

**NEUTRALITY, IMPARTIALITY AND FAIRNESS: AN EVALUATION OF THE ETHICAL  
CHALLENGES FACED BY MEDIATORS IN IRELAND**

**by**

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# Dissertation Submission

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## **Abstract**

According to regulations underpinning the process of mediation, the mediator must be neutral and impartial, not taking sides. However, some critics have raised the argument that, by nature, the mediator can not be neutral, since there is a whole history of life behind every human being. Due to so much controversy in this area, the main objective of this dissertation was to examine the ethical obstacles faced by mediators in Ireland in order to remain unbiased, impartial and obtain a reasonable outcome.

In order to obtain the data, qualitative research was carried out through a survey addressed to mediators in Ireland in order to listen to the practitioners' perception of the controversial problem of the study of this field. Exploratory research has also been carried out on the scholarly articles of different authors on the subject. Following an in-depth analysis, the study concluded that variations between the principles of neutrality and impartiality are still open to debate among professionals in the field. This work leaves a legacy for future studies that, like the current author, not only in Ireland but in all other nations, would like to promote a less restrictive regulation of conflict resolution.

**Keywords:** Neutrality, Impartiality, Mediation

## **Introduction**

### **1. Background**

Mediation is one of the most powerful methods of dispute management and resolution. Moore (2014) described mediation as an informal, voluntary and confidential process performed by an impartial third party and acknowledged by the parties to the conflict in order to promote communication between the parties and to allow them to reach an agreement drawn up according to their own decision. To succeed, however, a qualified mediator must be able to perform this process.

The mediator is a peacemaker, a facilitator who can not advise or appreciate the merits so that the parties are responsible for making their own replies. He or she must allow participants to be empowered and to give voice to silenced individuals to dictate their sentences themselves without intermediaries, eliminating the position of the protagonist from the State (Bogdanoski, 2009).

Authors and scholars of conflict resolution do not hesitate to point out its democratic nature, based on the method employed, the structure and characteristics of the system, the role of the mediator, and also the personal and potential transformation of the society that it enables.

Moreover, the very suggestion on the disposition of seats in the mediation session (mediated side by side at the round table) indicates the concern to deconstruct the view of the hearing in which the judge assumes a position of dominance and the litigants face to face as adversaries (Bowling and Hoffman, 2000).

Mediators must be neutral and impartial by regulation, and there is a consensus in all forms of mediation that mediators perform the process neutrally and impartially. The Mediators' Institute of



Ireland (MII) Code of Ethics and Practice No. 56 specifies that the mediator does not take sides. The parties to the mediation process relate neutrality to confidence and acceptance in resolving their disputes for what is fair.

Therefore, because the mediator is part of the process, some critics argue that he or she is not neutral since he or she controls and is affected by the dynamics of the mediation process. However, a mediator must always behave equidistantly to provide a balance of influence, mutual listening, empowerment and fairness for solutions that meet the needs of the negotiated parties (McCorkle and Reese, 2018).

The authors argue, according to research on the case, that a mediator can not be neutral since he is a human being with his or her life, experiences and values. Moreover, from the moment the mediator can use his techniques as a way of conducting the session for the good of the parties, the result of the process will already be affected, exempting the mediator from the neutrality and impartiality required (Mayer 1987).

However, this does not mean a lack of commitment on the part of the mediator or even a breach of the mediation criteria. On the contrary, according to Rosenberg (1991), when the mediator uses his or her techniques to conduct mediation, he or she prioritises the fair outcome between the parties, which scholars would interpret as a commitment to a balance of power for the good of both parties.

Nevertheless, the connection between neutrality, impartiality and fair outcomes is a delicate subject to be evaluated, as this would lead to a questioning of the mediation process' legitimacy. Which is not the intention of the writers of this area, much less the intention of this study. Neutrality and impartiality principles are fundamental for appropriate characterisation of mediator conduct. In this

regard, this study aims to examine the relation between ethical barriers and neutrality, impartiality and fairness of procedure within the mediation process in Ireland.

## **2. Research Question**

Controversies created by the concept of fair results, together with neutrality and impartiality, have increased the variety of researchers related to this topic in order to demystify this picture. This scenario demonstrated the importance of research in the study of neutrality and impartiality standards.

While there is a great interest in the academic field to understand the topic better, there is a lack of research material in this area. This study is, therefore aimed at trying to understand this phenomenon better.

Understanding the need for outlining to ensure that this study achieves its motivations and objectives through the exploration of this field, a starting point for this study has been established through the research question: What are the ethical challenges that mediators in Ireland are confronted with in order to remain neutral, impartial and achieve a fair outcome?

### **2.1 Aims and Objectives**

This dissertation aims to evaluate the ethical challenges faced by mediators in Ireland in order to remain neutral, impartial and achieve a fair outcome in the mediation process. In order to accomplish the goals of the research, this study has one general objective and three particular objectives.

The main objective is to analyse the association between ethical barriers and neutrality, impartiality and procedural fairness within the mediation process in Ireland.

The subjective details consist of:

- To evaluate the mediator's role in both theoretical and practical context;
- To assess what is the role of the mediator's emotion and the ability to remain neutral and impartial;
- To assess what are the mediator's perceptions about neutrality, impartiality and procedural fairness;

## **2.2 Dissertation Road Map Proposed**

The dissertation is structured into five chapters, supplemented by an introduction and a collection of final observations.

Chapter 1- The first part of this study will present the reading and interpretation of the literature review, based on a variety of scholarly research papers. This section will aim to present both sides of the authors' arguments on the issue of neutrality and impartiality in the mediation process. The writers' ideas will be presented and will allow for a summary of the discussion. For this chapter, section and subsections need to be used to discuss the topics clearly.

Chapter 2- The research methodology used for the development of the thesis will be discussed in the second part of this work. In this section, the issue, the starting point, the objectives of the study will be discussed, as well as the methodological options and strategies. The research approach is

based on a qualitative analysis, which attempts to understand the dynamics of the dilemma of neutrality and impartiality in the mediation process through the subjects that connect to it.

Chapter 3- For data collection, a questionnaire was selected consisting of mostly open-ended questions that allowed the perceptions of a group of mediators in Ireland on issues of neutrality and impartiality to be known. As explained above, quantitative data will be analysed from a qualitative research perspective. Therefore, the data obtained from the answers analysed are provided with a descriptive, interpretive and inductive analysis.

Chapter 4- The results of the questionnaire will be discussed in the fourth part of this work. An in-depth review of all sections and subsections of the questionnaire will be carried out so that the objectives of the study can be accomplished. The aim is to interpret the findings and explain them. The rationale for the issue of the principles of neutrality and impartiality, along with the search for fair results, has been outlined.

Chapter 5- In the fifth part of this work, after acknowledging the literature review; presenting the qualitative data, interpreting the data based on the survey objectives, also using the academic studies in parallel, the study will present the in-depth analysis combining the literature argument with the survey results. A contextual analysis will be made contrasting theory and practice.

Finally, a reflexive and critical conclusion of this academic study will be drawn from the final part of this dissertation, connecting the objectives of this work with the results of the discussion on the stages of this academic research. The structures of the questionnaires will be included in the appendices (see Appendix I and Appendix II).

### **3. Limitations**

The study was first intended to combine the quantitative with the qualitative method in this dissertation. However, due to the number of questionnaire participants, the initial definition could not be pursued.

The questionnaire presented two versions. The first edition did not have an appropriate number of responses. There was then chosen a slight change in its essence. The second edition has thus succeeded in achieving the minimum number of participants.

### **4. Major Contributions**

In Ireland, the majority of research on mediation has concentrated so far on the techniques and positive characteristics and the characteristics used in the mediation process.

In this report, the researcher has attempted to transfer attention to problems rather than the individual intactness of practitioners in the field, contributing to the creation of the more open stance of reflections on neutrality and impartiality.

## **Chapter 1. Literature Review**

### **1.1 Introduction**

Mediators and commentators recognise neutrality and impartiality as essential to the theory and practice of mediation. It is not clear, though precisely what they mean when they say that they are acting neutrally and impartially. The literature review in this chapter, first, discusses a number of studies on the definition and rationale of mediator neutrality and impartiality, looking at how neutrality and impartiality work or do not work in practice. Secondly, it examines whether the concept of ‘procedural fairness’ should be given primacy over the concept of impartiality to ensure substantively fairer mediation outcomes. This dissertation aims to evaluate the role of the mediators in Ireland regarding the ethical challenges that they have to face in the process of mediation. It enables a rethinking of the principle of neutrality, impartiality and observing the idea of multi-partiality as elements of the mediating system.

### **1.2 Mediation: An Overview**

The essence of mediation is to provide spaces for dialogue between the parties to a conflict, with the help of the mediator. The parties have the opportunity to communicate in another perspective, aimed at mutual understanding and the search for satisfactory solutions to their conflicts (Moore, 2014).

Being a method supported by consensus, the parties must be prepared for dialogue and decision making, considering that the consensus becomes convincing not by simple agreement, but by the conscious participation of those who concluded it (Mulcahy 2001). Thus, the first relevant aspect of

mediation is to ensure the balanced participation of the mediated parties, who cannot only be brought to an agreement but must understand the implications and consequences of their participation in the mediation process. In this regard, the mediator seeks to be guided to encourage the conscious and autonomous participation of the mediated, assisting them in their processes of empowerment and emancipation (Agusti-Panareda, 2005).

As the mediator is part of the process, therefore, some commentators suggest that he or she is not impartial, as he or she influences and is influenced by all the dynamics of the mediation process (Mayer, 1987). However, he or she must always act equidistant to provide a balance of power, mutual listening, empowerment and justice of solutions, which meets the needs of the mediated parties (McCorkle, and Reese, 2018).

The scholar's evidence indicates that the mediator's position transcends the mediator's neutrality and impartiality. The mediator becomes part of the bargaining process of the parties (Kydd, 2003). Accordingly, the next topics will be the analysis of the concepts of neutrality and impartiality, which are recognised as central characteristics of the mediation process. Nevertheless, to reach an awareness of justice in the process, the ethical principles of this process must be discussed first.

### **1. 3 Professional Ethics and Code of Ethics**

Whatever way we look at ethics; the study would not have interference in the personal conception of moral values. Furthermore, changing the values does not mean changing the conduct, recognising that it is determined by several factors, not only by morals. Conduct is also the result of the education, personal opinions and convenience (Cooks and Hale, 1994).

In the face of this situation, according to Moore (2017), a utilitarian sense would justify the elaboration of a code of ethics for believing this would stimulate the development of a uniform and collective effort (certainly more productive than mere theoretical explanations). These positions have a simplistic view of the study of ethics, dealing only and directly with conduct. The problem is that, once the conduct is determined, the human universe is hidden behind it (Exon, 2006).

The mechanism used for this purpose is the code of ethics, which simplifies moral values, and is the first step in the analysis of professional ethics (Schuwerk, 1997). Still, it is worth referencing as the first contact with mediation and mainly to awaken the critical assessment of the suggested behaviours.

In mediation, unlike the judicial process, there is enormous substantive and procedural flexibility, allowing the process to be moulded by the positions of the mediator and, secondarily, of the parties (Ibsen, 2019). Therein lies the importance of reflecting on the conduct of the mediator, as the result of the mediation will depend on the approach that the participants present and on the values and vision that they have of the mediation (Spencer and Brogan, 2007).

According to The Mediators' Institute of Ireland (MII) Code of Ethics and Practice, the principles of mediation are detailed in section 11 "The fundamental principles of mediation are that it is a voluntary process, that confidentiality applies to the process, that the mediator is and remains impartial and neutral, that the parties have the right of self-determination and decide on their own solutions rather than having a solution imposed on them. The participants will treat each other and the process with respect". Among some of the main conducts of mediators, this study will address neutrality and impartiality as the first step to understanding the ethical challenges of the mediator in



the mediation process. It will also refer to the voluntary nature and self-determination of the parties.

These sessions are described below:

- Section 62. Voluntary Participation– Mediation is voluntary. Any party to mediation including the mediator may leave the process at any time without having to give reasons.
- Section 59. Self Determination – The Parties make the decisions in relation to the outcome of the mediation. The mediator is there to help that process - The content and outcome of the mediation belongs to the Parties.
- Section 56. Impartiality and Neutrality – The Mediator must act and be seen to act in an impartial manner throughout the process of mediation. Impartiality means freedom from favouritism, bias or prejudice. The mediator must not take sides. If a Mediator believes that they cannot remain impartial, they shall terminate the mediation.

The Code of Ethics and Practice (MII, 2020) also states that the mediator uses the techniques of conducting the process following the values of fairness, diligence, honesty, impartiality, transparency, and discretion.

Whatever forthcoming legislation will require both legal and judicial professionals and a strong awareness of the benefits of mediation, however, in the case of an obligation or discretion implying some mandatory mediation, this could conflict with one of the critical elements of mediation(Ibsen, 2019). It is essential to think about the distinction between the concepts of mediation within and outside the process. Although all MII mediators are governed by the MII Code of Ethics and Practice, any law prevails over this (Moore, 2017).

## **1.4 Mediator Styles: The Role of Emotions in Mediation and The Ability to Remain Neutral and Impartial**

The emphasis on the parties has increased the need for expertise, strategies and action by the mediator to influence parties' behaviour. Mediators are professionals who use their methods and power to make use of their expertise in seeking a solution (Mayer, 1987).

According to Bowling and Hoffman (2000), each type of mediation represents a different technique to reach the result: an agreement between the parties. This is because mediation, unlike legal proceedings, does not seek a winner, but a point of convergence between those involved. The position of the mediator is not that of a judge, and the professional does not have the power to make decisions, but rather to act as a catalyst, aiming to allow the best dialogue between the mediated (Moore, 2017). There are four main styles used by mediators today: Facilitative, Evaluative, Transformative and Narrative. These styles will be discussed below, according to Exon's reflective study (Exon, 2007).

### **Facilitative Mediation**

It is also called traditional mediation, where a qualified mediator aims to facilitate discussions between opposing parties. Facilitating mediation is one of the oldest in terms of application, although its formal structure was studied and formatted at the beginning of the 20th century. This technique understands that the parties can always reach a substantial and lasting agreement if they are provided with enough information, time and support. The mediator raises questions; validates and normalises the points of view of the parties; seeks out the interests behind the positions taken by the parties, and assists the parties in identifying and analysing strategies for resolution. The

mediator who uses this style is impartial. He or she does not offer suggestions, suggestions or thoughts.

### **Evaluative Mediation**

In this mediation model, the aim is to reach an agreement between the parties, focusing on the result, and not on the interest of each party. The evaluative mediator intervenes more in the mediation than the facilitative mediator by making suggestions or giving opinions as to what could happen if the case goes back to court. Based on this assessment, the mediator, who is usually from the legal area, assesses the case and sets out how he believes the resolution in court would be.

Evaluative mediation is more likely to be used when money is the reason for the dispute. The evaluative mediator also has some experience in the substance of the conflict and uses his or her information to provide an opinion on the merits of the situation. This assessment can be applied either to legal issues or to factual matters, whether financial, engineering or otherwise. A mediator using this style can also refer to the strengths or disadvantages of the positions suggested by either side of the conflict.

### **Transformative Mediation**

Transformative mediation is considered to be one of the newer types of mediation. This mediation model aims to reestablish the relationship and empower people in conflict and then resolve the dispute. The method focuses on enabling each party to understand the needs and interests of the other.

Similar to the facilitative method, while the transformative style also maintains the framework of the facilitating dynamic, it also aims to motivate each of the parties and allow each party to understand the point of view of the other party. The purpose of this style is to change the relationship between the two parties during mediation through empowerment and appreciation. This style focuses a great deal on contact and cooperation between the parties.

### **Narrative Mediation**

Narrative mediation presupposes that people are trapped in the loop of conflict because they see themselves tied to it. This technique tends to take into account the stories of the parties and to find meaning in the construction of the relationship between them for the existence and resolution of the problem.

This type of mediation has, as a starting point, that all people live through stories and speeches, that is, training is built through relationships. A mediator using this style would get the parties to see the dispute from a distance, by story-telling. Through dual listening to the stories of the parties, a new meaning is sought. After the story is over, the parties collaborate with the mediator to construct a new development where a settlement agreement replaces the dispute. Therefore, it seeks to avoid essentialist determinism, that is, it does not assume that people can be intrinsically aggressive, fragile, right, or depressive, for example, but that they develop these behaviours. The objective is to find the resolution in the construction of a new story, to get the parties to separate themselves from the conflict.

There are strengths and disadvantages in each type of mediator styles. Once mediators become part of the conflict, they change the dynamics of the conflict. The versatility and willingness that the

mediator has to adapt to every new dispute and to the restrictions that emerge in the resolution process. The mediators are altering the dynamics of the conflict by adopting different methods depending on the type of dispute they are dealing with. There are very different styles and techniques of mediation available to help settle the dispute. Every mediator is different, just as every human being is different.

### **1.5 Mediator Neutrality: Definition and Value**

Once the basic outlines of the mediation process principles and the mediator's role have been set out, one of the most controversial topics in terms of mediation, which is the so-called neutrality principle, must now be discussed. According to McCorkle (2005), neutrality and impartiality are commonly used interchangeably, as if they were synonyms. In reality, for other scholars, they are not.

In a paradigmatic study on the topic, Ibsen (2019) explained the issue well, elucidating in a few words that impartiality, in terms of the behaviour of the judge, is revealed when his or her attitude does not favour the treatment of either of the parties, while neutrality is revealed when the judge acts indifferently to the outcome of the case.

In this work, Ibsen (2019), after exposing these ideas, concludes that the judge must always remain impartial, but that this impartiality should never be understood to the point of legitimating total judicial abstention from the process, allowing unfair results to be produced, due to the apparent need to respect this postulate.

It is said to be apparent because, in this hypothesis, one would not be faced with the problem of whether or not to respect impartiality, but rather with a real attitude of neutrality on the part of the judge concerning the process, which, in the view, this judge is not allowed to possess (Ibsen, 2019). This is explained, thus, in the exercise of jurisdiction, it is the responsibility of the judge to investigate and render a resolution to the specific case, following the terms of the law, in that case, it can not be expected to produce results which are not in compliance with the law (Hazard, 1997).

Therefore, transplanting those concepts to mediation, where, unlike the jurisdiction, it is the dissenting parties themselves who are responsible for taking a decision, putting an end to their dispute, it is natural to conclude that the mediator, unlike the judge, must, in principle, be neutral.

This is because, as stated above, it is the parties themselves who are responsible for obtaining a decision in this field. Any solution that is suggested or even imposed by the mediator is illegitimate, given the principle of self-composition of the parties, another postulate of apparent incidence in this field (Welsh, 2017).

Thus, by raising the concept of neutrality to the level of a principle of mediation, one can see that the legislator wanted to avoid the mediator imposing, guiding, or making suggestions as to the merits of the dispute, or in any way influencing the final result of the mediation, conferring a solution to it, according to its own scale of values, which would be in manifest contradiction to any systematic mediation (Mayer, 1987). This is how the principle of neutrality should be understood.

### **1.5.1 Practical Context of Application**

The great practical question arising from the incidence of this principle lies in the establishment of an exact boundary for the principle of neutrality, such that, on the one hand, Izumi (2010) explains that its substance remains upheld, without, on the other hand, sacrificing, where possible, its possible and indispensable interference in the conflict.

In this context, it should be emphasised that such a principle, although understood in the terms outlined above, cannot be carried out with extreme strictness. In other terms, the neutrality exposed here can never be interpreted in an absolute manner; any intervention of the mediator in the dispute submitted to him or she could be interpreted, as a form of imposing his or her personal perceptions, his or her values, concerning the merits of the dispute, which, in practice, would end up making any intervention on his or her part impossible, which certainly does not seem reasonable to admit (Exon, 2006).

In this regard, it is worth emphasising that even for those who admit the principle of neutrality as a statement guiding the mediator's posture, they do so with individual reservations. According to Crowe and Field (2019), this is because it is understood that neutrality as an endpoint in itself, or rather, as a permanent way for the mediator to behave throughout the mediation process is, at the very least, an unrealistic idea.

Notwithstanding, in this hypothesis, one would have a mediator as a static being, without values, who, because of unreserved attachment to this principle, would never intervene in the dispute, thus revealing an absolute indifference to it (Crowe and Field, 2019). Based on this idea, it is evident that there are authors who deny even the existence of neutrality of the mediator, leading them to affirm that, as judges, mediators would only be impartial.

In this regard, Douglas and Field (2006) discuss that it should be noted that neutrality understood under these terms is an unattainable myth. Moreover, it is an idea that practically renders the figure of the mediator ineffective, taking from him or her all the contribution he or she is capable of offering to reach an adequate solution to the dispute. For the writers, it is evident that if this principle were to be interpreted to the extreme, the very operative essence of mediation would remain vulnerable.

It can thus be seen that the touchstone of the concept of neutrality lies in making its actual desideratum consistent with the required and reasonable intervention that the mediator would have in evaluating the conflict submitted to him or her. If such compatibility is not possible, the way out even seems to accompany those who deny the application of this principle to the mediator. It happens that this simplistic solution often contradicts the literal text of the law (Mayer, 1987).

As an example, imagine an intervention by the mediator to rebalance the forces in the negotiation process between the parties, by formulating questions to one of them, to allow him or her to consider an aspect previously ignored by him or her, but crucial for a correct evaluation of the dispute. Could such an intervention be considered as an attack on this principle? According to Astor (2007), the doctrine certainly does not believe so, a view in which one entirely agrees.

The problem surrounding this topic remains vulnerable when it is known that any human interference can give rise to even a mild perception by the mediator of a particular subject, whether the language he or she uses can classify him or her, by his or her understanding of the knowledge exchanged there, or even by the manifestation of his or her values and perceptions of the dispute (Coben, 2004).



## 1.6 What is Impartiality?

There is an extensive academic commentary on what constitutes impartiality within the mediation context. As mentioned above, the concept of impartiality tends to be housed by commentators within the broader concept of neutrality. Neutrality is a separate but related concept. It relates to the mediator's practice of impartiality through asymmetrical disengagement from or distance from parties' interests or proposals (Halperin, 2020).

Some commentators compare neutrality with impartiality in the same way that others consider impartiality to be a quality or an interpretation of neutrality. Moore (2014) classifies impartiality as "the absence of partiality or preference in favour of one or more negotiators, their interests or the specific solutions they defend (p.53)" while associating neutrality with the relationship or behaviour between intervener and disputants (p.53)". Besides, the author points out that the mediator has had no previous relationship with the litigating parties from which the mediator could benefit directly and significantly (Bailey, 2014).

However, the purpose of this dissertation is to make it possible to reconsider the concepts of neutrality and impartiality. Impartiality typically indicates equality of treatment and non-discrimination. The Oxford dictionaries define impartiality as 'treating all rivals or disputants equally'. In contrast, the Merriam-Webster Dictionary defines the word impartiality in terms of not being partial or biased and treating or affecting all equally (Shapira, 2016). It is clear, however, from mediator's Code of Ethics and Practice, that while they require mediators to act impartially, this is generally framed negatively as freedom from bias and favouritism rather than positively as a duty to treat the parties equally (Shapira, 2016).

There is a perfect reason for this: if mediator impartiality was concerned with equal treatment, the mediator would have to ignore inequalities between parties and the mediation process would favour

stronger parties over weaker ones. This situation, where the parties meet on unequal terms is where the interesting questions begin to emerge (Shapira, 2016).

One party in a mediation will often have a better ability to negotiate, higher education or intellectual capabilities, more resources, a more stable emotional state or more significant resources than the other party in a mediation (Shapira, 2016).

Even this limited definition of impartiality as freedom from bias or favouritism, however, is not adequate in such unequal situations. This is because it offers no guidance to mediators as to what conduct will be considered bias and what conduct will be considered to be permissible intervention (Rosenberg, 1991).

The first point that needs to be approached under the observance of this principle refers to the fact that the mediator has to avoid taking action that can be viewed by either party as a position in favour of another. Codes of conduct for mediators do not offer direction and while some commentators suggest that in appropriate circumstances, mediators should assist weak parties; the ethical rationale for such mediator intervention remains vague (Shapira, 2016).

At this stage, the distinction between formal and practical equality is essential to be explored. Formal equality is the assumption that individuals must be treated fairly or consistently at all times for fairness. Substantive equality goes beyond the universal standards for the acceptance of the equality of all and identifies discrepancies between parties rather than treating parties precisely the same (Mulcahy, 2001).

According to Rosenberg (1991), mediator impartiality then rules out the notion of treating all parties precisely the same as it recognises differences between the relative strength of parties. On the other hand, there is a limit to more substantive constructions of equality or impartiality.

This is because mediation is often framed as a process which is different from formal proceedings precisely because disputants can construct their own agreement. As mediators are constrained from controlling or regulating the substance of an agreement, justice from this perspective can only be procedural in nature, and there can be no substantive basis for justice if disputants are responsible for their own agreements (Cobb and Rifkin, 1991).

### **1.6.1 Definitions of Impartiality in Practice**

On one interpretation, mediator interventions could be construed as 'justified favouritism' whereby intervention is necessary in order to protect another moral right of one party (such as party autonomy), and there is no other possible intervention with a lesser impact on the mediator's impartiality (Rosenberg, 1991).

Another issue commonly linked to the principle of impartiality according to Mayer (1987) is whether or not its normative command offends a more active intervention by the mediator, in order to eliminate possible imbalances that affect the parties' negotiating capacity. On another interpretation, however, treating parties, in the same way, might promote the interests of one party to the disadvantage of another such that it would fall within a substantive conception of impartiality (Rosenberg, 1991). Under this conceptual approach, different treatment by a mediator would be justified as a protection of mediator impartiality (Shapira, 2016).

The way such interventions are framed then could be determinative of whether and to what extent interventions are considered permissible or not. Consider, for example, the following:

A Florida mediator asked the Mediator Ethics Advisory Committee (MEAC) whether he could inform a mediation party of a legal right of which he seemed ignorant of, to make a legal claim.

The Committee indicated that it thought he could not do this because this would necessarily compromise his impartiality. The Committee stated that "advice will inevitably favour one party over another and thus, by its very nature, advice can not be provided while maintaining impartiality".

The Committee instead suggested that the proper intervention would be to check with the party whether he or she had consulted a lawyer and considered his or her legal rights and advise him or her to seek legal counsel.

This more limited intervention was targeted at assisting the party in exercising his right to self-determination. If the party was already represented or had made an informed decision not to seek legal advice, the mediator could legitimately assume that the party had exercised self-determination (Shapira, 2016).

Suppose, however, an alternative conceptual approach was taken whereby allowing one party to remain ignorant of his or her legal rights was construed as bias against him or her. In this situation, a less restricted intervention maybe taken in order to respect a substantive notion of impartiality. Consideration must also be given to what impartiality seeks to protect within the mediation process.

Is impartiality about protecting party autonomy and choice from mediator influence and bias? In which case, the focus will be on how best to ensure that parties are exercising self-determination (Mulcahy, 2001). On the other hand, if impartiality is directed towards achieving substantively fairer outcomes, then one must examine whether it, in fact, does this in practice (Coben, 2004).

Bogdanoski (2009) argues that viewing the mediator as an impartial facilitator assumes that the mediator can act within the process without impacting on it<sup>1</sup>. There is evidence, which supports that mediators are not practising impartiality when they claim to do so.

The line between controlling the process and its content is blurred accordingly, and mediators very often influence outcomes through how they facilitate their mediations, including their use of strategic interventions throughout the process, such as the use of the appropriate techniques such as active listening, reformulation, positive connotation, among others (Bogdanoski, 2009). In fact, as the studies related to these subjects evidences, a growing number of mediators are starting to recognise that nearly every process intervention made by a mediator affects the substantive outcome.

Mediators are committed to procedural fairness but have different attitudes to substantive fairness. For some mediators, the challenge is around deciding what strategies to employ to ensure substantive fairness without contravening ethical requirements such as neutrality/impartiality and self-determination. This is especially the case if one party is at a clear disadvantage (Noone and Ojelabi, 2014).

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<sup>1</sup> Bogdanoski's comments relate to "neutrality", but there are equally applicable to "impartiality".

Mediators influence the content and outcomes of mediation to a greater extent than is acknowledged in theory. Mulcahy (2001) argues that neutrality is associated with impassiveness and invisibility. Cobb and Rifkin (1991) define neutrality as a linguistic system that works to conceal the power of mediation and causes mediators to ignore their role in the development and transformation of conflicts. Impartiality, therefore, cannot be confused with passivity. The mediator must actively participate in the negotiation process in order to eliminate any distortions that break with the necessary balance that must exist between the parties (Mayer, 1987).

Douglas (2012) argues that there is a difference between the process and the outcome "grounds understanding of both mediator neutrality and party self-determination as key principles of practice, (p.164)" and, on the basis that neutrality precludes the mediator from inputting into the content and outcome, the mediator is less able to ensure substantive justice (Noone and Ojelabi, 2014).

According to the Noone and Ojelabi's (2014) study, the author concludes, however, that more work needs to be done concerning the mediator's responsibility to ensure substantive justice. Field (2003) advocates for a contextual approach, which values relational party self-determination.

As transformative and narrative mediators have pointed out, facilitative mediators cannot be strictly impartial because they are settlement-oriented and their interventions are targeted towards solving the parties' problems rather than repairing or restoring their relationships with one another (Exon, 2007). Sibley and Merry have demonstrated that mediators who are more directive, by assisting the parties to define their dispute and generate options for its resolution, are much more likely to generate settlement (Chalkey and Green, 2016).

In addition to intervening, mediators can also control the process in more subtle ways that can have the effect of influencing the parties' settlement. The mediator's selective facilitation of the process through their use of particular body language can have an inhibiting or encouraging impact on the parties' ability to communicate themselves with confidence in the mediation (Exon, 2007). Mayer (2011) outlines that primary body language, such as giving one party more eye contact than the other or allowing one party to express themselves at greater length, are actions, which can promote one party's interests over the other (Chalkey and Green, 2016).

Furthermore, Cobb and Rifkin (1991) found that in over 80% of their case studies, the party whom the mediator permitted to present their argument first outlined the content of the settlement. However, Garcia et al. (2002), who observed and analysed videotapes from 30 mediations found that this bias could be overcome if the parties decided themselves who would present their argument first, thus avoiding feelings of unfairness (Chalkey and Green, 2016).

Mediators can covertly steer parties towards reaching specific outcomes by creating more opportunities to talk through the mediator's favoured options, thereby giving not a lot of emphasis to alternative options, which the mediator may find less desirable (Chalkey and Green, 2016).

Besides, mediators can also influence settlement through their use of strategic questions; Mediators can use leading and suggestive questions, to direct the parties towards solutions and answers which they are more inclined towards (Bogdanoski, 2009).

## **1.7 Procedural Fairness**

The concept of mediator impartiality presupposes that the mediator can facilitate the mediation process without imposing their own ideological predispositions on the content/ outcome. However, as noted above, in practice, the boundary between facilitating the process and determining the content/ outcome is indistinct (Bogdanoski, 2009). Chalkey and Green (2016) argue that mediator impartiality (neutrality) is a fallacy as the slightest action or inaction, will affect the outcome of the dispute and the nature of the settlement and, therefore, mediator influence is unavoidable.

On this basis, according to Exon (2006), mediators should be acknowledged as having a positive duty to ensure there are minimal standards of fairness to procedures as opposed to outcomes embedded within the mediation process. Regardless of what the parties have agreed, it is problematic to expect mediators to ensure that the outcome meets the standards of justice, given that mediation is a voluntary process in which the mediator does not have the power to force a particular agreement.

Besides, the author clarifies that mediators have the right to withdraw from the mediation process at any time. However, this prerogative does not put mediators in a position where they can determine the parties' agreement for them (Exon, 2006).

Commentators such as Lawrence Susskind, Leonard Riskin and Isabelle Gunning make a case for an increased focus on accountability for the outcome, not just a mutually acceptable agreement. As Haleperin (2020) describes, a crucial role of the mediator is to make sure that the parties have equal opportunities for concisely engaging in dialogue.

Exon (2006) gives the example of the United States (US) state standards, in which the ideas of justice mediation procedures appear to be adjusted with the substantive concepts of justice in terms



of the final result. The author outlines that in the ethical codes of some American states, mediators could be required to end a session where parties are coming towards an unconscionable agreement or when one side is using the mediation to gain an unfair advantage.

The author also contends that describing the approach used by the mediators in those cases can be identified as the narrative or facilitative approach to mediation, and it includes strategies to help disadvantaged parties address issues of substantive unfairness and to address power imbalances between disputants.

However, this approach seems to suffer from the same uncertainties that plague the principle of impartiality (discussed above). An assurance of some degree of procedural fairness, however, would appear to be less open to attack or as incompatible with the functions of a mediator.

### **1.7.1 Pure Procedural Fairness and Substantively Fairer Outcomes**

John Rawls pioneered an idea of pure procedural justice (Solum, 2004) in which he argued that there was no need for an independent standard for the assessment of justice and fairness and that there can be no assessment of whether a mediation outcome is fair as a result.

Within Rawls' conceptual framework, the fair procedure will, by its very nature ensure a fair outcome and further, the outcome will be fair irrespective of what the outcome is. Advocates of this approach associate procedural justice with substantive justice and argue that ensuring procedural justice will lead inevitably to a fair settlement (Ojelabi, 2012).

According to Quek Anderson (2018), the association between procedural and substantive justice was endorsed by the socio-psychological study that examined the participants' own subjective

assessment, which concerned the fairness of the dispute resolution process. Noone and Ojelabi (2014) had pointed out how perceptions of procedural justice likely lead to favourable perceptions of substantive fairness and in turn, to more durable agreements. Some commentators discuss that the perceptions of the parties measure fairness in mediation—such that public legal norms are relevant but not definitive. As Cheevers (2020) describes the role of the mediator is to help the parties decide their own views on fairness or justice, and whether or not the mediator agrees with those views does not matter, as the principle of self-determination is a central value of mediation.

This figure fits with the view that a mediated outcome is only fair if the parties see it as fair. Noone and Ojelabi (2014) propose that issues of fairness in the outcome can be approached in part by developing a values-based approach to mediation. They claim this approach “supports mediators in identifying and addressing power imbalances, abuse issues, participant vulnerability, and other matters which may result in injustice (p. 155)”.

Stulberg (2004) argues that mediation could be referenced as a process of ‘pure procedural justice’ since it can tackle matters of injustice utilising codes of conduct or through the competences of the mediator.

Furthermore, the author primarily highlights elements that may prompt critics to believe that mediation is not a just process, including unwitting decision making; the negotiation of fundamental interests like for example freedom; concordance with illegal terms such as those that infringe human dignity and those that conflict with essential social values; and the absence of informed decision making. Stulberg then suggests that mediators can create requirements or restrictions on the conception of a mediation process that minimises unfairness by assuring that the process is

voluntary, the inalienability of interests, the publicity of results, dignity and respect, informed decision making, and tolerance of conflicting fundamental values (Noone and Ojelabi, 2014).

Welsh (2017), in her article, states that the promise of mediation to ensure self-determination is not being fulfilled. Instead, it argues that self-determination has been set aside by judges and lawyers, and demands for reform have fallen on deaf ears.

Therefore, Welsh (2017) sees procedural justice as an alternate form of establishing self-determination, including having free speech, being heard, being treated impartially and being treated respectfully. Suppose the elements of procedural justice are involved. In that case, parties are more likely to have self-determination as they can engage in open discussion leading to an outcome that genuinely reflects the interests of all participants.

On a comparable basis, it could also be argued that the pursuit of the above elements of procedural fairness may be a more practical way of addressing the ethical principles of impartiality, self-determination and voluntariness, which all appear to be interrelated concepts.

Additionally, Bogdanoski (2009) expounds that in theory, mediator accountability concerning the outcome is achieved by facilitating a procedurally fair process as a process which will inevitably render the agreement fair. Pure procedural fairness may follow if parties are allowed to express their position, the party is even-handed, and the parties are treated with dignity and respect.

Some scholars suggest that the various sides of the mediation process can see neutrality and fairness differently. However, the theory alone does not resolve the problem of whether neutrality and fairness can be accomplished simultaneously. To decide if there is a problem with the inconsistency, one may begin by looking at the objectives of the mediator, other than what may be necessary by

statute. On this subject, the commentators have been debating about an insightful doctrine that has formulated the idea of multi-partiality, which, in a few words, means that it is more interesting for the mediator to have an attitude that takes sides for all rather than an attitude that is not broken by any of them (Assegued, 2018).

## **1.8 Conclusion**

For this research, in order to evaluate the role of the mediators in Ireland regarding the ethical challenges that they have to face in the process of mediation, the literature review in this chapter addressed a number of studies on the concept and rationale of mediator's neutrality and impartiality. It furthermore explored how neutrality and impartiality work in practice or do not work. This chapter also provided a summary of the nature and principles of mediation, along with a review of mediation ethics and of the code of mediators. This chapter also addressed the scholars' opinion as to whether the principle of procedural justice should take precedence over the principle of impartiality in order to achieve significantly more just mediation outcomes.

## **Chapter 2. Research Methodology and Methods**

### **2.1 Introduction**

The research methodology and methods in this chapter explain the mechanisms carried out to complete this study. In this second part of the work, the problem, the research question and the expected objectives of the research will be discussed, as well as the methodological options and procedures implemented. Subsequently, the data collection techniques and instruments applied during the study will be revealed, and the data analysis techniques gathered will be addressed.

### **2.2 Background**

Mediation emerges as a possibility of providing more appropriate treatment to the ongoing conflictual complexity experienced by those affected, since it provides parties with a unique style of practice that goes beyond conventional jurisdiction, designing new through consensual and independent practices that restore the opportunity to deal with current disputes (Bowling and Hoffman, 2000).

The critical aim of mediation is, therefore, to exceed dispute resolution in order to avoid conflict. Through the mediation process, it is possible to try to solve problems through a constructive view of the conflict and the involvement of the parties through good dialogue, prevention, inclusion and the social peace of the individual.

This research has shown that the mediator can help the parties settle the dispute by mutual consent without any active intervention and without pressuring the consent during the negotiations, as Moore (2014) stated.

The mediator is a trained specialist with the experience and skills needed to execute a mediation procedure. In other words, the mediator must have an attitude of neutrality and impartiality and must be adequately qualified to practice as such and have no self-interest in its resolution (Parsons, 1991).

Since the mediator is a part of the process, some experts believe that he or she cannot be impartial as they are influenced by the dynamics of the mediation process and affected by it. However, the mediator must always act similarly in order to ensure a balance of power, mutual listening, empowerment and fairness in the solutions that meet the needs of the parties (McCorkle, and Reese, 2018).

The evidence of the scholar indicates that the role of the mediator requires neutrality and impartiality. However, he or she is not impartial since he or she is part of the negotiation system (Mayer, 1987). This argument has prompted scholars and even practitioners in the field to debate.

### **2.3 Research Question**

The controversy created by the awakening of the concept of fair results along with neutrality and impartiality has meant that other studies could explore this field. In this field, however, there is still a lack of research material. For this reason, the purpose of this research is to try to endorse this phenomenon and to try to understand it better.

This situation, mentioned above, highlighted the importance of the investigation of two fundamental principles of mediation, neutrality and impartiality, which, according to the analysis of the literature review, have given rise to a considerable amount of debate on the issue of ethical barriers between the fulfilment of these principles and the consideration of fair outcomes.

Understanding that a number of motivations and aims have to be accomplished by exploring this area, the question of this work should be strengthened:

- What are the ethical challenges that mediators in Ireland are confronted with in order to remain neutral, impartial and achieve a fair outcome?

## **2.4 Aims and Objectives**

This dissertation aims to evaluate the ethical challenges faced by mediators in Ireland in order to remain neutral, impartial and achieve a fair outcome within the mediation process. This study has one general objective and three specific objectives in order to achieve the goals of the study.

The main objective consists in to analyse the association between ethical barriers and neutrality, impartiality and procedural fairness within the mediation process in Ireland.

The specific subjective consist of:

- To evaluate the mediator's role in both theoretical and practical context;
- To access what is the role of the mediator's emotion and the ability to remain neutral and impartial;

- To access what are the mediator's perceptions about neutrality, impartiality and procedural fairness;

## **2.5 Proposed Research Methodology**

In this research, an exploratory study of a qualitative nature was chosen to outline and understand the association between ethical barriers and neutrality, impartiality and fairness within the mediation process in Ireland.

According to Walliman (2011), qualitative research is characterised by an exploratory and flexible research method, which is why the techniques chosen in this research method are comprehensive and diversified and applied to the survey questionnaire as required by the present study.

The qualitative design embraces elements of research to explore contradictions regarding mediators' neutrality and impartiality. The theory is developed as a consequence of the study of data concerning the qualitative method (Lewis, Saunders and Thornhill, 2009).

### **2.5.1 Research Philosophy**

Epistemology includes three philosophical situations described as positivism, realism and interpretivism (Saunders, Lewis and Thornhill, 2009). The position adopted for this study was interpretivism, which attempts to explore the relationship between ethical boundaries and the two fundamental principles of mediation: neutrality and impartiality. The Theory of Interpretation was chosen to explain the phenomena in this study.



This thesis has been established through epistemological philosophy, while the purpose of the study is to raise awareness through evaluations of the concepts of neutrality and impartiality. To understand this process, qualitative data collection techniques were conducted via comprehensive analysis, with the interpretation of the mediator's perceptions of fundamental principles through the survey questionnaire.

### **2.5.2 Research Strategy**

A qualitative investigation was chosen for the elaboration of this research in order to perform a thorough study on what is meant by the mediator's neutrality and impartiality in the theoretical and practical sector.

Based on this theoretical rationale, the survey questionnaire was described as an appropriate analytical technique for investigating the relation between ethical barriers and the two fundamental principles of mediation: neutrality and impartiality, to present specific and contextualised knowledge in its scope.

There were 17 questions in total in the questionnaire, in which the interviewer presented the topic, and the interviewee was given the freedom to answer it spontaneously, so that it was possible to obtain as much information and detail on the subject investigated as possible, according to the interviewee's point of view.

The questionnaire was developed and stored through the Google Form platform, developed by American multinational technology company, Google LLC. The access link to the questionnaire has been inserted in the body of the email of the cover letter sent to the participants. Participants in the

survey were invited to complete the online questionnaire. All responses were stored in an encrypted online account. Furthermore, after the survey deadline had passed, the data was securely downloaded.

### **2.5.3 Research Choice**

The method chosen for this analysis was inductive, with the goal of interpreting and exploring the findings of the questionnaire and to effectively link them to the content of the literature. Flexibility in this research is significant because the data collected include the expertise and professional knowledge of mediators in Ireland in order to clarify the issue of research.

### **2.5.4 Secondary Data Collection**

Knowledge sources such as empirical publications referring to data collected in industry and statistics, studies, books, articles, scholarly journals, reports, commercial publications and documentary sources such as magazines, online diaries, web images (Saunders, Lewis, Thornhill, 2012) were essential for the development of this study. The virtual library provided by the Independent College Dublin learning portal provided access to articles for the EBSCO search database.

### **2.5.5 Primary Data Collection**

The data collected from open-ended questions was the qualitative aspect of the analysis- these questions aimed at offering a more in-depth understanding of the mediator's views of neutrality, impartiality, and procedural equity.

While it had been originally intended to include both open-ended and closed questions and take a mixed method approach, the small number of respondents meant that a purely qualitative approach was more appropriate. However, given that the number of responses was not adequate for a consistent assessment, the decision was made only to connect them in terms of methodology.

### **2.5.6 Research Population**

The questionnaire was sent by email to the Program Leader MA in Dispute Resolution of the Independent College Dublin and mediators in Ireland through their registration at the Mediators' Institute of Ireland website.

Regarding the selection of participants, no pre-selection was aimed at participants regardless of the operating sphere or geographical restriction. The only requirement needed was for participants to be accredited mediators, active at the Mediators' Institute of Ireland (MII). The questionnaire was sent to 40 practitioners on the MII's list of available mediators (randomly selected according to the order of appearance on the website). The emails were sent with a cover letter requesting mediators who have or are still practising mediation to complete a questionnaire. Seven answers were received from the 40 emails sent to the submission.

### **2.5.7 Analysing Qualitative Data**

The data were evaluated according to the arrangement of the categories and subcategories according to the order of the questionnaires. In this review, the data proposed have been analysed in proportion to the mentioned objectives in an interpretative logic.

The objective was to recognise concepts, practices, acts, principles, inventions and improvements by reading the literature data collected and reproduced for the more in-depth understanding of the object of the analysis. It was a process of tidying up the information obtained, which gave significance to the categories and the data analysis methodology.

It was recognised that the content analysis approach was used both to define and measure the content and to draw inferences specific to the topic under investigation.

Thus, based on content analysis, a careful process has been established of defining categories and subcategories, which could be repeated and, in particular, allow references to context data (Walliman, 2011).

The questionnaire structure was organised in four parts: first, on the mediator's background with four questions (3 open-ended and one check box); second, on the role of emotions in mediation with four open-ended questions; third, on the mediator's perception of neutrality, impartiality and fairness, with seven questions in total (six open-ended and one yes/no question); finally, the fourth part on the future of mediation in Ireland, with two open-ended questions.

In order to discuss the findings, a triangulation between the theory and the data was attempted, to be continued in agreement with the author. The data analysis method was performed reflexively, leading to the contextualisation of the literature review.

### **2.5.8 Ethical Issues**

All participants were guaranteed anonymity so they could answer questions in a judgment-free manner. A letter of introduction has been sent to the participants outlining the nature of study, anonymity and voluntary participation.

All the study knowledge is genuine with regards to the academic section and is based on previous studies verified by researchers and book authors. The use of the Internet has been unique for academic purposes.

### **2.5.9 Limitations to Research**

In order to explore contradictions regarding mediators' neutrality and impartiality within the mediation process, in the first moment, it was first intended to use the quantitative method in combination with the qualitative. However, the original concept could not be followed due to the number of questionnaire participants.

The first questionnaire was sent to 15 mediators, but the number of answers was not sufficient, and it was not possible to collect information that would allow an analysis. Therefore, at the suggestion of a mediator who had answered the first questionnaire, it was necessary to make small changes to the questions in order to make it as objective as possible. The suggestions were processed, and the refreshed questionnaire was sent to 25 contacts on the Mediators' Institute of Ireland (MII)'s list. The First questionnaire obtained two respondents, while the second obtained five respondents.

The changes made did not alter the essence of the topic in question, and it was possible to link the two results for the analysis. The two full questionnaires will be available in the appendices at the end of this work (see Appendix I and Appendix II).

Out of the 40 emails sent, it was possible to get seven answers from the mediators. After the end of the acceptance of responses, emails were received from the participants who would have liked to have responded to the survey, but who unfortunately could not due to lack of time at the time. Possibly the questioner would get more answers if there had been more time available.

## **Chapter 3. Presentation of the Data**

### **3.1 Introduction**

This chapter is dedicated to the presentation of the questions and answers of the research questionnaire for this study. The purpose of this work is to evaluate the role of the mediator in Ireland concerning the ethical challenges experienced by these professionals during the mediation process. In this stage, the study presented what scholars say about the contradictions between neutrality and impartiality, and also pointed out the divergences caused by the concept of fair outcomes. Now, a reading of the research performed with accredited mediators from Ireland on the issues raised in the previous chapters will be carried out.

### **3.2 Participants**

Regarding the selection of participants, no pre-selection was targeted at the participants regardless of the sphere of operation or geographical constraint. The only criteria required was that the participants had to be certified mediators, active at The Mediators' Institute of Ireland (MII). The questionnaire was emailed to 40 practitioners on MII's list of the mediators available (randomly selected according to the order of appearance on the website). The emails were forwarded with a cover letter asking mediators, who had practised or are still practicing mediation, to complete a questionnaire. The request received seven responses out of the 40 emails sent.

#### **Section 1- Mediator's Background**

This section of the questionnaire, composed of 4 questions, aimed to create a profile of the background of the mediators so that it would be possible to identify common points between the candidates concerning the perceptions on the subject studied in this work.

**Question 1-** In this part, the participants were asked to indicate their qualifications. Three of the participants mentioned a bachelor's degree; another three mentioned a master's degree qualification, one mentioned a postgraduate diploma and counselling qualification. Two of the participants had a background qualification in Law. See the chart below:

PARTICIPANT	QUALIFICATIONS
A	BA(Hon), LL.B, MII Certified Mediator
B	MSSc, MII Certified Mediator
C	BA MA MIACP MII MBPSs
D	MII Advanced Practitioner



E	BL, MII Certified Mediator
F	Leaving Certificate, MII Certified Mediator
G	BA, MA, PGD, MII Certified Mediator

**Question 2-** In this part, the participants were asked to indicate how long they have been practising mediation. From the seven respondents who indicated a time in practice two had worked as a mediator between one and five years; other two between six and ten years; another two more than ten years; and, finally, one had worked less than one year.

PARTICIPANT	YEARS OF PRACTICE
A	2 YEARS

B	11 YEARS
C	10 YEARS
D	20 YEARS
E	5 YEARS
F	11 MONTHS
G	6 YEARS

**Question 3-** In this category, participants were requested to indicate the mediation areas in which they practised. Out of the seven participants, two of them were acting in only one specific area; two of them were acting between two and five areas; one of them was acting in more than five areas, and one answer was blank.

Among the areas cited, three of them appeared more frequently in the survey. The family area was selected by three respondents, followed by the workplace conflict area, also selected by 3

participants. Two respondents then selected the separating couple area. One participant selected the other areas mentioned.

PARTICIPANT	ANSWERS
A	“Family, Separating Couples, Workplace Conflict”
B	“Separating couples, workplace.”
C	“Family (including sibling), not financial.”
D	“Workplace”
E	“Civil, commercial, medical, elder, litigation, professional regulation, regulatory discipline.”
F	N/A

G	“I am a family mediator. I do not have a legal qualification.”
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**Question 4-** Finally, in this last section, participants were asked to inform which mediation styles they were performing. The five styles were chosen because they are the most common in the mediation process, according to Shonk (2018). However, many mediation styles are available when looking at the scientific area of study.

From the seven responses, four of the participants selected just one mediation style that they would adhere to; two participants selected that they would adhere to between two and three styles; then only one opted for four or more mediation styles.

Concerning the styles cited, the facilitating style was the one that was most selected, receiving six votes among the participants; then the transforming style received three votes from the participants; the humanist style received two votes; followed by the narrative and evaluative styles that received one vote each.

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PARTICIPANT	A	B	C	D	E	F	G
FACILITATIVE	X	X		X	X	X	X
EVALUATIVE						X	
TRANSFORMATIVE	X	X				X	
NARRATIVE						X	
HUMANIST		X	X				

**Section 2- The Role of Emotions in Mediation**

There are very different mediation styles and strategies available to help resolve the conflict. Each mediator is different, just like every human being is different. For this reason, this section aims to gather information on how each professional faces the challenges of mediation; and to know

whether the styles of each mediator can interfere or help in the strategies used by them to face conflict situations. This section of the questionnaire was composed of four open-ended questions.

**Question 1-** In this question, the participant was asked what is the most challenging aspect related to mediation and why.

Among the various aspects that challenge mediators during the mediation process, the vast majority have shown that dealing with human behaviour is one of the significant challenges, mainly because this process deals with people, who have feelings and emotions (Exon, 2007). This is the reason Moore (2014) explains that it is essential for the mediator to use strategies of each mediation's style so that he or she can exercise his or her profession wisely and effectively. They cited: maintaining the focus of the parties in the session; maintaining the equality between the parties; maintaining the balance between the parties; remaining impartial; dealing with behaviour; addictions and educational problems.

PARTICIPANT	ANSWERS
A	"Focus.... Participants in Separating Couples get caught up in past hurt and find it difficult to focus on moving forward even though they state they do not wish to repair the relationship."
B	"Maintenance of equality."

C	“if one party is using drugs.”
D	“A party being unreasonable, as it triggers me.”
E	“maintaining the balance in the plenary meeting.”
F	"Remaining impartial - because, from the outside, the answer often seems obvious."
G	"Lack of education within the general public of the meaning of mediation." "

**Question 2-** This question was about whether the participants found that some types of mediations are more emotionally draining than others. It was followed by the question of examples of the types of mediations in case of "yes". At all times in conflict management, mediators are subject to positive or negative feelings resulting from speech, behaviour, action or reaction (Mayer, 1987). Each person reacts differently to each type of conflict, so it was essential to observe the areas and variations in the participants' reactions. The area most mentioned by the participants in this premise was that of the family, including couples.

PARTICIPANT	ANSWERS
A	“Separating Couples Mediation is highly emotional.”
B	“Couples”
C	“When one party is a drug user or has mental health issues and are not taking their medication; clients are asked not to use drugs before a mediation, but its effects of their drug use are clearly seen in the session.”
D	“They are all draining.”
E	“yes - family mediations are the most emotionally draining.”
F	"Mediations that involve peoples feelings rather than sums of money are more draining."
G	"Family Mediation "



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**Question 3-** Another question with two tasks. Firstly, this question required the participant to reflect on his or her own experiences and values combined with the emotional drive of some types of mediation. Secondly, in the case of "yes", whether they would know of any triggers they might have, or know why these exist.

The first question when thinking of triggers certainly is not something pleasant to ponder, precisely because of the content of the word itself. How to face this approach without underestimating the value of a self-analysis? For Mayer (1987), the knowledge of how to address these triggers can help in conflict management.

PARTICIPANT	ANSWERS
A	<p>“The use of the word "why" is a trigger for most people, including me....</p> <p>Reframing is better than using an accusatory word."</p>
B	<p>“Yes .....abuse."</p>
C	<p>“I am a counsellor and family therapist as well as a mediator. If, during a mediation, I feel a response in my body - I notice it for 1/2 seconds and know I will deal with it after the session - the main focus is on the clients -</p>

	being totally present for them."
D	"See above. Don't know why."
E	"I don't work in family mediations which would be more akin to a trigger for me."
F	"Yes, I have my own triggers which I must be aware of and keep in check if I am to remain impartial."
G	"Working with addictions."

**Question 4-** This question follows the same pattern as the previous ones, two requirements: whether the participants allow their emotions to guide or affect the mediation process in any sense; and if so, what they would do if they felt emotional in a mediation. Three participants were emphatic in pointing out that they do not let emotions drive or affect the process, while the four others say they manage these emotions, or 'gut' them so that there is a better understanding with the parties.

PARTICIPANT	ANSWERS
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A	“No.... I keep myself in check I am sympathetic but remain neutral.”
B	“No”
C	“I listen to my gut, my heart and my head. If, during sibling or mother\daughter\son\grandparent mediation - I will name the feeling and check with clients have they felt it too. If they have it - we will immediately pass on.”
D	“Emotions can help to create empathy with a party or parties. if inappropriately emotional I call a break and then reset.”
E	“no, I purposefully avoid family mediations for that reason.”
F	"I try not to let my emotions guide me, but I try to be aware of the parties emotions as they have such an important part to play in any successful resolution."
G	"I self reflect and seek support when this happens. I believe this always happens as we are human beings."

### Section 3- Mediator's Perception- Neutrality, Impartiality and Fairness

This section addresses the critical problem of this entire study through the following seven questions. Perhaps one of the most challenging stages for participants to answer, due to the strength of these answers. The objective was to reveal each participant's perception of the controversial aspects of neutrality, impartiality and fairness.

**Question 1-** Direct question: what are the participants' perception of the principles of neutrality and impartiality? Unanimity among the participants, according to them, these two principles are indispensable for the profession, in contrast to what some scholars see in the subject in question, as explained by Rosenberg (1991).

PARTICIPANT	ANSWERS
A	"They are treated as one in my work... It is not my conflict; it is theirs... I am always in the middle only to assist in their direction."
B	"Essential"
C	"Vital in any mediation involving the area I work in - family (separated couples, disputes between parents and children, grandparents etc.)"
	"You don't take either side and aim to help both to get the outcome they

D	need.”
E	“fundamentally crucial to the process.”
F	N/a
G	"Neutral is not having an opinion impartial is having an opinion being aware of it and keeping it out of the process."

**Question 2-** In this regard, participants were asked to identify whether their instincts would be part of their mediation intervention strategies. The request for specification followed it. Since negotiation in the mediation is an interpersonal relationship, communication plays a decisive role in its success; besides, it is at this point that we perceive the importance of the use of instincts, according to Bogdanoski (2009).

PARTICIPANT	ANSWERS
A	“Yes, but my instinct remains with me to explore deeper into my gut feelings about what is happening.”

B	“Experience”
C	“My gut - my heart and my head are what I notice - and I would check in with the clients. Recently a daughter requested mediation as she felt her parents were not treating her as an adult, by washing her clothes and making her dinners. (She was 44 and recently returned to her family home). Her parents just mentioned in passing that she was not contributing to the household bills (they were both pensioners) .... as a result of my gut instinct, my heart and my heart we teased this out.”
D	“It is useful to notice physiological reactions as it can be a clue to becoming triggered or knocked off the impartial stance.”
E	“gut instinct is relevant when it comes to non-verbal communication and assessing body language.”
F	"It can be at the initial stage, but fact-finding is more important as the mediation progresses."
G	"Absolutely. There is evidence to suggest gut instinct is actually a physiological response."

**Question 3-** Concerning the imbalance of power between the parties in the mediation, the participants were asked to express their opinion on how the session could be best conducted in such cases. As well, requesting further clarification.

Single session, ground rules and respect for others; the use of each mediator's skills and techniques are highlighted as a response to this issue of disadvantage.

PARTICIPANT	ANSWERS
A	“My House rules apply ... It's my space Equal speaking time.”
B	“Individual sessions.”
C	“Ground rules, Equal time and remind them it is win-win for both”
D	“The process and mutual respect of the mediator neutralises any power imbalance. I know this isn't the case for all types of mediation, but it works in workplace mediation.”
E	“you should have dealt with power imbalance at the preliminary meetings so it should not be as big an issue at the plenary meeting. But it may be

	necessary to have more regular caucuses to ensure that no latent imbalance develops."
F	"It is my role as mediator to maintain balance in the room. I can use my skills to ensure that the message that the 'weaker' party is trying to get across is heard e.g. repeating the question to ensure that I heard it correctly ensures that the point is heard by all. Break out sessions may also be beneficial."
G	"Possibly in individual sessions. Depending on the case."

**Question 4-** Question Yes/ No/ Maybe. The participants had to choose one of the options on whether it is possible to remain impartial and connected to the parties. In this part, six participants chose yes, and only one answered maybe.

YES	NO	MAYBE
6	0	1

**Question 5-** Complementary question from the previous one. If “yes”, how did the participants manage to remain impartial and at the same time connected to the parties? "By being mindfully



present with people, listening and watching verbal and non-verbal communication ". Empathy would be one of the main directions for most respondents.

PARTICIPANT	ANSWERS
A	"Option 1."
B	"Option 1."
C	"Option 1."
D	<p>"They are two different things. You can be empathetic to the parties sufficient to allow the work to be done i.e. not becoming sympathetic.</p> <p>Empathetic is understanding how someone else feels; sympathetic is feeling the same way as someone else. In mediation, you don't allow either side sway you from being impartial, but you are still compassionate ie understand how they feel and want to assist them."</p>
E	"by constantly being present and aware to your role in the mediation."

F	"I can remain impartial to the issue being contested but remember that my role is to help the parties reach a resolution that they are both happy with."
G	"By being mindfully present with people, listening and watching verbal and non-verbal communication."

**Question 6-** Second complement to the previous discussion. If not, what prevents participants from remaining impartial and connecting the parties? As mentioned, in this regard, again, the use of skills would be well employed concerning being connected to the parties and impartial.

PARTICIPANT	ANSWERS
A	"N/A"
B	"Supervision"
C	"I did not get an opportunity to fill in the Yes part of this question."

D	“A”
E	“n/a”
F	"n/a"
G	"Racing ahead in my mind wondering what questions to ask. Thinking about other things instead of being with parties."

**Question 7-** Major question surrounding the core subject of this research. What would be the participants' perception of Neutrality, Impartiality and Equity within the mediation process?

PARTICIPANT	ANSWERS
A	“Everyone is equal no one is more important than the other”
	“Respect for individuals.”

B	
C	<p>“These are vital components. I always remind those involved that it is win-win - sometimes (in the case of sibling disputes which have gone on for years) one sibling will be very quick to give in ... I always remind clients is a win-win situation - and with gentle teasing - peeling the layers - they feel confident to talk about the issues they would like sorted.”</p>
D	<p>“Fairness is a nebulous term and is interpreted subjectively, so I don't use it. As a human being, I cannot be neutral - I still have opinions and biases even if I am not aware of them. Impartiality is something we aim to achieve while treating both parties equally well - to do that we have to keep our biases in check and our opinions to ourself.”</p>
E	<p>“critically important to the mediation process surviving and lasting to the end.”</p>
F	<p>"By remembering that my role is not to direct but to host/facilitate the mediation and assist the parties to reach an outcome, they are both happy with - not one that I consider fair."</p>
G	<p>"As a Mediator, we are unattached to the outcomes. Fairness is a subjective term, and within a mediation, it is not for me to decide. It is for the parties to decide once operating inside the law."</p>

**Section 4- The Future of Mediation in Ireland**

The last section of questions. This part had two objectives: first, to know if the class was satisfied with the rules of the mediation, and second, if changes would be welcome in the view of the participants.

**Question 1-** First part: the participants were asked if they had any reservations about the regulations of mediation and if there were anything they would like to change. Followed by "please, specify".

PARTICIPANT	ANSWERS
A	<p>“Legal professionals, solicitors and barristers should not be permitted to train as mediators..... It is our objective as Mediators to help people find their own self determined solutions and stay away from Court..... I have the utmost respect for the legal profession, but I would like to see that they afford us, Mediators, the respect we earn from the good work we do in helping our clients. It is not about fees it is about the lives of children and family. The Court cannot spend the time with clients as we do to get to the heart of the issues and help them move forward; this is our job... To stay out of Court.”</p>
B	<p>“No reservations.”</p>
C	<p>“No”</p>

D	<p>“Yes. Firstly the Institute has become and continues to be far too legalistic and bureaucratic in its view of mediation practice. It has forgotten that mediation is an informal process. If mediation were to be regulated by the government in the future, the concern would be that a legal body would be put in charge of this and further drive mediation towards a quasi-legal process. The drive for 'quality' misses the point completely and imposes a manufacturing standardisation approach which does nothing to improve quality and only serves to drive more bureaucracy and box-ticking.”</p>
E	<p>“Mediation could be forgotten about unless it is fully utilised by communities and businesses. more upskilling and wider community involvement in mediation.”</p>
F	<p>“No”</p>
G	<p>"I would ensure all mediators are accredited to work and teach. I would love to see a formal supervision process established."</p>

**Question 2-** Second point: whether participants could see any long-term change in mediation interpretations and why they thought so.

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PARTICIPANT	ANSWERS
A	"Mediation is becoming more and more popular and successful; people are taking the time to look at options outside of the Courts."
B	"Yes more available."
C	"Maybe"
D	"It is constantly changing depending on whom you talk to - there is no one standard to cover everything."
E	"yes with upskilling, continuous professional education."
F	"I would hope so. I would hope that as mediation becomes a more successful tool for people that others will look for it rather than other lengthy, stressful costly options."
G	"I hope so. There is a lack of education about mediation in Ireland and benefits of same "

## **Chapter 4. Research Findings**

### **4.1 Introduction**

This chapter will analyse the qualitative data from the questionnaire presented in the previous chapter. At this point, this study discussed what scholars thoughts about the inconsistencies between neutrality and impartiality and, followed by the discrepancies caused by the principle of equal results are. It also presented the survey addressed to mediators in Ireland. The objective of this research is to analyse the association between ethical barriers and neutrality, impartiality and procedural fairness within the mediation process in Ireland.

### **4.2 To evaluate the mediator's role in both theoretical and practical context**

In order to identify common points among the participants and to evaluate how choices are made regarding the styles of mediation and strategies within the process, the researchers created a profile of the mediators' context in order to identify common points between the mediators regarding their perspectives about the concepts of neutrality and impartiality, the main objective of this study.

Therefore the need for questions about the background of each participant played an essential role in the analysis. However, the number of participants who answered the questionnaire was not enough to create the reference point for other mediators. At this point, it was not possible to compare the profiles of the participants, as this could be unfair to the 683 mediators in Ireland.

The qualifications vary from Master's degree to leaving Certificate. Two of the participants had a background qualification of Laws. Although some academics find the role of lawyers in mediation



contradictory, others discuss the connection of these two areas that involve conflict. While lawyers and mediators are practitioners focused on dispute resolution, mediation, and law are different fields (Riskin, 1982).

In fact, something that surrounds the issue of conflict resolution is the link between the law and mediation. In the professional field, the difference between the two professions is clear, but the view of the parties to the conflict is not so obvious. Mulcahy (2001) describes that the parties tend to look at the mediators as judges, who are there to decide the solution to their conflict informally. It is more precise, both for the academic circles and for the mediators here in this study, that the mediator is not a judge.

Coben (2004) describes that when the mediator can see the disfavour of a party, he can act through his techniques in order to reverse this situation. However, when one has a scenario like this, this attitude is considered as hidden favouritism directed towards the weaker or wronged party.

The mediators in this research have work experience in mediation ranging from 11 months to 20 years. The numbers alone do not say much about the performance of those who act as mediators for a long or short time. The association of time and mediation style does not apply in this scenario.

Family disputes were the most mentioned by the participants. Moreover, it was also one of the most mentioned areas in terms of emotional distress. Precisely because it involves emotional ties between the parties, this is considered by many authors to be one of the most draining areas to work in. Still, why is this area one of the most draining areas to work in? The answer may be in the feeling that professionals carry about the will to understand more and more the human behaviour, to be all the time improving, trying new experiences (Rosenberg, 1991).

Mediation cases also include conflicts that occur in issues of divorce and child custody and conflicts between family members, neighbours, business partners, landlords and tenants, and labour unions and managers. Even with all the areas mentioned in the research, it can never be exhaustive. It is understood that any situation can be mediated and resolved by the citizen. Thus, the role of the mediator is to help the mediated person to see what situation they are in, presenting them with the opportunity to find solutions with a prospective focus on resolving their demands (Bowling and Hoffman, 2000).

As described in the literature, several types of mediation are available in the field of scientific research. However, only five types were selected to this question (facilitative, evaluative, transformative, narrative and considering humanist- see below) because, according to Shonk (2018), they are the most common in the mediation process. However, the content of the questionnaire was based on the theoretical field, from the academic reading, one of the changes that were necessary for the questions of the survey, was implemented based on the field of practice.

The humanist style was incorporated into the style options based on the suggestion of one of the practitioners. Furthermore, this style was chosen by at least two of the respondents. What arouses the curiosity to understand why this style does not appear in the primary theoretical researches of this field of study? According to Lewis and Umbreit (2015), humanist mediation is more profound than just considering the solution to the conflict and allows scope for feelings. Perhaps because it is a style created parallel to the transformative, or rather because of the human element that this approach presents.

#### **4.3 To access what is the role of the mediator's emotion and the ability to remain neutral and impartial**

Of all different facets of mediation that challenge mediators, the vast majority have shown the value of coping with human behaviours, mainly because this method addresses individuals with thoughts and emotions (Exon, 2007). The mediator performs a vital role in the development of society, as he or she fosters understanding among citizens in the search for the best solution to their disputes.

Moreover, therefore, their professional performance is surrounded by several challenges. According to Mayer (2012), the main obstacles to his conduct of the procedure are the interpretation of the conflict; the resumption of communication flows and the confrontation of the problem without issuing an opinion or taking a position; Similar to the answers from the mediators reported in the research. According to Exon (2007), dealing with human behaviour will always be a great challenge, in all conflicts and any style of mediation.

As described above, the family area is one of the most recurring in the field of conflict mediation, and this scenario would not be different in the field of the most emotionally exhaustive mediation as it can be seen from the answers the mediators frequently, family and couples. According to Lewis and Umbreit (2015), when conflicts arise involving people who know each other, who have some connection, it is essential to explore the whole conflict, not just resolve the financial issue. The areas involving people's feeling is considered by many writers to be one of the most draining fields to work in, precisely because it entails personal relations between the parties.

Bowling and Hoffman (2000) adopt a systemic approach to the mediation process. This means examining the process contextually, seeking to understand the relationships that are evolving and arising as the process unfolds; consequently, the mediator becomes part of the conflict. By conducting the process and using the tools, he or she considers appropriate he will be recreating the vision that each one has of the conflict. Moreover, this is inevitable, because each individual has his

own experience in the world, his own perception of reality. Even the simple presence of the mediator influences what happens around him.

According to Fisher, Ury and Patton (2011), the most significant obstacles to achieving one's own life goals are oneself. Therefore, according to the author, before being able to help the parties to resolve their conflicts effectively, it is essential that preparation and training take place. According to scholars, the self-knowledge of the mediator is fundamental for the good performance of his functions.

According to the answers to the questionnaire, most of the participants can identify the emotional respondents, knowing when to address them. On the other hand, some respondents prefer to abstain in some cases; others prefer to abstain in all cases and let the process occur literally. Thus, although there were not a large number of responses in which the differences in this respect were remarkable, it can still be noted that the mediation process could not be shaped and studied as a static process. It is possible to find a rationale even in the abstention of an opinion. Once again, the power in the exercise of self-reflection on emotions mentioned by scholars can be observed by the majority of the answers.

#### **4.4 To access what are the mediator's perceptions about neutrality, impartiality and procedural fairness**

For mediators, neutrality and impartiality are paramount in the mediation process, and there is no point here that supports the theoretical basis presented by scholars in this case. However, when we look above at the issues of empathy and emotions, this scenario changes a little, because even in the attempt at self-analysis, it could already be understood as the non-neutrality of the process.

According to Douglas and Field (2006), the mediator must be impartial to the conflict and have no self-interest in the form of its resolution; the mediator must have an attitude of internal neutrality and be adequately trained to act as such. This neutrality would, in the author's view, be impartiality, for no one can be totally neutral. Each individual brings his own 'baggage' (experience) of life, and this makes them see, hear and think from their own experience, using their own filters. In this way, 'impartial' would be more appropriate.

The mediator's instinct is regarded both in practice and in theory. In practice, considering the responses of professionals, the practice of instinct can avoid situations that interfere with impartiality. In this case, besides self-analysis, is necessary to attention to details during the process. The experience is also part of the mediator's skills because according to the author, the qualities that can help to be better mediators are not the same for everyone. Nevertheless, some can be cited as self-knowledge, presence, authenticity, consistency and convergence. Mediators would do well to remember that the heart of the practice is not technical expertise, but 'gut' instinct and intuition (Benjamin, 2001).

One can conclude from the answers recorded here that the important thing is to be internally prepared to deal with people, conflicts, emotions, feelings, basic needs, everything that comes to the mediation table. For the most direct and noticeable impact of the mediator on a mediation process is the choice of techniques used during the process. These interventions are made based on the mediator's analysis and may have different results because the conflicts are different; the parties are different. In the same way, however, the personal characteristics of the mediator influence the effectiveness of his or her interventions.

Within the concepts of neutrality and impartiality, mediation is also guided by the principle of equality between the parties. According to Douglas (2012), in the mediation procedure, the principle of material equality attributes to the mediator the duty to ensure the balance of power regarding the participation of the parties, the access to information and the presentation of documents they may consider necessary for the presentation of their arguments.

In the same regard, the MII's Code of Ethics and Practice provides that the mediator must ensure that the parties have a voice and legitimacy in the procedure, thus ensuring a balance of power, as well as suspending or terminating the mediation when its continuation could prejudice any of the mediated parties. It was noticeable that all the answers in the survey are the same as the foundation of the code to ensure equality in the process. However, the methods used by mediators may vary according to their own driving strategies.

Is it possible to remain impartial and at the same time connected with the parties? Based on the survey, the answer is yes, it is possible to remain impartial and at the same time, be empathetic to the situation. Again, this statement confuses the opinions of academics, because, in logic, these are two different concepts. Impartiality, as the name implies, refers to the act of abstaining from action. This is not meant as a change of position for the influence of results.

It is clear that the influence of results, in this case, is not aimed at favouritism, but rather the best form of resolution. As has already been mentioned in this paper, conflicts are present in all situations of daily life; however, how the individual deals with them are what differentiates him from others. In this logic, for the mediator, to be inside a conflict is to avoid sensible actions, a party cannot see a solution due to the proximity of the problem, and it is up to that external observer to see this with wisdom. In this case, the mediator, with his or her experience and using his or her

techniques, can be empathetic to the situation and thus acting as the bridge connecting the parties to a joint agreement with wisdom (Bowling and Hoffman, 2000).

Being 'connected' with the parties can be considered as empathy for both sides of the dispute. However, this does not mean favouring either side of the dispute. Empathy can be implemented at different points in the conflict.

According to participant D "They are two different things. You can be empathetic to the parties sufficient to allow the work to be done, i.e. not becoming sympathetic. Empathetic is understanding how someone else feels; sympathetic is feeling the same way as someone else. In mediation, you don't allow either side sway you from being impartial, but you are still compassionate, i.e. understand how they feel and want to assist them".

In one direction, research has shown that although these are two different paradigms to be questioned, it is possible to maintain the connection through empathy and media techniques. On the other hand, some have shown that it is not possible to be in connection with the parties and to remain impartial, but it has not been possible to collect all the information on this matter.

In general, perceptions of mediation concepts are intertwined among mediators in this research. However, a consistent position on equity was lacking and being mentioned by one of the participants as 'a nebulous term', because the interpretation of this concept is subjective. The idea of neutrality was expressed differently in this statement, and the mediator reported that from mediators like this with any individual, he has a step, with ideas, opinions, values and judgments, and that would already be the impediment of neutrality. As previously mentioned, neutrality does not mean impartiality.

Opinions were divided into mediation regulations. Among the considerations of mediators about the rules, one can see the call for further development among professionals; as well as more resourcefulness and establishment about teaching and supervision; and the importance of clearly articulated values and reflections in the mediation process.

Opinions were divided into mediation regulations. However, the vast majority have hopes that changes will take place related to the enhancement of abilities. Among the considerations of mediators about the rules, one can see the call for further development among professionals; as well as more resourcefulness and establishment about teaching and supervision; and the importance of clearly articulated values and reflections in the mediation process.

#### **4.5 Conclusion**

The results of this questionnaire show a potential for neutrality and impartiality to be possible along with a fair outcome if these ideas are worked through mediator strategies to achieve that outcome. However, there has been a variation among mediators related to the perception of the concepts of neutrality, impartiality and procedural fairness. Nevertheless, when assessing neutrality and impartiality, the difficulties faced by mediators clearly create variations in the way they manifest these values in their activities.

The research concludes here that despite the whole structure and scope of the profession, the interpretation of these concepts is somewhat open to discussion, both in the theoretical field and in the practical field, because there was no consensus on this point.



## **Chapter 5. Discussion**

### **5.1 Introduction**

This chapter is dedicated to the discussion of the aim of this study to evaluate the ethical challenges faced by mediators in Ireland in order to remain neutral, impartial and achieve a fair outcome within the mediation process. The research to this stage has addressed the reflections of academics on the neutrality and impartiality context and the quest for a fair outcome. It also presented the discussion and analysis of these principles within mediator professionals in Ireland. The research objective must be reflected on this point.

### **5.2 Mediation**

As already described in this study, mediation is a method of conflict resolution in which the parties meet in the presence of a mediator and may reach an agreement. Moore (2014) clarified that mediation allows parties to make their thoughts known and have an opportunity to work together and constructively to address critical issues.

Academic papers have already shown that mediation is the voluntary process in which the parties are involved only if they wish; that the agreement between the parties has contractual force; that the process is usually informal even when the institutions exercise this; that it is not limited to evidence, arguments, and interests, as it does not have the aim of determining which party is right and which is wrong.

As defined in the literature and subsequently ratified by the mediators, mediation attempts to resolve or avoid conflict through dialogue between the parties with the assistance of an impartial third party, the mediator. A constructive perception of conflict and collaboration are ways to accomplish the purpose of resolving or preventing mediation conflict. There is no hesitation about this postulate, either in the theoretical or practical area.

### **5.3 The Role of Mediator**

It has been seen in this research that the mediator will help the parties to resolve the conflict by mutual agreement without any active involvement, as well as without forcing the agreement during the negotiations, as explained by Moore (2014). The mediator is a qualified specialist with the expertise and abilities required to perform a mediation procedure. In other words, the mediator must have an attitude of neutrality and internal impartiality and must be duly trained to act as such, and have no self-interest in its resolution.

In the view of some scholars, this neutrality and impartiality will be where the contradiction starts since according to some writers, nobody can be absolutely neutral. Each person brings their own 'baggage' (experience) of life, making them see, hear and think from their experience using their filters.

### **5.4 Neutrality and Impartiality**

The mediator has the most transparent and evident effect on the mediation process by selecting the techniques employed. The interventions are made based on the analysis of the mediator and can have different outcomes, as disputes are different, the parties differ. However, in the same way, the

mediator's personal characteristics influence the efficacy of his or her interventions (Bogdanoski, 2009).

It is essential that the mediator has empathy, that he or she is connected with the parties' emotions, not with the event or situation. He or she must listen, establish a space for sincerity, not transfer judgement, only welcome. Each episode of conflict resolution is an opportunity for the mediator and the parties to grow individually, in cooperation with those around themselves (Bowling and Hoffman, 2000). With a broader view of the mediation process, its growing use in the world may also be viewed as an evolutionary transition that takes the world to higher levels of cooperation and mutual dependence.

The presence of the mediator is an important aspect to bring to the mediation table. This means being focused, connected to the highest values, principles and aims of the people concerned, making contact with the humanity of the clients and being consistent, sincere, creating security and inclusion. The mediator must know themselves well in order to be genuinely present (Moore, 2014).

According to Bowling and Hoffman (2000), a growing awareness of how their personal qualities can influence the mediation process is one of the most challenging aspects of the mediator's development. This also involves analysing the process contextually, trying to understand the relationships that emerge as the process progresses. The mediator becomes part of the conflict: by initiating the process and using the resources he or she finds necessary, he or she can recreate the vision that each person has of the conflict. Moreover, this is unavoidable, since every person has his own experience and perception of truth. Even the simple presence of the mediator influences what happens around him. Moreover, the author states that it is about becoming a mediator, not only implementing the techniques taught by one mediation school or another.

This integration enables the mediator not only to be conscious of the limitations of the parties' partial vision but also of their own partial vision. About this, the self-knowledge of the mediator is essential to the good exercise of his duties.

## **5.5 Reflections**

In short, the principles of neutrality and impartiality are interpreted to mean the prohibition of any behaviour on the part of the mediator that favours any treatment of the party. These concepts, therefore, apply to the mediator's attitude towards the parties and not to the substance of the subject matter of mediation.

In other words, any legal standard aimed at governing mediation in its various aspects can not deviate from it; otherwise, this complementary conflict resolution process will remain entirely distorted.

Therefore, the regularity of a mediation mechanism in which this concept is not followed continuously is not conceivable (Shapira, 2016). There are no legitimate mediation procedures in situations where the mediator is not neutral, and according to the scholars, this is a cardinal rule that must always be followed in the course of a mediation process.

By the observance of those standards, the first point raised was the fact that the mediator had to avoid taking an attitude that could be perceived by one of the parties, even though, obviously, as a stance taken on behalf of the other. In this respect, any mediator interference may, in any way, be viewed as a breach of the fundamental principles under the Code of Ethics and Practice for Mediation (Douglas and Hurley, 2017).

Another concern generally associated with the principles of neutrality and impartiality is whether or not the mediator's more direct interference offends his or her normative command to remove potential imbalances influencing the parties' negotiation ability.

Without ignoring the issues that may arise from such a position, mainly if the mediator uses it in an abusive and non-operational manner. According to Bogdanoski (2009), it is understood that the mediator not only should but also has a responsibility to interfere prudently and reasonably (i.e. without infringing the other values and liable to the other duties to which he or she is attached) in order to restore the balance between the parties to the negotiating phase. On the other hand, this understanding suits more perfectly with the definition of a fair trial, a definition that is entirely consistent with this complementary conflict resolution process (Coben, 2004).

Thus, this approach, if properly applied, through the use of appropriate techniques such as active listening, reformulation, positive connotation, among others, only leads to enhancing the confidence of the parties in the management of this conflict resolution process.

Therefore, neutrality and impartiality can not be confused with passivity. In order to avoid distortions that break the required balance that must occur between the parties, the mediator must actively engage in the negotiating process. Neutrality and impartiality, therefore, in terms of mediation, certainly do not want to presume the absence of mediator interference (Mayer, 1987).

However, if so, how can an apparent interference attack the notion of the neutrality and impartiality of the mediator or also, on a contrary note, under which hypothesis would it be acceptable?

The answer to this question is not a simple formulation. However, by carrying out a teleological interpretation of those concepts, it is considered that its object is to prevent the mediator from revealing the merits of the conflict itself to his personal views, in order to prevent the parties, or even one of them, from adhering to a particular measure formulated based on the mediator's axiological scale (Exon, 2006). As mentioned earlier, the parties alone and solely are responsible for the resolution of their dispute, as opposed to the jurisdiction.

If this were the case, the neutrality and impartiality of the mediator would first be observed because, at the point of resolution, the mediator would limit himself to not making any clear recommendations as to the merits of the dispute, leaving the parties free to decide. The limits of this free activity of the parties must also be laid down in the statute so that no compromise can be reached on illegal items, or whose agents are incapable of doing so, or their separate ways contradict the provisions of the law (Moore, 2017).

If one of these theories arises, the mediator must warn the parties to this possibility but can never suggest a concrete action instead. Such an obligation remains evident when the interaction is made that the mediator must ensure a genuinely successful procedure (Bogdanoski, 2009).

It does not matter to him or her, after all, that a mediation mechanism achieves a result that he or she knows in advance that it can have no tangible consequences. This result remains even more apparent in a mediation scheme, in which Section 11(2) of the Mediation Act 2017<sup>2</sup> stipulates that the agreement concluded therein constitutes an extra-judicial compliance order.

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2 <http://www.irishstatutebook.ie/eli/2017/act/27/section/2/enacted/en/html>

Finally, about the stages before the drafting of the agreement, it is assumed that the mediator's interventions will be legitimate, provided that they are based on the development of a more conducive and negotiable climate, driven by absolute respect for equality and good faith.

What this postulate seeks to do is to leave beyond a shadow of a doubt differentiate what the mediator considers to be due for the settlement of the dispute posed to him from what the parties actually want, thus preventing the mediator from voicing his personal views on the settlement of the dispute, which would distort the very *ratio essendi* of mediation as explained above.

## **Conclusion**

It is common to use the words impartiality and neutrality in order to designate the same phenomenon as if they were synonyms. As evidenced in this work, through the critical analysis of academic articles together with the analysis of the perception of mediators in Ireland, it was possible to establish that neutrality and impartiality are distinct phenomena. This assertion has never been confirmed in the context of outlining the mediation process.

With the increasing interest in the particular traits of the mediation process, it can be noted that the practice of the mediator does not lack a fascinating debate. The great controversy surrounding the neutrality and impartiality of the mediator and the issue of equal outcomes could also be addressed in this study.

In this sense, from the scholars and mediator's perspective, that impartiality should be understood as the prohibition of any conduct on the part of the mediator which would result in any favouring of treatment of one of the parties. Therefore, impartiality refers to the mediator's attitude towards the parties and not to the content of the subject matter of mediation.

Neutrality, in turn, should be understood as the prohibition imposed on the mediator consistent with the act of guiding or even formulating suggestions as to the merits of the dispute, or that of any influence on the final result of the mediation, conferring a solution to the parties, according to their own scale of values.

Therefore, it has been verified in this research that neutrality and impartiality refer to the mediator's attitude towards the parties and not to the content of the subject matter of mediation. In other words,



any legal norm aimed at regulating mediation in its various aspects cannot deviate from it; otherwise, this complementary mechanism for resolving disputes would remain completely distorted.

However, it was also evident that neutrality should not be confused with a supposed lack of values on the part of the mediator, which, for scholars, it would be an impossibility. Nor is neutrality due to a supposed passivity of the mediator, who must act, in the face of the hypotheses, fundamentals and aiming to achieve the objectives listed above.

On the other hand, from the above table, one aspect that emerged from the study was that, given the multiple situations arising from the contradictions of these principles, there is a noticeable lack of clarity on what is neutrality and fairness. Nevertheless, these concepts may be similar to ones where 'you know it if you see it'. In other words, perhaps these concepts do not need to be defined explicitly because parties know what they mean, even though parties cannot articulate the meaning.

Thus, it was concluded that the correct understanding and analysis of the framework of the basic outlines of these principles, as well as the proper analysis of their practical consequences, will only contribute to more outstanding operability of this dispute settlement mechanism.

Through an in-depth analysis of the academic content it was possible to assimilate that only through the correct analysis of the main points of these the principles of neutrality and impartiality can one have a notion of how the success and credibility of mediation are viscerally linked to the observance of these principles.

The research attempted to discuss a more sensitive aspect of mediation, which is practically not found in any procedural manual or law. It is a field that goes beyond the inferior approach towards the subject but, even if nuanced, is necessary for those who want to be able to act in the area and to explore more about the mediator's self-knowledge.

As revealed through the perception of mediators in Ireland, as long as the individual has not developed his or her emotional self-knowledge, they will project their own unrecognised emotions onto others.

Therefore, based on the opinion of scholars combined with the experience of mediators, self-knowledge is essential for self-confidence. As mediators, it is easy to become so focused on the emotions of the parties that they even forget to observe their own emotional reaction to the process. Without self-knowledge and self-confidence, they could not be accomplished mediators.

Starting from the assumption that the basic is always the most challenging, the task of understanding oneself typically needs a lot more intense effort than the superficial judgment of the other.

Although one can imagine that the physical and emotional movement of consciousness is practised 'from inside' in a more normal way, that is, from self-knowledge to a potential empathy with others, the practice can be more favourable to the reverse order in which one tries to understand another from the outside even before asking oneself about the way the conflict or account has been reached.

Nevertheless, after all, why so much resistance to exploring oneself when this seems to be the only way to discover the most powerful answers to one's inner concerns? Perhaps because it brings personal discomfort. Moreover, one's beliefs, biases, and experiences are difficult to challenge.

It is always a challenge to recognise certain truths built up over time and then to test them, precisely because they may destabilise. As a relief, the fact that this deconstruction process- a result of self-questioning- generates much insecurity is entirely normal, according to the scholar's arguments.

The critical point, however, is that insecurity contributes to stagnations, to conformism- with what you are and with what they think- to blindness in the face of changes in society or, worse, to apathy about either regular internal and external provocations. According to scholars, this apprehension is highly counterproductive to the issue of mediation.

As a professional responsible for maintaining an atmosphere of lucidity and understanding between the parties, the mediator needs to know his own boundaries, or he or she will undermine the very situation addressed to him or her.

The mediator faces a significant risk of going against his or her own standards of mediation, such as neutrality and impartiality, which are all foreseen in the mediator's Code of Ethics and Practice, by ignoring the attributes that make him or her a human being- fears, emotions, traumas, desires, feelings, among others.

Individuals seeking mediation are often in vulnerable circumstances in their lives and often see this process as a last resort to the response they need. If, in this already complex scenario, the mediator is not very well aligned with himself- understanding his or her scope and limits- mediation can

result in a deterioration of the quality of the relationship between these people instead of improvement. Furthermore, this effect is not definitively pursued by any mediator by his or her actions.

In mediation, there is an instrument called 'caucus', consisting of nothing more than a separate discussion with one of the parties involved in the dispute, to explain problems that seem relevant but often do not occur out of fear of the participation of the other at the joint meetings.

Taking the same concept of the 'caucus' as a basis, the present reflection suggests that mediators, or even those interested in contributing to a more harmonious passage through human relations, hold individual meetings with themselves. To allow internal questioning, but also to cultivate ways to improve the quality of our interactions.

As Fisher, Ury, and Patton (2011) suggest, the person should sit at the dinner table with his own worries, emotions, thoughts, in order to better understand how he functions himself. Only in this way will we create better relationships regardless of what they are.

May this be the natural course of mediation: before contributing to understanding between the mediated, the mediator may commit himself or herself to understand themselves. Without that, all theoretical awareness is devoid of intent and meaning.

Given the above scenario, this work was able to conclude that everything about the mediator has an influence on the mediation process, from his or her training to apply the appropriate techniques at the appropriate times, to, above all, his or her self-knowledge. The mediator needs to know his or her values, beliefs, needs, limits, emotions and feelings in order to be effectively present, welcome

the parties, be neutral, impartial and finally bring peace to the mediation table. To be a mediator is to live in constant evolution.

## **Reflection**

The first point posed is the review of tasks, which illustrates the importance of the guidelines for involvement in the creation of another's thinking.

As we have seen in the study, the context of neutrality and impartiality has contributed to the conclusion of self-analysis as a way of weighing the profession of a mediator. If these directions and comments are given more attention to building critical reflexive discourse, I believe that texts with characteristics of critic reflexive behaviour will grow more frequently.

The background of mediation will help to provide a variety of resources to develop more critical thinking. I assume that mediators are instrumentalised in cultivating an essential mastery of thought by means of this form of instruction.

Personally, research helped me develop as a researcher and as someone who learns to see herself as 'not so fine'.

Looking at the data and realising that some of my instructions were considered accusations or inducing, was not a fun expedition, but an exercise of humility and self-knowledge that really made me feel the conflict, present in the explanation of my own actions, reminding them, addressing them, while proposing and creating transformations. But we must still, as Fisher, Ury, and Patton, (2011) said: look at the positive side of the conflict.

What I could see in this trajectory of this study is that there is a concept behind the professional obligations of mediation that appears to cover the origins of free and argumentative thought.

What I have found in my research experience is that there is no topic which is too audacious, shocking, repeated, too used, retrograde, because all academic research is valid.

All research involving the study of an entity, whether physical or abstract, is of benefit to knowledge in general. Thousands of people might be familiar with the topic, but who could guarantee that the facts would be kept up to date if they weren't for this study. Where would we have been today if problems that are deemed redundant were no longer mentioned?

Consider, for example, a situation on the Internet, how many management considers this topic 'cliché'. If we think the Internet as a consumer, yes, it definitely wouldn't be meaningful. This is not the case, however, for those who encourage evolution.

Where would we be now when the world was only able to interact across the Internet under the current pandemic scenario? Imagine that if there had been no studies in this field, there wouldn't be any evolution either, because there wouldn't be the technical help we have today, so we wouldn't be able to have classes online. If this was the case, because of the world situation, I definitely would not be finishing this research at this precise moment.

Returning to the topic of mediation, what I sensed during this study was a fear of opening up discussion on the question of values. I can understand that these are sensitive issues and that they need a subtle approach, but if we look at countries like the US, we can see a significant debate about this.

In particular, I believe that the legislation is real, that I follow and will always follow, but I also believe in the freedom of interpretation, which I endorse and support.

My research, as well as the Internet, will continue to progress. I am going to be searching for more 'because's, I'm going to be looking for more 'how's, I'm going to offer my contribution to the field of science so that more research can be carried out so that inventions can happen so that the planet continues to develop in the same way that it rotates.



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## **Appendices**

### **Appendix I- First Survey**

"Timestamp","First name:","Age:","What country were you born in?","What are your qualifications?","In what areas of law do you mediate?","How long have you been a

mediator?","Which of the following mediation styles best describes your mediation approach?","What is the most challenging aspect of mediation, and why?","Do you find that some types of Mediations are more emotionally draining than others? If yes, please give some details.", "Do you find that some mediations may trigger an emotional response based on your own past experiences? If yes, please give some details.", "Do you allow your emotions to guide or affect the mediation process in any way? And why?","Have you facilitated any mediation in which the result of the parties was not satisfactory? Please specify.", "Do you think that the principles of impartiality can be applied to all mediator styles? If yes, why. If no, why not?","Is using your instinct or 'trusting your gut' an essential element in the mediation process? If so, why?","What is the best way to conduct a mediation process regarding an imbalance of power between the parties? Please specify.", "In your opinion, are there differences between neutrality and impartiality? Please specify.", "Do you think it is possible to remain impartial and still be 'connected' to the parties?","If Yes, How do you stay impartial but connected to the parties at the same time?","If No, what keeps you from being impartial and 'connected'?" "Would you depart from neutrality if you believed that doing so would promote achieving a fair and just outcome? Please specify.", "How can the mediator be impartial and fair at the same time during the mediation process? ", "How important is compliance with impartiality for a mediator?","Is procedural fairness a better way to produce substantially fair outcomes or fairer outcomes rather than adhering to the principle of impartiality? Please specify.", "Do you have any reservations concerning the regulation of mediation? Is there anything that would you agree to change? Please specify.", "Do you think changes in the understanding of mediation may occur in the future? Why?"

"2020/10/15 12:03:49 AM GMT+1", "John ", "40", "Ireland", "Barrister, mediator, investigators and medic ", "Community, civil, commercial, professional negligence, nursing home disputes ", "5years ", "Facilitative", "The most challenging aspect of mediator is during the plenary session when parties are talking and keeping a structure and control to the process. Not allowing either party to dominate

the process ", "Yes. The more personal the topic the more emotionally challenging it can be. It becomes more important to keep a distance from the topic and adopt a pure classic approach of facilitation as opposed to more personal approaches ", "Yes absolutely. All mediations invoke emotions - that is inevitable, but more deeply personal cases encore deep emotions and feelings and they have to be explored and given time to be heard", "As a mediator you can't allow yourself fall into that trap, if you do, you are no longer impartial and you loose independent and objectivity ", "Yes. Not every mediation will result in a satisfactory agreement - that doesn't mean mediation has failed it means the parties either aren't ready to commit to ADR or they weren't willing to listen to all sides fully. Sometimes emotions and feelings can pre-dictate that outcome ", "It's must. It is a LEGAL requirement. If you know anything of the parties or take a side (or give the impression of taking a side) then you are no longer able to operate in a fundamentally fair manner", "Yes, your own litmus test is a very good indicator of how times are progressing. Your own gut feeling is what allowed you perceived verbal and non verbal communication issues and it allows you rapidly evaluate responses to discern if answers are changing, or if the process is collapsing ", "This should have been resolved at the preliminary meetings. When a mediation is happening at the plenary (joint) session there should be no Imbalance. The mediation process does not change significantly for perceived power imbalance but that should be resolved by talking to both parties and re-balancing that power divide by allowing equal time and equal process", "Yes, one is objective and one is subjective. I can be objectively neutral between the parties but my impartiality is a subjective position which I as a mediator have to work on constantly and portray to the parties as being maintained all the time.", "Yes", "That is the process of your questioning, your active listening, accounting for verbal and non verbal communications and discussing these issues as they arise. Also important to have caucuses and breaks to check in with both parties ", "N/a", "It can't. The moment your depart from neutrality-that is the process you stop being an effective mediator and in order to protect the process and the interests of the parties, you should appoint a different mediator.

Your ethical code is vital here", "Already answered above ", "Extremely important", "Procedural fairness is a resultant outcome of your impartiality and neutrality. Procedural fairness is a legal requirement that inherently underpins the mediation process ", "Stricter oversight of mediators is never a had thing.", "More and deeper psychological understandings may develop mediation on a deeper level "

"2020/10/15 11:43:31 AM GMT+1", "Sharon Morrissey ", "45", "Wales", "MA in conflict resolution, Post graduate in mediation and conflict resolution, Family Mediator qualification, child inclusive mediation counselling and psychology, Collaborative Practitioner, Degree in Applied Social Care, Counselling and Humanistic Skills, train the trainers, domestic abuse training, parental alienation, self awareness training, drug and alcohol training, supervision in social and legal childcare, child bereavement psychology and counselling. ", "I am a family mediator, i do not have a legal qualification ", "6 yrs", "Facilitative;Evaluative;Transformative;Narrative", "Lack of education within the general public of the meaning of mediation ", "Family Mediation ", "Working with addictions", "I self reflect and seek support when this happens. I believe this always happens as we are human beings", "It depends what satisfactory means. Satisfactory for the parties or me? ", "I believe we have to try to apply them, but we are human and sometimes it is easier than others depending on the person we are dealing with and how we are triggered ", "Absolutely. There is evidence to suggest gut instinct is actually a physiological response ", "Possibly in individual sessions. Depending on case", "Neutral is not having an opinion impartial is javing an opinion being aware of it and keeping it out of the process ", "Maybe", "By being mindfully present with people, listening and watching verbal and non verbal communication ", "Racing ahead in my mind wondering what questions to ask. Thinking about other things instead of being with parties ", "I would reality test with parties but hold my neutrality ", "By acknowledgement of ones own judgements but not imposing them on parties ", "Very important", "As a Mediator we are unattached to the outcomes. Fairness is a subjective term and within a mediation it is not for me to decide. It is for the parties to decide once

operating inside the law ", "I would ensure all mediators are accredited to work and teach, i would love to see a formal supervision process established ", "I hope so. There is a lack of education about mediation in Ireland and benefits of same "

"2020/10/16 10:00:36 AM GMT+1", "Martina", "54", "Ireland", "Leaving Cert", "I don't", "11 months", "Facilitative", "Remaining impartial - because from the outside the answer often seems obvious", "Mediations that involve peoples feelings rather than sums of money are more draining", "Yes, I have my own triggers which I must be aware of and keep in check if I am to remain impartial", "I try not to let my emotions guide me but I try to be aware of the parties emotions as they have such an important part to play in any successful resolution", "no", "Unsure", "It can be at the initial stage but fact finding is more important as the mediation progresses", "It is my role as mediator to maintain balance in the room. I can use my skills to ensure that the message that the 'weaker' party is trying to get across is heard eg repeating the question to ensure that I heard it correctly ensures that the point is heard by all. Break out sessions may also be beneficial", "Unsure", "Yes", "I can remain impartial to the issue being contested but remember that my role is to help the parties reach resolution that they are both happy with.", "na", "Not if I believed that the parties could reach an agreement that they were both happy with. It's not my role to determine what is a fair and just outcome", "By remembering that my role is not to direct but to host/facilitate the mediation and assist the parties to reach an outcome they are both happy with - not one that I consider fair.", "Very important", "NO. Some parties may need some more support/time from the mediator this is not the same as the mediator no longer being impartial", "No", "I would hope so, I would hope that as mediation becomes a more successful tool for people that others will look for it rather than other lengthy, stressful costly options."

## **Appendix II- Second Survey**

"Timestamp","What are your qualifications? ","In what areas of speciality do you mediate?","Which of the following mediation styles best describes your mediation approach?(Facilitative/ Evaluative/ Transformative/ Narrative /Humanist)","How long have you been a mediator? ","What is the most challenging aspect of mediation, and why?","Do you find that

some types of Mediations are more emotionally draining than others? If yes, please give some examples of a mediation that you find most difficult.", "Do you find that some mediations may trigger an emotional response based on your own past experiences? If yes, are you aware of some triggers you may have, do you know why these are triggers for you?", "Do you allow your emotions to guide or affect the mediation process in any way? If yes, what do you do if you find you're becoming emotional in a mediation?", "What is your opinion of the principles of neutrality and impartiality? ", "How can you identify whether your gut instinct (physiological response) is an essential element of mediation? Please specify.", "Describe in your opinion what is the best way to conduct a mediation process regarding an imbalance of power between the parties? Please specify.", "Do you think it is possible to remain impartial and still be 'connected' to the parties? Yes/No", "If Yes, How do you stay impartial but connected to the parties at the same time?", "If No, what keeps you from being impartial and 'connected'?", "What is your perception about Neutrality, Impartiality and Fairness within the mediation process?", "Do you have any reservations concerning the regulation of mediation? Is there anything that would you agree to change? Please specify.", "Do you think changes in the understanding of mediation may occur in the future? Why?"

"2020/10/14 11:03:49 PM GMT", "N/a", "Yes absolutely. All mediations invoke emotions - that is inevitable, but more deeply personal cases encore deep emotions and feelings and they have to be explored and given time to be heard", "Yes, your own litmus test is a very good indicator of how times are progressing. Your own gut feeling is what allowed you perceived verbal and non verbal communication issues and it allows you rapidly evaluate responses to discern if answers are changing, or if the process is collapsing", "Ireland", "Yes. Not every mediation will result in a satisfactory agreement - that doesn't mean mediation has failed it means the parties either aren't ready to commit to ADR or they weren't willing to listen to all sides fully. Sometimes emotions and feelings can pre-dictate that outcome

","Yes, one is objective and one is subjective. I can be objectively neutral between the parties but my impartiality is a subjective position which I as a mediator have to work on constantly and portray to the parties as being maintained all the time.", "This should have been resolved at the preliminary meetings. When a mediation is happening at the plenary (joint) session there should be no Imbalance. The mediation process does not change significantly for perceived power imbalance but that should be resolved by talking to both parties and re-balancing that power divide by allowing equal time and equal process", "Community, civil, commercial, professional negligence, nursing home disputes ", "It's must. It is a LEGAL requirement. If you know anything of the parties or take a side (or give the impression of taking a side) then you are no longer able to operate in a fundamentally fair manner", "Yes", "John ", "Yes. The more personal the topic the more emotionally challenging it can be. It becomes more important to keep a distance from the topic and adopt a pure classic approach of facilitation as opposed to more personal approaches ", "5years ", "40", "Extremely important", "Already answered above ", "That is the process of your questioning, your active listening, accounting for verbal and non verbal communications and discussing these issues as they arise. Also important to have caucuses and breaks to check in with both parties ", "More and deeper psychological understandings may develop mediation on a deeper level ", "Facilitative", "Stricter oversight of mediators is never a had thing.", "As a mediator you can't allow yourself fall into that trap, if you do, you are no longer impartial and you loose independent and objectivity ", "Barrister, mediator, investigators and medic ", "Procedural fairness is a resultant outcome of your impartiality and neutrality. Procedural fairness is a legal requirement that inherently underpins the mediation process ", "It can't. The moment your depart from neutrality-that is the process you stop being an effective mediator and in order to protect the process and the interests of the parties, you should appoint a different mediator. Your ethical code is vital here", "The most challenging aspect of mediator is during the plenary session when parties are talking and keeping a structure and control to the process. Not allowing either party to dominate the process "



"2020/10/15 10:43:31 AM GMT",,,,,,,,"Racing ahead in my mind wondering what questions to ask. Thinking about other things instead of being with parties",  
,"Working with addictions", "Absolutely. There is evidence to suggest gut instinct is actually a physiological response",  
,"Wales", "It depends what satisfactory means. Satisfactory for the parties or me?",  
,"Neutral is not having an opinion impartial is javing an opinion being aware of it and keeping it out of the process",  
,"Possibly in individual sessions. Depending on case",  
,"I am a family mediator, i do not have a legal qualification",  
,"I believe we have to try to apply them, but we are human and sometimes it is easier than others depending on the person we are dealing with and how we are triggered",  
,"Maybe",  
,"Sharon Morrissey",  
,"Family Mediation",  
,"6 yrs",  
,"45",  
,"Very important",  
,"By acknowledgement of ones own judgements but not imposing them on parties",  
,"By being mindfully present with people, listening and watching verbal and non verbal communication",  
,"I hope so. There is a lack of education about mediation in Ireland and benefits of same",  
,"Facilitative;Evaluative;Transformative;Narrative",  
,"I would ensure all mediators are accredited to work and teach, i would love to see a formal supervision process established",  
,"I self reflect and seek support when this happens. I believe this always happens as we are human beings",  
,"MA in conflict resolution, Post graduate in mediation and conflict resolution, Family Mediator qualification, child inclusive mediation counselling and psychology, Collaborative Practitioner, Degree in Applied Social Care, Counselling and Humanistic Skills, train the trainers, domestic abuse training, parental alienation, self awareness training, drug and alcohol training, supervision in social and legal childcare, child bereavement psychology and counselling.",  
,"As a Mediator we are unattached to the outcomes. Fairness is a subjective term and within a mediation it is not for me to decide. It is for the parties to decide once operating inside the law",  
,"I would reality test with parties but hold my neutrality",  
,"Lack of education within the general public of the meaning of mediation"

"2020/10/16 9:00:36 AM GMT",,,,,,,,"na",  
,"Yes, I have my own triggers which I must be aware of and keep in check if I am to remain impartial",  
,"It can be at

the initial stage but fact finding is more important as the mediation progresses", "Ireland", "no", "Unsure", "It is my role as mediator to maintain balance in the room. I can use my skills to ensure that the message that the 'weaker' party is trying to get across is heard eg repeating the question to ensure that I heard it correctly ensures that the point is heard by all. Break out sessions may also be beneficial", "I don't", "Unsure", "Yes", "Martina", "Mediations that involve peoples feelings rather than sums of money are more draining", "11 months", "54", "Very important", "By remembering that my role is not to direct but to host/facilitate the mediation and assist the parties to reach an outcome they are both happy with - not one that I consider fair.", "I can remain impartial to the issue being contested but remember that my role is to help the parties reach resolution that they are both happy with.", "I would hope so, I would hope that as mediation becomes a more successful tool for people that others will look for it rather than other lengthy, stressful costly options.", "Facilitative", "No", "I try not to let my emotions guide me but I try to be aware of the parties emotions as they have such an important part to play in any successful resolution", "Leaving Cert", "NO. Some parties may need some more support/time from the mediator this is not the same as the mediator no longer being impartial", "Not if I believed that the parties could reach an agreement that they were both happy with. It's not my role to determine what is a fair and just outcome", "Remaining impartial - because from the outside the answer often seems obvious"

"2020/10/21 2:08:19 PM GMT", "B Arts (hons) law LL. B

MII Certified Mediator ", "Family

Separating Couples

Workplace Conflict ", "Facilitative; Transformative", "2 years ", "Focus.... Participants in Separating Couples get caught up in past hurt and find it difficult to focus on moving forward even though they state they do not wish to repair the relationship ", "Separating Couples Mediation is highly emotional ", "The use of the word ""why"" is a trigger for most people including me.... Reframing is







