). Here procurers of mediation might usefully reflect on the additional benefits, identified in this study, that co-mediation can provide.

### **9.7 Recommendations for Future Research**

This study has contributed to the knowledge of how mediators develop their practice in the initial stages. It has formulated a reflexive process whereby mediators can progress into heedful practice that is relational and dialogical. However, what is missing is a longitudinal study that could track the effect of reflexive practice over time for both the individual and the COP. Such a study could draw on elements of the recommendations for practice (above) and form an action research project in a selected university.

Further, a theme arising from the findings of this research is that while practitioners are unanchored by explicit theory, they are equally not completely beholden to the formal facilitative model and the assumptions that are made about its enactment. Meanwhile, it has been noted above that the relational practice of mediation found in this study may not be replicated in other situations, either in other universities or in the wider field of workplace mediation. This raises two possibilities for further research. Firstly, to investigate a university service which has a settlement enactment of the facilitative model. Secondly, to work from the premise that examining interaction explicitly through

a reflexive lens can lead to a relational enactment of mediation in non-workplace disputes. One potential area, familiar to this practitioner and outside the field of workplace mediation is the field of Special Education Needs. This operates under the shadow of a tribunal process which exerts a strong settlement pull on the mediation process. However, these disputes cannot be considered wholly transactional as the parties to the dispute – school, local authority and parents – must continue to interact with each other in the future. Mediators from this field are drawn from commercial, family, workplace and community mediation, each adopting disparate practices of the facilitative model.

### **9.8 Reflections**

One of the concerns in this research was to produce findings that had salience for both academia and the practice community. To conduct research that is practitioner relevant (Kressel, 2013) but which also provides the opportunity to extend theory by learning from practice. This research started from the supposition that looking at interaction in mediation might yield insights. It closes by concluding that a focus on interaction in mediation can be effective in extending theoretical understanding and yet offer, in reflexive practice, value to the practitioner.

Theory is said to be '*observing, looking at, or viewing things in a thoughtful manner*' (Broome, 2017: 5). Things in the mediation context are micro-practices or the collection of such practices into a mediation model. Research into such things enables an understanding of how a mediator does or should execute practice. This is useful in supporting habitual practice but, operating under a set of unexamined organising assumptions, limiting. The practitioner is crammed into the mould prescribed by the researcher. Categorising mediators by model or shedding light on micro practice can only take the practitioner so far.

This research has sought to go further, to examine what lies behind practice and theory, the meta-theory behind theory. This has opened up horizons for both researcher and practitioner to gain an understanding of mediation that is wider than any one model. Broome's '*thoughtful manner*' applied in this research arises from inductively interrogating practice to reveal meta-theory. Further, the practitioner has been offered a thoughtful manner to heedful performance in reflexive practice and relational trust.

I conclude this thesis by noting that I have gained as a practitioner in the course of this research. I have been spurred to be reflexive in my practice and interrogate my experience, case by case, against the theoretical framework employed in developing these findings. I end with a better understanding of how I practise and how my style varies in the several fields in which I mediate. In

particular, the concept of a monological or dialogical approach to interaction is helpful in understanding why colleagues practice in different ways. As a consequence, I am now enabled to explore the development of relational trust as I co-mediate. Using the lens of interaction I am equipped to query my positioning and use of power. I aim to learn more of my own theory of practice in the ongoing pursuit of heedful practice.

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## Appendices

### Appendix 1

#### Interview Topics

Background:

Please describe your experience as a mediator – years, cases, areas of practice, experience of co-mediation, practice models

Topic 1:

*How can a better understanding of Social Interaction Theory contribute to consciously integrated, flexible practice?*

1. How does theory inform your practice as a mediator?
  - a. What theories of conflict do you draw on?
  - b. What theories of power do you draw on?
    - i. Between parties
    - ii. For the mediator
2. What do you see as the goal(s) of mediation?
3. In what ways do your personal values impact your practice?
  - a. How have these been derived?
4. In what ways has your practice developed over time?
5. Personal Style = Formal model(s) plus personal schema
  - a. How do you make decisions during mediation?
  - b. Are you flexible in style?

Topic 2:

*How does co-mediation become effective given differing personal styles?*

1. Within your mediation service:
  - a. Do you see a need for style flexibility?
  - b. How do you select pairs for co-mediation?
  - c. How do you assess your best mediator and best pair?
2. What makes an effective co-mediation
  - a. Good and bad examples?
3. How do you allow for differences in style?
4. How do you divide tasks?
5. How do you coordinate interventions?

## Appendix 2

### Questionnaire

Scale responses from 1 to 6 where: 1 = Strong Disagreement 6 = Strong Agreement

#### Mediation (is):

	Response
A technique for resolving a conflict	
A flexible procedure to resolve a conflict	
A tool to create communication between people	
Encourages one to help oneself	
Reduces power inequality in society	
Empowers the parties by strengthening their awareness of their self-worth	
Enhances people's ability to recognize and attend to the other's needs	
An economical procedure to resolve a conflict	
A way of life	
Is an educational experience	
Allows for participants' moral growth	
Changes the character of the parties, and of society as a whole	

#### The Goal of mediation is:

	Response
To get the parties to agree	
To bring about the resolution of the dispute	
To create communication between the parties	
To build trust between the parties	
To create behavioural change between the parties	
To empower the parties	
To create a better society	
To help parties reveal their interests	
To help parties understand the various alternatives for resolving the conflict	

#### Success in Mediation is:

	Response
Achieving an agreement	
Achieving an agreement that will show stability over time	
When a party understands his/her own and the other party's interests	
When communication between the parties is enhanced	
When a negotiation was carried out between the parties	
When a party feels that his/her narrative was recognized	
When parties better understand alternative solutions for resolving the conflict	
When hostility between the parties is reduced	

These survey questions are drawn from earlier research and the article: *Transformative Women, Problem-Solving Men? Not Quite: Gender and Mediators' Perceptions of Mediation*, Negotiation Journal 2010

## Appendix 3

### Coding Structure

#### 1. Survey

##### 1. Mediation is...

- I. A technique for resolving a conflict
- II. A flexible procedure to resolve a conflict
- III. A tool to create communication between people
- IV. Encourages one to help oneself
- V. Reduces power inequality in society
- VI. Strengthens private people against the system
- VII. Empowers the parties by strengthening their awareness of their self-worth
- VIII. Enhances people's ability to recognize and attend to the other's needs
- IX. An economical procedure to resolve a conflict
- X. A way of life
- XI. Is an educational experience
- XII. Allows for participants' moral growth
- XIII. Changes the character of the parties, and of society as a whole

##### 2. The goal of mediation is...

- I. To get the parties to agree
- II. To bring about the resolution of the dispute
- III. To create communication between the parties
- IV. To build trust between the parties
- V. To create behavioural change between the parties
- VI. To empower the parties
- VII. To create a better society
- VIII. To help parties reveal their interests
- IX. To help parties understand the various alternatives for resolving the conflict

##### 3. Success in mediation is...

- I. Achieving an agreement
- II. Achieving an agreement that will show stability over time
- III. When a party understands his/her own and the other party's interests
- IV. When communication between the parties is enhanced
- V. When a negotiation was carried out between the parties
- VI. When a party feels that his/her narrative was recognized
- VII. When parties better understand alternative solutions for resolving the conflict
- VIII. When the procedure was pertinent
- IX. When hostility between the parties is reduced

## Coding Structure - Continued

### 2. Literature

1. Co-mediation
  - I. Allowance for style differences
  - II. How to coordinate interventions
  - III. How to divide tasks
  - IV. Need for style flexibility
  - V. Selection of pairings
  - VI. What makes effective co-mediation
2. Integrated Practice
  - I. Experience
    1. Motivation
    2. Qualification
    3. Training
    4. Work Experience
  - II. Flexibility
  - III. Personal style
  - IV. Personal values
  - V. Practice development
  - VI. Practice model
  - VII. Theory
  - VIII. Theories of conflict
  - IX. Theories of power
    1. Mediator power
  - X. Theory in action

### 3. Emergent

1. Context
2. Decision-making
3. Mediator Flexibility
4. Metaphor
5. Neutrality
6. Reflexivity
7. Sense-making



## Appendix 4

### Group Presentation

#### *Mediator practice: Personal Style, Implicit Theories and Reflexivity*

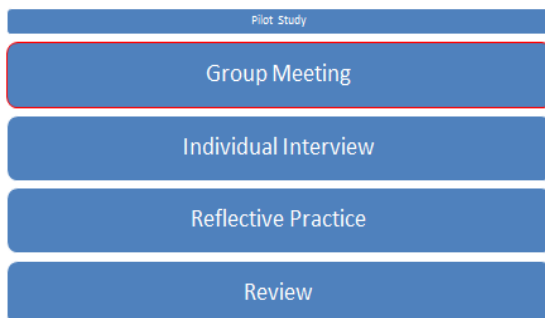
An Interactive Session of Professional Development and Research

#### Today's Meeting

What do we – as individual mediators – bring into the room and how does that impact our decision making?

- An opportunity to explore this as a group
- A briefing as a lead into interviews and reflective practice.

#### Research Stages



#### The Paradox of Method

- Commercial
- Workplace
- Employment
- SEN
- Neighbour

#### The Variability of Context

- Case – community, workplace, commercial
- Participants – individual factors
- Mediator?
- The interaction

#### Drawing on Theory

- Political science
- Anthropology
- Sociology
- Economics
- Psychology – *Confirmation bias*
- Applied game theory
- Decision sciences - *BATNA*
- Planning

## Espoused Theory...

- What we say we do...
- ...and what we actually do (theory in action)
- ...and how would we know?

## Do Labels help?

- Facilitative
  - Positions into interests
  - 'Getting to Yes'
- Transformative
  - Failure of social interaction
  - 'The Promise of Mediation'
- Narrative
  - Dominant narrative
  - Narrative therapy & postmodernism

## Same goals many paths?

- Empowerment?
- Recognition?
- Others?

## Mediator Style

- Do you respond differently in different cases?
- In what ways?
- Stylistically eclectic?
- How is this accomplished?

## Personal Style

- Cognitive overload – simplification to Personal Style
- Formal Model of Practice
  - Facilitative?
  - Organisational
- Personal Schema
  - Beliefs, values, experience

## Integrative Practice

- Best single model
- Synthesis of models
- One root and borrow techniques
- Synthesis across common elements

*Professional competence requires development of one's own theory of practice including technical and interpersonal theory (Argyris & Schön)*

# Case Study

- An incorporated charity has a headquarters in a city and a branch office in a provincial town. The relationship between two employees has broken down to the extent that they hardly speak to each other. One, A, is line managed by the CEO in the city HQ. Employee A line manages the other party, employee B. The branch office accommodation consists of two rooms with no adjoining door, and a kitchen shared with other occupants of the building.
- Employee A is accusing employee B of lack of cooperation, laying a complaint behind her back without going through company procedures, and conniving with employees previously line managed by A to undermine A's authority.
- Employee B, who has been taking leave due to stress, is complaining of bullying, of distortion of facts about the situation presented by A to her line manager the CEO, and of A's unwillingness to accept responsibility for her own actions.
- The CEO is keeping his distance but partisan in favour of employee A who has been working with him for a long time.

## Habitual & Heedful Practice

- Do we see patterns in this case?
- How do these condition our approach?
- Do we adapt...in response to...?
- Discourse & discourse

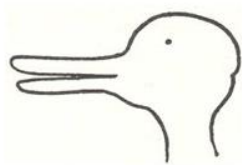
## Group Sense Making

- Cultural grammar
  - Acas
- Communities of Practice
  - Articulating what is excellent practice

# Success in mediation is...?

Achieving an agreement
Achieving an agreement that will show stability over time
When a party understands his/her own and the other party's interests
When communication between the parties is enhanced
When a negotiation was carried out between the parties
When a party feels that his/her narrative was recognized
When parties better understand alternative solutions for resolving the conflict
When hostility between the parties is reduced

## What do you see?



## Social Interaction

- The search for meaning
- Communication, interpretation and adjustment
- The development of self in interaction
  
- Front/Back Stage - Goffman
- Reference Groups - Shibutani
- Intersubjectivity

## Theory Light?

- Neutrality
  
- Power
  
- *What do these words mean to us and how do they affect our practice?*

## Interviewing

Stage 2

- *How can a better understanding of Social Interaction Theory contribute to consciously integrated, flexible practice?*
  
- *How does co-mediation become effective given differing personal styles?*

## Revealing the Implicit

Stage 3

- Through Reflective (and Reflexive) Practice
- The practical impact of theory such as social interaction
- Examining effective co-mediation

## Reflective Wrap Up

- What's new?
- What's struck me?

## Appendix 5

### Reflective Practice

The reflective phase of the research is intended to build 'practical theories of practice', offering professional development to the practitioner whilst addressing the research questions. It is an extension of the topics raised and themes that have emerged from the interview and group phases and enables these to be examined in greater depth in the context of actual mediations.

This phase of the research will run over a period of 9-12 months to enable participants to reflect on a number of cases and consider changes in practice over time. There is however, no requirement that a minimum number of cases be undertaken/reflected upon during this period.

When you are assigned a case that you'd like to include in the research could you kindly contact me to arrange a time for a post-mediation reflective interview (by Skype). I'd also invite you to engage in reflection as you prepare for the case and consider how your formulation ('what's this case about?', 'what should I do next?') evolves during the mediation.

### Reflective Prompts

I'm hoping to encourage reflection which is reflexive - thinking about who we are as mediators as we practice - and explores the social interaction taking place in mediation and how that shapes your practice. I've included below some prompts that might be helpful and I will also draw on material from your individual interviews.

#### Reframing:

Reframing is a technique that has surfaced in group meetings and individual meetings. A recent blog describes reframing as 'recasting toxic language into more palatable forms; by chunking up or chunking down the information provided by the parties; by restating proposals in ways that are likely to be more acceptable to the other party; by shifting the context and time frame of the discussion; or by redirecting the aim of the conversation'.

Is this how you understand and practice reframing? What does this say about your role as a mediator? And the power you are exercising as a mediator?

One theorist suggests 'we see reality as a result of the perspectives we take on through social interaction and the groups whose perspectives we use are called our reference groups.' Do you draw on reference groups as a mediator and how might these influence your reframing?

Is the mediator's role to help reveal objective frames for the dispute? Or provide an alternative mediator frame? Or assist the parties to construct their own frames?

#### Habitual and Heedful Practice:

In our basic training we are provided a set of prescribed steps to follow. How far do you feel able to depart from these and under what circumstances?

Mediators often espouse flexibility, an adaptation in our style of mediation that responds to each case and disputants; we are said to be heedful. But how do we accomplish this? Are we experts in

recognising patterns and then applying the appropriate techniques? How does the interaction with the parties influence our choice of interventions? How do the goals and needs of the parties emerge during mediation and when/how do we respond?

Useful Knowledge:

What do mediators find to be useful knowledge (aka 'theory') and what does this say about them?

I have shared with many of you my own approach to starting joint meetings, namely to ask the parties who'd like to speak first. This, for me, serves two purposes. It's an invitation for the parties to collaborate and it signals my role in facilitating (rather than controlling) the mediation process. That's useful knowledge I've developed from practice that appears to play well with participants. Equally, it expresses my view of mediation and draws on my personal schema.

How has your practice evolved since basic training? What new knowledge have you generated?

Power:

Power is often thought about as being exercised, 'over' and 'against' and many of you spoke, in the interviews, of hierarchical power between parties in mediation. On the other hand, you saw the need to create a level playing field in mediation and this can be conceived as power 'with', a joint and collaborative exercise of power.

How did these aspects of power play out in the case on which you are reflecting? What steps did you take to encourage power 'with'?

And turning to mediator power; how would you characterise your own exercise of power (over or with) and what implications does that have?

## Appendix 6

### Questionnaire Statements

#### **Purpose of mediation: 'Mediation is...'**

Q1 – A technique for resolving a conflict

Q2 – A flexible procedure to resolve a conflict

(Removed) – Increases power inequality in society

Q3 – A tool to create communication between people

Q4 – Encourages one to help oneself

Q5 – Reduces power inequality in society

(Removed) – Strengthens private people against the system

Q6 – Empowers the parties by strengthening their awareness of their self-worth

Q7 – Enhances people's ability to recognize and attend to the other's needs

Q8 – An economical procedure to resolve a conflict

Q9 – A way of life

(Removed) – Perpetuates injustice against the weak and ignores the achievements of groups

Q10 – Is an educational experience

Q11 – Allows for participants' moral growth

Q12 – Changes the character of the parties, and of society as a whole

#### **Goals of mediation: 'The goal of mediation is...'**

Q13 – To get the parties to agree

Q14 – To bring about the resolution of the dispute

Q15 – To create communication between the parties

Q16 – To build trust between the parties

Q17 – To create behavioural change between the parties

Q18 – To empower the parties

Q19 – To create a better society

Q20 – To help parties reveal their interests



Q21 – To help parties understand the various alternatives for resolving the conflict

**Success criteria in mediation: ‘Success in mediation is...’**

Q22 – Achieving an agreement

Q23 – Achieving an agreement that will show stability over time

Q24 – When a party understands his/her own and the other party’s interests

Q25 – When communication between the parties is enhanced

Q26 – When a negotiation was carried out between the parties

Q27 – When a party feels that his/her narrative was recognized

Q28 – When parties better understand alternative solutions for resolving the conflict

(Removed) – When the procedure was pertinent

Q29 – When hostility between the parties is reduced

## Appendix 7

### Pearson Correlations – Statements 1-12, Gender and Experience (Cases)

	Cases	Q1	Q2	Q3	Q4	Q5	Q6	Q7	Q8	Q9	Q10	Q11	Q12	Gender
Cases	1	.101	.195	-.227	-.156	-.038	-.183	.050	-.118	<b>-0.586</b>	-.058	-.054	-.088	.148
Q1	.101	1	-.238	.139	-.054	.128	-.164	-.372	.337	.141	-.147	-.060	.100	<b>-0.483</b>
Q2	.195	-.238	1	-.399	-.241	<b>-0.516</b>	-.282	-.111	.049	-.115	.116	-.103	<b>-0.486</b>	.150
Q3	-.227	.139	-.399	1	-.036	-.102	-.217	-.086	.195	.029	-.045	-.389	-.104	-.090
Q4	-.156	-.054	-.241	-.036	1	.291	<b>0.486</b>	<b>0.628</b>	.232	-.207	-.184	.187	.350	.229
Q5	-.038	.128	<b>-0.516</b>	-.102	.291	1	.270	.370	.317	.066	-.049	<b>0.604</b>	<b>0.645</b>	.352
Q6	-.183	-.164	-.282	-.217	<b>0.486</b>	.270	1	<b>0.609</b>	-.165	.305	-.004	.339	<b>0.605</b>	.215
Q7	.050	-.372	-.111	-.086	<b>0.628</b>	.370	<b>0.609</b>	1	.085	-.182	-.052	.400	<b>0.492</b>	<b>0.471</b>
Q8	-.118	.337	.049	.195	.232	.317	-.165	.085	1	-.169	.061	.060	-.013	.155
Q9	<b>-0.586</b>	.141	-.115	.029	-.207	.066	.305	-.182	-.169	1	.304	.272	.316	-.085
Q10	-.058	-.147	.116	-.045	-.184	-.049	-.004	-.052	.061	.304	1	.217	-.009	.132
Q11	-.054	-.060	-.103	-.389	.187	<b>0.604</b>	.339	.400	.060	.272	.217	1	<b>0.496</b>	.331
Q12	-.088	.100	<b>-0.486</b>	-.104	.350	<b>0.645</b>	<b>0.605</b>	<b>0.492</b>	-.013	.316	-.009	<b>0.496</b>	1	.089
Gender	.148	<b>-0.483</b>	.150	-.090	.229	.352	.215	<b>0.471</b>	.155	-.085	.132	.331	.089	1

### Pearson Correlations – Statements 13-21, Gender and Experience (cases)

	Cases	Q13	Q14	Q15	Q16	Q17	Q18	Q19	Q20	Q21	Gender
Cases	1	.081	-.047	-.060	.063	.229	-.154	-.344	-.403	-.016	.148
Q13	.081	1	<b>0.52</b>	<b>0.487</b>	-.098	-.072	-.223	-.404	.291	.009	-.284
Q14	-.047	<b>0.52</b>	1	.434	-.089	.036	-.098	-.387	.380	-.021	-.265
Q15	-.060	<b>0.487</b>	.434	1	.040	-.016	-.088	-.143	.318	.357	-.265
Q16	.063	-.098	-.089	.040	1	<b>0.649</b>	.319	.252	-.194	<b>0.47</b>	.203
Q17	.229	-.072	.036	-.016	<b>0.649</b>	1	<b>0.539</b>	.064	-.307	.318	.185
Q18	-.154	-.223	-.098	-.088	.319	<b>0.539</b>	1	<b>0.618</b>	-.177	.359	.224
Q19	-.344	-.404	-.387	-.143	.252	.064	<b>0.618</b>	1	.021	.298	.124
Q20	-.403	.291	.380	.318	-.194	-.307	-.177	.021	1	.019	.038
Q21	-.016	.009	-.021	.357	<b>0.47</b>	.318	.359	.298	.019	1	-.120
Gender	.148	-.284	-.265	-.265	.203	.185	.224	.124	.038	-.120	1

Correlation significant at the 0.05 level (2-tailed) in red

Correlation significant at the 0.01 level (2-tailed) in blue

n = 18

Pearson Correlations – Statements 22-28, Gender and Experience (Cases)

	Cases	Q22	Q23	Q24	Q25	Q26	Q27	Q28	Q29	Gender
Cases	1	.099	.337	-.291	-.161	-.419	-.441	-.209	-.176	.148
Q22	.099	1	<b>0.511</b>	.256	-.010	<b>0.646</b>	-.220	<b>0.596</b>	.431	.517*
Q23	.337	<b>0.511</b>	1	-.149	-.402	.247	-.162	.079	.319	.396
Q24	-.291	.256	-.149	1	.160	.259	.212	<b>0.519</b>	-.139	.053
Q25	-.161	-.010	-.402	.160	1	-.073	.282	.062	.185	-.222
Q26	-.419	<b>0.646</b>	.247	.259	-.073	1	.037	.250	.364	.234
Q27	-.441	-.220	-.162	.212	.282	.037	1	-.044	.073	-.372
Q28	-.209	<b>0.596</b>	.079	<b>0.519</b>	.062	.250	-.044	1	.318	.181
Q29	-.176	.431	.319	-.139	.185	.364	.073	.318	1	-.244
Gender	.148	.517*	.396	.053	-.222	.234	-.372	.181	-.244	1

Correlation significant at the 0.05 level (2-tailed) in red

Correlation significant at the 0.01 level (2-tailed) in blue

n = 18

**Appendix 8**

One-way ANOVA

		Sum of Squares	df	Mean Square	F	Sig.
Q1	Between Groups	3.180	1	3.180	4.878	.042
	Within Groups	10.431	16	.652		
Q2	Between Groups	.414	1	.414	.367	.553
	Within Groups	18.031	16	1.127		
Q3	Between Groups	.069	1	.069	.131	.722
	Within Groups	8.431	16	.527		
Q4	Between Groups	1.170	1	1.170	.887	.360
	Within Groups	21.108	16	1.319		
Q5	Between Groups	3.180	1	3.180	2.269	.152
	Within Groups	22.431	16	1.402		
Q6	Between Groups	.719	1	.719	.772	.393
	Within Groups	14.892	16	.931		
Q7	Between Groups	3.501	1	3.501	4.563	.048
	Within Groups	12.277	16	.767		
Q8	Between Groups	.670	1	.670	.396	.538
	Within Groups	27.108	16	1.694		
Q9	Between Groups	.247	1	.247	.116	.738
	Within Groups	34.031	16	2.127		
Q10	Between Groups	.247	1	.247	.282	.603
	Within Groups	14.031	16	.877		
Q11	Between Groups	5.470	1	5.470	1.975	.179
	Within Groups	44.308	16	2.769		
Q12	Between Groups	.192	1	.192	.127	.727
	Within Groups	24.308	16	1.519		
Q13	Between Groups	2.975	1	2.975	1.401	.254
	Within Groups	33.969	16	2.123		
Q14	Between Groups	.534	1	.534	1.208	.288
	Within Groups	7.077	16	.442		
Q15	Between Groups	.219	1	.219	1.210	.288
	Within Groups	2.892	16	.181		
Q16	Between Groups	.931	1	.931	.690	.418
	Within Groups	21.569	16	1.348		
Q17	Between Groups	.534	1	.534	.567	.462
	Within Groups	15.077	16	.942		
Q18	Between Groups	.931	1	.931	.848	.371
	Within Groups	17.569	16	1.098		

Q19	Between Groups	.578	1	.578	.249	.625
	Within Groups	37.200	16	2.325		
Q20	Between Groups	.055	1	.055	.023	.881
	Within Groups	37.723	16	2.358		
Q21	Between Groups	.492	1	.492	.235	.634
	Within Groups	33.508	16	2.094		
Q22	Between Groups	4.937	1	4.937	5.848	.028
	Within Groups	13.508	16	.844		
Q23	Between Groups	2.975	1	2.975	2.981	.104
	Within Groups	15.969	16	.998		
Q24	Between Groups	.055	1	.055	.044	.836
	Within Groups	19.723	16	1.233		
Q25	Between Groups	.309	1	.309	.827	.377
	Within Groups	5.969	16	.373		
Q26	Between Groups	2.223	1	2.223	.929	.349
	Within Groups	38.277	16	2.392		
Q27	Between Groups	.623	1	.623	2.571	.128
	Within Groups	3.877	16	.242		
Q28	Between Groups	.931	1	.931	.540	.473
	Within Groups	27.569	16	1.723		
Q29	Between Groups	.623	1	.623	1.009	.330
	Within Groups	9.877	16	.617		