

Overcoming impasses while negotiating

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“Overcoming impasses while negotiating”

by

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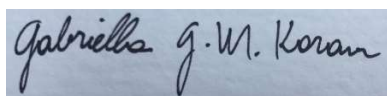
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Abstract

The impasse is an intrinsic part of negotiation, deeply connected to human interaction. The way people interact dictates a positive or negative outcome, which makes impasses a recurrent phenomenon. This research showed impasse carries a negative connotation that dictates people's attitude towards an unfavourable direction while negotiating, which ends up either by aggravating the impasse to an escalated conflict or by making people give up on their goals and surrender to other's propositions just to avoid an impasse. In addition, other aspects, such as emotionally charged interactions, a competitive mindset, not allocating sufficient time to negotiate, and biased third parties, to name a few, refrain negotiations from developing its full capacity, meaning to get to the underlying interests and to develop relationships in order to make sure the result is a mutually beneficial agreement with a long-lasting effect.

This dissertation investigates the aspects of an impasse (definitions, different perspectives, when, how and reasons why it happens) and formulates a protocol with simple stages to overcome impasses. The protocol was designed with a multi-method qualitative study, gathering information from negotiators, mediators, barristers, etc experiences, plus the literature, to give practical guidance on how and why overcome impasses. The protocol aims to develop a straightforward guideline to reach a broad audience, meaning professionals that have negotiation experience and common folk.

Chapter 1 - Introduction

The central element of any dispute resolution is rooted in human relations' dynamic and people's abilities to deal with one another. A dispute or conflict arises from a divergence of opinion between two or more parties on how to address or proceed on a certain matter. This is when negotiations come into place as a natural response or strategy of communication and the individuals establish the most adequate strategies, the information that can be disclosed with the other negotiator, possible offers and counteroffers, to discuss the issues and find a resolution both parts would agree with and later move on from it.

However, the key to a successful interaction lies in the way a negotiator reacts during the negotiation, so, at this point, knowing how to deal with the other party and being able to recognize one's own strong and weak points becomes the absolute nucleus of the whole negotiation process. As there are different capabilities on bargaining and dealing with the many factors of negotiation among the negotiators, their interactions will dictate the flow and possible results of the negotiation. Thus, an impasse is a recurrent and common aspect in negotiation, that deserves consideration and to be carefully dealt with because only then the negotiation can resume back to its advancement. Otherwise, the impasse can turn the conflict into becoming either completely stagnant or intensified.

For that reason, the purpose of this research is to take one facet of negotiation, the impasse, and put it under a microscope to analyse its aspects and dynamics that contribute to either aggravate or help to overcome the impasse. This dissertation will employ a multi-method qualitative study, through exploration of the literature and conduction of semi-structured interviews with experienced professionals that deal with negotiations and impasses.

Moreover, the following research questions serve as guides to keep the research's assertiveness towards the development of the mentioned protocol a major contribution of the study: Is there a way to overcome impasses in negotiations? What techniques appraised in the literature and professional

experiences can be used in an impasse situation? That is to say, in practical terms, is it possible to determine a protocol that would assist negotiators to get out of the limbo situation that is an impasse to move on with the negotiation? And, if yes, how would this protocol look like?

In this research is included descriptions of the author's definitions and perspectives on the impasse, as well as applied techniques and methods detailed by the interviewed experienced practitioners. It also contains the developed protocol and explanation on how and why to follow its' stages. However, this protocol does not have the purpose to be specific to any type of negotiation or impasse and does not include any guarantees it is going to be successful in every possible impasse case, due to the infinite possibilities and unpredictability of human interactions. The advantage of a general protocol to overcome impasses is that its guidelines are malleable and can be extrapolated and moulded to fit best a specific case. An impasse can be reached in all kinds of human interactions/ negotiations, therefore, a general protocol can be used and approached by a larger audience.

Furthermore, regarding the organisation of this dissertation, chapter one explores the aspects of an impasse found exclusively in the literature, meaning physical and online books, articles, and journals, including definitions, points of view, reasons why impasses happen, and techniques used to overcome it. Chapter two reveals more details on the multi-method qualitative methodology chosen, showing this is the best option for this dissertation when compared to other research methods because it is flexible and allows a broader collection of data. Chapter three explains how the collection of data was done, both in the literature review and the interviews, giving specifics on how the interviews were conducted. Chapter four thoroughly describes the interviews as well as the interviewees' opinions and points of view on the set of questions equally asked by the interviewer, including extra information interviewees brought to the interview connected to the interview questions. Now, chapter five merges information from both chapters one and four, comparing and contrasting them to critically assess the best practices research showed to overpass an impasse and develop the protocol.

Chapter 2 – Aims and Objectives

In general terms, impasses can be present in any type of human interaction, however, understanding its dynamics and being prepared to deal with them is an elementary skill to overcome impasses. Therefore, this dissertation aims to identify what kind of negotiations are more likely to reach an impasse and to develop a protocol to help people easily overcome an impasse.

Moreover, this dissertation explores the following objectives:

- To comprehend what constitutes an impasse.
- To investigate why negotiations reach an impasse.
- To appraise if an impasse is a negative or positive thing in negotiation.
- To investigate how to overpower an impasse.

Chapter 3 – Review of the Literature

The word *impasse* comes from the French, although without reference to where exactly in France or when precisely it was originated, and it is essentially composed by the following two parts: the prefix *im-*, representing a negative or denial, and the suffix *-passer*, meaning literally “to pass”, resulting in resistance to pass or to go forward (Concise Oxford English Dictionary, 2011, p.713). Also, the definition of an *impasse* can be found in many different sources, such as dictionaries and textbooks, still, it is more commonly defined as a noun that means a deadlock, a standstill, a dead-end, to halt, to reach full stop (Oxford Corpus, 2007a, p.404).

According to Spector (2006, p. 273), a negotiation resulting in a deadlock is the worst possible outcome because it means that the parties could not find common ground neither agree on an ultimate agreement, failing the whole process for all negotiators involved, and could lead to negative consequences, such as the break of the relationship or the rise of conflicts. Also, Druckman (2001, p. 522) defines an *impasse* as the end of the communication, when the possibility of bargaining is close to nothing.

From these few definitions of the word *impasse*, it is possible to already picture the parties adopting a traditional hard approach once they realize they reached an *impasse*. In this mental picture, the parties, having divergent goals and expectations in the negotiation, insist on their position, applying pressure to one another and demand concessions, ending up in a less likely result to produce a solution that will be satisfactory to both negotiators (Menkel-Meadow, 2014, p.15).

Mayer (2012, p.245) defines an *impasse* as a conflict that is marked by the unwillingness to move forward with the negotiation and a close-minded approach from parties at that moment, that could leave people stranded in a destructive sequence of events. An *impasse* not caused on purpose or as part of a strategy, and, therefore, genuine, solely happens because of people’s interactions and when

the engagement is incapable of moving forward without at least one of the parties letting go something important, which can originate from pure emotions of the negotiators or can be entrenched in the structure of the negotiation (Mayer, 2012, p.249-255).

Also as illustrated by the affiliate faculty of the Program on Negotiation Harvard Law School (PON), Daniel Shapiro (2016, cited in PON, 2019b), when reaching an impasse, the parties from opposite sides in the negotiation decide to insist on their views, both denying the prospect to abandon their positions. Shapiro (2016, cited in PON, 2019b) continues saying that an escalation of the conflict turns into a predictable cycle that contains “threats, demands, and possible deception”.

Now, to be fair, it is important to consider the “*escalatory cycle*” of an impasse to be from a strategic nature, which means that impasses can also be used as part of the negotiation, when parties turn the negotiation into a conflict to result in an impasse (Shapiro, 2016, cited in PON, 2019b). The same concept of the impasse being used as a strategy in negotiation is explored by Latz (2011), as, according to the author, an impasse can be seen differently by the parties: while one might comprehend it on the point of failure to engage efficiently, the other might see it as a favourable outcome. It all depends on the negotiation strategy the negotiators decide to take.

References that relate the word impasse to a negative connotation can also be found in researches about negotiation, which not only believe that an impasse is a waste of time but also suggest that, in the circumstances where negotiators find themselves in an impasse, not engaging in the negotiation is the best way to go (Cotter and Henley, 2017, p.4-6). In addition, Cotter and Henley (2017, p.5) also mention in their research that impasses should be averted because they represent a negative result of negotiations and a defeat, as the negotiator would have not reached their goals.

With the same logic in mind, an impasse is a negative thing because it is an appreciable adverse result of a negotiation, particularly when one considers that a negotiation’s sole purpose is to reach an agreement while attaining to one’s ultimate aims (Cotter and Henley, 2017, p.3). The circumstances

that are considered not worth it to engage in a negotiation are the following: if the negotiators' ethics differ a lot once compared; if the agreement is not beneficial to both sides, meaning the only foreseen outcome to be a win-lose situation; if one of the parties accept to participate in the negotiation for other purposes that not to truly engage but for concealed motives, such as "public relations" and "to leverage their own market positioning"; if "unexpected events" happen and could change the negotiator's motivation to keep on the same track of a negotiation (Cotter and Henley, 2017, pp.6-8).

The negative connotation of the word *impasse* continues throughout the definitions found in the dictionaries: as a "position from which there is no escape" or even a path from which there's no escape (Oxford Corpus, 2007b, p.1334), and "a situation in which further development is impossible", to break, to end (Cambridge University Press, 2011, pp.421-422). However, the same dictionary also includes in the definition of the word *impasse* "to resolve", interestingly enough (Cambridge University Press, 2011, pp.421-422). Moreover, once looking for the definition of *impasse* in a French dictionary, language which the word originated from, the word has both the negative meaning to be at a dead-end or a no through road, and the positive meaning to "get out of the rut it is in, to miss out, to choose to overlook something" (Collins Robert French Dictionary, 2008, p.494). Therefore, even in dictionaries is detected a certain positive tone to the word, so *impasse* can also mean an opportunity to instigate finding a solution.

In addition, the same sensed optimism of the word is described by Spector (2006, p.275) as a type of conflict that itself has the power to fully develop into a resolution, that is set for a settlement or even can unfold into a final arrangement. An *impasse*, then, more often has the enduring overtone of negative meanings used to describe a situation that is not supportive, not ideal and that should be avoided, however, it is possible to also find in the literature positive understandings.

According to Latz (2011), by understanding an *impasse* as something that is not necessarily a bad thing and that spending time engaging with the other party is not wasted, could be the key for

negotiators to ultimately comprehend that success in a negotiation means to reach an agreement that attains your goals and is better than the alternative of walking away. So, Bazerman and Magliozzi (cited in PON 2016a) say that walking away from a negotiation should never be considered until the negotiator persists on trying to engage while focusing on what one could gain and refusing to simply walk away lead the negotiators to achieve, in general, considerably better benefits. In addition, Mayer (2012, pp.248-249) points out that, if the walkout from the negotiation is genuine and caused by an impasse, a way to use it later on one's favour is to offer a way back to the conversation by adding something new to the negotiation or making a gracious or even small gesture to invite them back in the discussion.

In other words, a way to think of impasse as a positive thing is that to insist to negotiate and not walking away is an attitude that has more auspicious and promising possibilities to find a resolution and resolve a conflict than not negotiating at all (PON, 2016a). Resilience is a crucial ability for any negotiator to have in all negotiations, as it shows strength to rebound from an impasse through innovating strategies, always keeping the aims clear and being goal-oriented (Spector, 2006, p.284); and competence to overcome failure during the negotiation, facing the impasse as a positive thing because it allows developing new strategies to overpower impasses (Spector, 2006, p.276).

Nevertheless, besides walking away from a negotiation due to an impasse, another aftereffect commonly taken by negotiators to avoid an impasse is choosing a substandard deal because reaching a deadlock is commonly acknowledged as a failure or even considered, at the very least, the opposite of a successful agreement (Kesner and Shapiro, 1991, cited Tuncel et al., 2016). Tuncel et al. (2016, p.1) performed a study using the previous statement as a premise and decided, first, to investigate if it is true and, second, to understand why people would behave this way. As a result, the study found out that people tend to avoid impasses because of the negative stigma it carries or to prevent their negotiations to be seen as failures, as dictated by social convention, or even to themselves not to feel like failures (Tuncel et al, 2016, p.9). Also, Tuncel et al. (2016, p.9) revealed in their study that an

impasse also has the connotation of being a bad thing because of not having utility for the negotiation, while an agreement is detected as useful, and, therefore, an overall aversion for the impasse and ultimate allurements to reach an agreement.

Taking this study into consideration, it is valid to consider the reasons why negotiations reach an impasse. Tuncel et al. (2016, p.9) says that given the negative connotation of an impasse, the simple mention of the word or the possibility of reaching an impasse might drive people to reach an agreement or, at least, would add stress and tension in the negotiation, pressuring the negotiators to avoid the impasse and accept the agreement proposed, which most of the time would work, resulting in people going forward with an agreement that does not aggregate real value to their initial proposal, aims or goals.

Another reason why impasses happen is given by Daniel Shapiro (2019 cited PON 2019b), as he describes a humane phenomenon called "*tribe effect*", which means the adversarial attitude people adopt by opposing their group identity towards others. This attitude results not only in an antagonist behaviour, but also can lead people to believe their arguments are more legitimate and correct than the other and, that way, communication is limited, resulting in each side defending their view and not active listening one another anymore (Shapiro 2019 cited PON 2019b).

Debora Kolb (cited PON 2019b) defends that after assuming this defensive position, it would be difficult to go back to a position that one feels willing to compromise and/or keep negotiating, as one would be afraid to pass the image as being weak to the other side. This situation is characterized by "*a win-lose mindset*", in which the negotiator decides to adopt a determined attitude to "win" and to refuse "defeat", commonly embracing an unrealistic expectation on how the negotiation will go before the meeting itself, also setting ambitious goals and being over-optimistic regarding their own abilities to negotiate (Susskind and Cruikshank, 1987, pp.70-73).

Shonk (2019b) comments that if negotiators adopt this rigid position and base their strategies in a “winner” or “defeated” result as the only possible outcomes, then the negotiation will surely reach a drawn-out impasse. Accordingly, staying too focused on one’s own goals and point of view also refrains the negotiator from being more prepared, as anticipating how another side is susceptible to act, their weaknesses and strengths (PON, 2020a). An impasse happens because at least one of the parties believe their needs will not be adequately met going forward on that negotiation if none of its aspects change, so to comprehend it and act on it in an assertive way it is necessary to “focus on the real needs with the appropriate level of depth” of the issues that portray this specific conflict, infers Mayer (2012, p.250-251).

O’Sullivan (2018, p.21) offers an interesting explanation for the occurrence of conflicts, that lead to an impasse, based on a theory developed by Richard Bandler and John Grinder called NLP Meta Model, which is a meta-model of therapy based on neuro-linguistic programming (NLP) used to expand and challenge a person’s interpretation of the world. In this theory, the natural physiology of the brain is incapable to attain all information exactly as it received through the body’s five senses because, otherwise, it would be overloaded. Therefore, O’Sullivan (2018, p.20) concludes that no two people have the same response to reality, as the human brain, to cope with the overload of information and still retain in the memory, alters the information received in three categories: deletion, which is when one pays attention to only certain aspects of reality; distortion, when the perception of reality is unconsciously changed by altering the way one absorbs information; generalization, which comes from a need to predict the world based on former experiences and creating a deduction that will be applied to other future experiences.

As a result, O’Sullivan (2018, p.93) informs there is a natural creation of different paradigms among people, that is, how one understands, interprets and sees the world, developing exceptionally personalized ways to understand theirs and others’ role in the world. The natural consequence of this

phenomenon is conflicts being initiated because of parties' divergency on their unique interpretation of reality and subjective perspectives (O'Sullivan, 2018, p.12).

Another interesting reason for reaching an impasse is as part of a strategy adopted by a negotiator, who takes the negotiation to an impasse for the sole purpose of testing the other side and probing how far the other side is willing to go and their reactions to test the other negotiator's intentions and abilities (PON, 2020b). Mayer (2012, p.246-247) also says that a tactical impasse can be very effective, as it has to be credible to the other party, however it is risky because it can escalate the conflict as not predicted and it can fail or have an opposite effect as intended by jeopardizing more the party who started it. In addition, another study show that teams of negotiators with more than one negotiator in each side tends to reach as impasse, as people have their own emotions and feel differently from one another, even if part of a team no matter how prepared they could be before the negotiation (Cohen, Leonardelli and Thompson, 2014, p.235).

Other reasons why negotiations are more likely to reach an impasse in Wolfe and Murthy's (2005, pp.354-355) view is if the supervisor has a higher expectation of the employee's ability to negotiate or to prepare for the negotiation. While for Bac (2001 cited Cotter and Henley 2017, p.7), the reasons would remain to behaviours such as misguiding the other party, lying, giving the wrong idea or information, as well as lack of long-term commitment between the parties. For Susskind and Cruikshank (1987, p. 47) misguiding the other party jeopardizes the parties' relationship and possibly the negotiation outcome, leading to an impasse.

This could be even more inflamed if the issue presents technical complexity, that could be overwhelming for the parties, especially if one of the parties has less knowledge or utter understanding on the subject, which the other party may use it as an advantage presenting the need for a third party to act with fairness in the dispute (Susskind and Cruikshank, 1987, pp.65-66). In contrast, Bazerman et al. (1992 cited Cotter and Henley 2017, p.7) argues that an impasse can be

reached if employed a third party on one's behalf instead of oneself being part of the negotiation. This point of view is contradicted by other authors, who believe that having a third party involved in the process would facilitate the negotiation because the parties would have a neutral point of view and help to appraise and estimate the best options in the negotiation (PON, 2016b).

When reaching an impasse, the tendency is that the negotiator organically initiates what O'Connor and Arnold (2001 cited Cotter and Henley 2017, p. 8) called a "*distributive spiral*". This way, according to Cotter and Henley (2017, p.8), once the impasse is reached, the negotiator develops a negative perception of the interaction with the other party, believing the other party does not want to reach an agreement, which leads to an unwillingness to keep working with the other party at the same time that it jeopardizes possible future negotiations between those them.

Forsyth (2009, p.12) says that, however adversarial the nature of a negotiation is, keeping a mindset that it is an argument or disagreement would only contribute to driving it to an impasse, while the negotiation could present an opportunity to strengthen the relationship between the parties as well as to show commitment and engagement leading to positive outcomes. Leaving the adversarial attitude aside, it is important to not deteriorate the discussion and getting to a point that the parties set inconceivable conditions that no understandings are likely (Forsyth, 2009, p.12).

Furthermore, an impasse can be generated if a party believes that the other side is forcing a resolution that is acceptable for them, including using persuasion against the other's will, without considering the other party's concerns, point of view or needs (Forsyth, 2009, p.16). In the same direction Forsyth (2009, pp. 17-24) develops his argument that rushing through the negotiation and acting emotionally or rashly during the negotiation, making a party feel uncomfortable, can also point it into the direction of an impasse, especially if the communication takes the direction of complaints and finger-pointing. Bouncing back from this situation is potentially tricky, to say the least.

At the same time, emotions while negotiating must be taken into account and negotiators should be aware at all times that not only themselves but the person on the other side of the table is also influenced by their emotions, therefore, overlooking it could take one off the path to an agreement (PON, 2020a). According to Mayer (2012, p.249), a negotiation is stressful and can influence emotions, so the parties' feelings can get in the way and prevent the progress of its progress.

Therefore, getting out of an impasse might need the negotiator to analyse the emotional state of the other negotiator, trying to identify how the other side is feeling at the moment of the negotiation (calm, preoccupied, nervous, angry, etc.), but also how oneself is feeling too because emotions in a negotiation can influence the rational and the outcome, meaning that it could lead the negotiation to overpower an impasse or be stuck in it (PON, 2020a). This way, voiding or moving out of a deadlock might be the difference between letting emotions influence the other side with negative conclusions or to control it and show the other side that one is willing to make that negotiation positively flourish to both their benefit (PON, 2020a).

Decrease or lack of cooperation and difficulty to read one's emotions in the bargaining table are signs the negotiation is reaching an impasse, according to Program on Negotiation Harvard Law School (2016b). Recognizing this tendency and overcoming the temptation to accept a worse deal just to avoid an impasse by adjusting one's BATNA (Best Alternative to a Negotiated Agreement) is the strategy the negotiator should be aware at that moment (PON, 2016b). Alexander, Schul, and McCorkle (1994, p.27) defend that coordinating the manner of conducting oneself and directing it to a cooperative attitude between the negotiators is an effort from both parties that pays off because it is less likely to reach an impasse.

It is critical to a fair analysis to point out the research done by Hannah Riley (2001 cited Cotter and Henley 2017, p.4) that puts in check the gender element crossing reference with a more susceptible,

or not, chance to reach an impasse in a negotiation. The research showed that men tend to have a higher percentage of negotiations that reached an impasse than women.

The study was analysed and verified by Cotter and Henley (2017, p.18) in their research "*Gender Contrasts in Negotiation Impasse Rates*" and concluded that in spite no meaningful statistical values appointed an important difference between men and women negotiators, they discovered that in general terms, women tend to have less impasse quota than men. The reason for this tendency lay on an ongoing discussion in the literature regarding the different negotiation styles namely distributive (competitive approach) and integrative (cooperative approach), as mentioned by Olekalns, Smith and Walsh (1996, pp.68-70), in which women are more likely to choose an integrative approach than a distributive approach towards negotiation, decreasing the chances of them reaching an impasse.

In the distributive negotiations mentioned earlier, the parties have a one-sided view and concentrate their energy and BATNA in winning, targeting a win-lose agreement as to the desirable outcome, highly likely to reach an impasse. According to Susskind and Cruikshank (1987, p.19), one way to get out of this situation and avoid an impasse is through compromising, keeping in mind that time is important once a negotiation hits an impasse, as for the longer the issues continue unsettled, the hardest it is to establish a positive relationship between the negotiators and to come up with relevant and significant solutions.

Logrolling is one of the causes that delay reaching a solution, Susskind and Cruikshank (1987, p.19) says, which means when people ask someone outside the negotiation table to act as leverage to reinforce one's needs and aims in negotiation and ultimately get what the one side wants, a strategy used a lot in political bargaining disputes. At the same time, Program on Negotiation Harvard Law School (2020b) identified logrolling as a promising technique to overcome impasses, even if partially, because this principle requires one side to know its priorities well, but also to evaluate what does the

other side values more than the reason for the impasse, overpowering the situation by reciprocally exchanging the other party's higher priority needs with what the one party wanted in the first place.

In addition to that, Program on Negotiation Harvard Law School (2018b) also underlines the fact that analysing the interests behind the other party's position can be a way to advance in the negotiations and outline an impasse. The longer an impasse takes to be overpowered, the more the parties can become mind limited and less open to keep negotiating, so reminding the other party the loss of money and time can be a relatively successful technique to overpass the impasse (PON, 2018b). However, Mayer (2012, p.246) makes a solid point inferring that the primary aspect to understand an impasse is to look at it in terms of what the impasse is achieving for them and what does it signify for the people involved.

As to impasses originated from ideological issues, Corinne Bendersky (cited PON, 2014) believes the best way to act is with respect and ratifying the status of the negotiator or the body this negotiator represents by saying, for example, "I really admire your dedication to this cause" or "It seems like your organization's position on this issue has boosted its profile". According to Bendersky (cited PON, 2014), this way, one would safeguard any threats to the other party's identity that might be of concern to them, increasing the probability of the other party to disregard any pre-assumption or possible intimidation from the other party towards their ideology.

Pynchon (2009a) says that finding things in common with the other side of the table can prove to be helpful to establish a relationship and ease in the terms of the negotiation without the other party feeling threatened and, therefore, avoiding an impasse. Notwithstanding, she also highlights that finding out what one negotiator has in divergence with the other can very often be more important in negotiations that involve uncertain monetary value because the value one can offer in the negotiation can be higher than the other side's, allowing one to choose "the central rationale" of the proposal (Pynchon, 2009a). This would generate favourable circumstances to put more different options on

the table to bargain and avoid impasses by transforming a competitive negotiation into a business opportunity for both sides (Pynchon, 2009a).

Another technique used to overpower an impasse is using a new hybrid method of dispute resolution called Mediation-Arbitration (Med-Arb), which merges both mediation and arbitration processes into one system, using the same neutral third party to act first as a mediator and then as an arbitrator, in case the mediation reaches an impasse (PON, 2019a). This mixed process resolves the dispute using mediation techniques, in which the mediator can find out more information in the individual sessions/caucus the parties were unwilling to share in front of each other, helping parties to brainstorm solutions, and share an impartial perspective that offers parties mutual beneficial outcomes.

Moreover, if mediation techniques do not work, the impasse would be resolved by decision of the mediator, now using its power of arbitrator in the Med-Arb context, which can be an advantage to move forward the impasse, but also could make parties resistant to open up to the third party in the mediation phase (Shonk, 2019a). Appealing to a third party in a negotiation can prove to be tricky and dubious, as for the real advantages it offers depends on the nature of the dispute and if parties are truly willing to engage in it.

White and Sae Youn Kim (2017, p.24) indicate multi-tiered conflict resolution techniques, such as Med-Arb, to be slowly but surely arising in Korea because it empowers consensual determination of the issues, which ultimately encourages a long-lasting positive relationship between the parties. On this subject, Susskind and Cruikshank (1987, p.239) finally conclude that having a third party to assist or not in the negotiation is only a matter of how complex the issues are to the parties to deal with it effectively and assertively on their own.

When reaching an impasse, Spector (2006, p. 275) says that it opens up an opportunity to be creative, to find solutions to the issue that equally fit parties' needs, and to be more flexible, but not in a way that one would give up on their goals. Furthermore, by having an imposed deadline, it can motivate

the parties to move forward with the negotiation and not paying too much attention and wasting time in small impertinent behaviour; and improving the communication through keeping regular contact to debate about their concerns and plans, especially between parties that have a continuous relationship, for example, between a company and a sub-contractor (PON, 2010).

Under this paradigm, Shonk (2019b) says that to keep a regular communication is fundamental to minimize the possibility of an impasse, as well as to look for any positiveness that could accompany the problems the negotiator anticipated, inviting the other side to do the same and, therefore, adopting a "gain plan". Also, thinking about possible positive outcomes when facing a non-appealing proposal, instead of vetoing it right away, is another technique that prevents the negotiation to an impasse (Shonk, 2019b). Another author who supports this idea is Forsyth (2009, p.31), who says "arguments cannot be negotiated, only proposals can", which means in a negotiation is fundamental to keep making several suggestions and brainstorming proposals as a way to surpass an impasse, instead of denying the ones already put on the table.

O'Sullivan (2018) developed a method to stimulate parties to engage and continue to communicate that can be extrapolated to the good use of overpassing an impasse called *S Question Model*. It incorporates extensive possible questions to introduce all aspects of the negotiation causing the impasse (people involved, context, the issue itself and the relation between those elements) by structuring what kind of questions will fit best for this particular issue (open or closed questions) to gather and clarify all information, and look at the issue with a different perspective, in order to change parties' paradigm and create new insights (O'Sullivan, 2018, pp.7-12).

Moreover, O'Sullivan's method ranks different open-ended questions from high to low assertive performance as follows: *what if, in what way, where/which, who/when, why*, and at the bottom are the closed questions, meaning *yes or no* questions (O'Sullivan, 2018, p.72). The author also alerts that questions starting with *why* must be carefully elaborated and wait for the perfect timing to be

asked because it naturally suggests judgment of other's actions (O'Sullivan, 2018, p.72). O'Sullivan's idea behind those types of questions is to analyse the conflict, identifying issues and underlying interests to tease parties to think on future options (O'Sullivan, 2018, p.94).

Furthermore, in order to keep a lasting relationship between parties, White and Sae Youn Kim (2017, p.16) point out that it is important negotiators to take into consideration the cultural differences between the parties, which could be the key to surpass an impasse since different cultures can have different moral codes, understandings, and priorities. Moreover, being aware of different cultures between the negotiators allow the parties to think about different ways to resolve the impasse (White and Sae Youn Kim, 2017, p.16).

By showing respect and awareness of the other party's culture is one of the many ways that negotiators can demonstrate trustworthiness and fairness, which are very important principles for a negotiator to have that can help them to even avoid impasses by building a positive influence since the beginning (PON, 2013). According to Jap, Anderson, and Hamilton (2011, pp.1620-1621), creating affinity by exercising empathy develops compatibility with the other side, as well as not rushing to a decision and outlining the benefits of a burden situation are key demonstration aspects of engagement and assertiveness, which is useful to overpower an impasse.

Furthermore, Pynchon (2009b) argues that it is essential to ask "diagnosis questions" to the other negotiator, so one can understand its needs, fears, preferences, and desires to ultimately design a resolution that accommodates to both sides' requirements. This technique is extremely useful to end impasses, states Pynchon (2009b), and advantageous when trying to overcome an impasse because it reveals negotiators' motivations and concerns, especially by using the simple question "*Why?*".

Nevertheless, depending on the conditions of the negotiation that led to the impasse, more subtle approaches can be assertive, such as an apology, which adds a lot of value to one's reputation and has the power to repair relationships (Hollon, 2008). However simple it may sound, in order to be

effective, the apology must contain a good dose of sincerity and humility because, as pointed out by Clark (2006), a devious or “poorly expressed” apology, for example, trying to justify the wrongdoing, has the same effect as no apology at all.

Moreover, exercising empathy, as already mentioned earlier, is another simple technique that is constantly underestimated, but always proves to be effective and helps negotiators to cooperate, no longer seeing each other as adversaries, and simplistically means to put yourself in another person’s shoes (Fisher and Ury, 2012, pp.25-26). In adversarial negotiations it invites the other party to act on the matter as an ally and see the situation from a different perspective (Gowland, 2017). According to Trotschel et al. (2011, p.788), analysing the issues pointed out in a negotiation from the other negotiator’s point of view decreases the chances of that negotiation reaching an impasse.

To do so, Gowland (2017) argues that by asking the question “*What would you do if you were me?*” would evoke empathy from the other negotiator, even if there is no established relationship and is most effective in terms of an impasse. Forsyth (2009, pp. 20-21) also defends that having empathy would increase one’s chances to break out an impasse situation, plus showing to the other side one has also their interest in mind by choosing a reasonable and agreeable approach.

Another method to overpower impasse is highlighted by Leonardelli et al. (2019), called “*Multiple Equivalent Simultaneous Offers (MESOs)*”, which says a negotiator should put on the table several proposals at the same time, showing equal value to all of them, and ask the other side to pick whatever proposal is best to fit his/her concerns, priorities, and needs. Even if all proposals are rejected, by asking which one he/she would prefer if they had to pick one will show in which direction your proposals should follow (PON, 2018a).

The negotiator would start a MESO proposal technique by identifying the issues that matter most after already having discussed them with the other party, so then the negotiator will create the possible solutions and rank them from most to least favourable (PON, 2018a). However, no more than three

proposals should be offered at the same time, so it is not overwhelming to the other negotiator, and after their first response to the first three offers, create other three counteroffers but keeping in mind it should not jeopardize one's aims and priorities (PON, 2018a).

In conclusion, though an impasse has many definitions, there is no denial from the authors that it is present in negotiations, however different authors defend different points of view on how to recognize an impasse and why an impasse happens. In addition, the literature research shows it is possible to face the impasse positively, depending on one's perspective, which is crucial to overpower an impasse.

Chapter 4 – Research Methodology and Methods

This chapter analyses the process in which this research elected the appropriate techniques and procedures to collect and analyse data, both statistical and non-statistical, justifying the use of a particular research method and methodology, which are intrinsically connected, as one is the extension of the other (Saunders, Lewis and Thornhill, 2007, p. 3). The methodology is a description of how the research in the dissertation shall be engaged in, along with an indication in what way the theoretical and philosophical assumptions will influence the research methods chosen (Saunders, Lewis and Thornhill, 2007, p. 602). The research methods offer tools that researchers use in order to reach an appropriate conclusion in an efficient way to solve the research problem (Bashin, 2019).

Taking this into consideration, this dissertation was developed using a multi-method qualitative study, which means a combination of data collection techniques here determined as in-depth semi-structured interviews and qualitative (non-numerical) data analysis procedures (Saunders, Lewis and Thornhill, 2007, p. 145). More specifically, this last one refers to written secondary data, such as physical books, online articles and books, online journals, that, together with the structured interviews, here identified as primary data, helped to develop ideas and grant the complete analysis of data, providing insight into answering the research questions at the same time that it allowed the research to attain to the aims and objectives described in this dissertation's introduction section (Saunders, Lewis and Thornhill, 2007, p. 248).

A multi-method qualitative study would allow my research to gather information from different sources as an attempt to pursue a broader spectrum of different views, ideas, experiences and theories that approach the discussion proposed by the aims and objectives, regarding ways to overcome an impasse. According to Saunders, Lewis and Thornhill (2007, p.145), a multi-method approach means

using different methods of data collection and analysis in the research, which provides the opportunity to enrich the possible outcomes of this study, whereas a mono-method approach to this dissertation's topic would restrictively visit the theories and discussions proposed by the authors.

Hence, through the adoption of a multi-method approach, it would target more than one technique of collecting information, resulting in the different sources complementing each other, allowing the data analysis to be carried out more effectively, more profoundly and taking real professional experiences into account to answer the research questions: Is there a way to overcome impasses in negotiations? What techniques appraised in the literature and professional experiences can be used in an impasse situation? That is to say, in practical terms, is it possible to determine a protocol that would assist negotiators to get out of the limbo situation that is an impasse to move on with the negotiation? And, if yes, how would this protocol look like?

A mono method research data collection, therefore, doesn't seem to be fit in this dissertation because one of the aims of this study is to develop a protocol to instruct people to surpass impasses in any kind of interaction, professional or private, which means this protocol needs to contain a level of practicality to be easily understood by anyone and simple to be molded to most situations. Then, the choice of not adopting a mono method comes from the fact that to base the development of a technique to be realistically used by all sorts of interactions needs more than one data collection source. The more diverse the sources, the more approaches are studied and the better chances to be accessible to a bigger audience. Therefore, the choice to develop a protocol derives from a plurality of methods to overcome an impasse and a lack of material that compiles at least a part of them with the purpose of creating a pragmatic system or procedure to surpass an impasse. At the same time, the protocol is supposed to be accessible to anyone and applicable to a professional or personal setting.

For that reason, regarding the in-depth interviews, five different professionals were selected, who have experienced negotiation and the challenges it could offer, such as impasses, on a daily basis as

an inherent part of their job or career. The number five represents a fair and sizable set of professionals that act basically in two different industry segments: mediation and law. In order to be thorough, the precise profession of the interviewees are the following: one interviewee is a barrister (interviewee E); one interviewee is a mediator (interviewee B); one interviewee is both a barrister and a mediator specialised in online mediation (interviewee D); one interviewee is a mediator specialised in education, who was part of the faculty of Mediators Institute of Ireland (interviewee C); and one interviewee is a barrister and an adjudicator (interviewee A).

Now, as a matter of the sample of people interviewed, it is important to point out that were selected people who professionally act in Ireland, as it is possible to give the interviewees the option of meeting face-to-face to do the interviews. Also, it seemed appropriate to limit the possibilities of professional experiences to Ireland, as this master's degree course was enlightened by the Irish experience in Dispute Resolution and specific Irish Law competencies.

The choice of these professional areas was based on how much their job depend on human interaction, negotiation, and, therefore, how frequent the interviewees come across impasses. In addition, negotiation was explored by the scope of this course during the master's program, which enables, familiarity with the topic, and, by being close from people that work on both mediation and law, access to these professionals, which, a priori, does not represent a predicted difficulty to this project. However, it is clear that this could represent a weak point in this project, as the semi-structured interviews, fundamental for the collection of primary data for this dissertation, depend on people being available and having the interest to help in the research.

Furthermore, at the one-on-one interviews the same set of questions will be asked at the same manner to all interviewees, to make sure no bias or discrepancies occur from the interviewer's part, which is fundamental to guarantee a fair primary data collection. At the same time, due to the fact it represents a semi-structured interview, it admits the possibility of the interviewer to have the opportunity to

engage with the interviewee during the interviews and improvise other questions based on pieces of information relevant to the topic, investigating their points of view and eventual diversified topics the interviewees consider relevant to the original set of questions, which would only enrich the research.

For the record, here are the set of questions pre-selected to use in the interviews, which were asked in the same order, and that refer back to the aims and objectives mentioned in the Introduction section of this dissertation:

- How long have you been a solicitor/barrister?
- What sort of skills do you use in negotiations with a dispute?
- Would you say there's a kind of negotiation (with a dispute or without a dispute) that is more likely to reach an impasse? If yes, why?
- What is an impasse in terms of negotiation? How would you recognize it? OR How would you describe/ identify an impasse?
- Do you consider an impasse in negotiation a positive or negative thing? Why?
- In your opinion, why negotiations reach an impasse?
- In your experience, in which stage of the negotiation are impasses most likely to happen?
- What skills do you have to manage an impasse? What tools do you use to manage/handle it?
- How do you avoid impasses?
- Have you ever had any experience with a negotiation that had an infinite loop? Could you describe it? Give examples
- What do you do to overcome an impasse and were you successful?

All interviews were audio-recorded and transcribed with the permission of the interviewees, also they were conducted either in person or via skype and took the maximum duration of one hour in total. After transcribing the audio-recordings, the transcriptions were put in the Appendices section of this

dissertation and the audio recorded will be uploaded via Moodle, as per request and exclusive use of the College.

Afterwards, the interviews were analysed taking into consideration the information revealed by the interviewees, which later on was summarized and examined together with the information retrieved from the literature, in order to conduct a thematic analysis approach of the interviews (McCombes, 2019). This means the data collected in the interviews were processed based on the information this study needs to develop and unfold its aims and objectives. In addition, it is important to highlight that, for the purpose of this research and thinking about ethical guidelines, it was decided that the names of the interviewees do not need to be revealed, unless if strictly requested by the interviewees, because of only their credentials and statements/ answers to the questions proposed are of genuine advantage for this research.

Moreover, not only a multi-method was chosen for the purpose of this dissertation, but also it is important to clarify that a qualitative study is the most advantageous direction for this research. Qualitative research, as explained by Saunders, Lewis and Thornhill (2007, p. 145) in general terms, would make use of any sort of data gathering approach used in order to generate a sort of information that ends up with a non-numerical data, such as in-depth interviews, meaning the type of data that is other than just the texts and written literature. For Slife and Melling (2010, p.7), qualitative methods come from the disadvantages of empiric forms of data that can be overlooked or not understood because of its limitations. In one hand, empiric types of data would gather quantitative sort of information, more palpable if you will, which validates only a very simplified or limited range of experiences, while qualitative methods, on the other hand, conceives and accepts a broader range of experiences and takes them to the status of knowledge per se.

This means the qualitative data collection is not narrowed only to observable pieces of information, but it is also sensible to the meanings of a particular behaviour, which opens up to far more exciting

and possible interpretations and debate of ideas which is very useful for investigating personal experiences and meanings in order to formulate a theory (Slife and Melling, 2010, pp. 7-8). As a result, quantitative methods would not fit this particular dissertation, as it aims for types of knowledge that are given as unchangeable through space and time, commonly used in numerical data collection or questionnaires and wouldn't be so useful when studying unique events, as each different human interaction in the context of negotiation and impasse is singular (Slife and Melling, 2010, p.9).

By bearing in mind the aspects mentioned before and that this research permeates human behaviour and interactions in the specific context of negotiations, a qualitative method seems to be the most effective way to satisfy the research questions. Concurrently, a multi-method approach would be an advantage while collecting data, as it provides a wider variety of possible interpretations of special events, like impasses, at the same time that it provides better opportunities to answer the research questions and is able to make a better judgement of the extension to which the research findings are trustworthy and the conclusions that might come from it (Saunders, Lewis and Thornhill, 2007, p. 146). As a result, the diversity of methods chosen for this dissertation, namely the multi-method qualitative study, certainly is a strength for this dissertation's critical analysis because it allows the research to be extended to a variety of sources and a broader spectrum of interactions under the negotiation paradigm and, by extension, the impasse.

Chapter 5 – Presentation of the Data

As a matter of reminiscing what was discussed in Chapter 2, this dissertation was conducted using a multi-method qualitative data collection by researching in academic literature, online journals, online articles, etc, along with the information resulted from the in-depth semi-structured interviews. The multi-method qualitative strategy was chosen in order to meet the needs of a research designed to ultimately understand the impasse phenomena from the academic and professional practical point of view, at the same time that it ultimately develops a response to the set of research questions, as inferred in the Introduction. Through researching the definitions, causes, different points of view and how to overpower the impasse using academic sources, it shall give this research the vital support to critically assess the information taken from the in-depth semi-structured interviews.

Besides, a mono-method technique would only allow the use of one technique to collect data (Saunders, Lewis and Thornhill, 2007, p.145), which would not be the most appropriate for this research because it limits the analysis of a research object that permeates complex human interactions. Negotiations and impasses deal with qualitative aspects of human life, therefore a quantitative and mathematical approach would not fit the purpose of this research.

Nevertheless, the area of study for the purpose of this dissertation falls under the negotiation domain in Dispute Resolution, and, more specifically, the impasse, in this context. The research gathered interviews from people who deal with negotiation as an intrinsic part of their profession, that is from the areas of mediation, law (barristers), and adjudication, in combination with the literature-review. The experience of these professionals in negotiation contributes to a more expanded and broad perspective of impasses in negotiations.

It is important to point out that negotiation per se is done all the time by everyone, as it is part of human interaction. The choice to interview mediators and lawyers is purely because they tend to face

negotiation and possible impasses that might come out of these interactions pragmatically and assertively, then other people.

Human interactions are not possible to be completely defined and predicted by numbers or statistical methods, however, numbers could give a very good idea of occurrences or majority and minority figures, it is always going to be affixed to that specific sample of people who answer to the research according to their feelings and responses of that precise moment they were being part of the research. Numerical methods and concepts are forever limited by the unpredictability of human nature.

So, what can be done while evaluating a possible technique to deal with human interactions is to gather as much practical information regarding the topic under discussion and add value combining all results of the multi-method technique chosen, as a way of predicting possibly more successful outcomes from the problem in question: the impasse. The original idea of this dissertation is not to try to formulate a technique to overpower impasse by claiming it to be precisely designed to work successfully every time one comes across an impasse during a negotiation, but to analyse the aspects of the impasse and create a method that combines theoretical and practical guidance to deal with the issue, ultimately focusing on helping practitioners to apply it and be successful overpowering it.

To explain where the idea comes from, the complexity and unpredictability of human interactions forced society to dispose of mechanisms that would help resolve disputes, which the law systems around the world originated from this necessity (Goldberg, Sander, Rogers and Cole, 2012, pp.5-9). In modern times, this traditional method of Dispute Resolution was not enough to meet the demand at the same time that society was willing to determine less costly and faster methods that would better fit their modern needs, originating Alternative Dispute Resolution approaches were developed, such as mediation and arbitration (Goldberg, Sander, Rogers and Cole, 2012, pp.4-5)

However, what all Dispute Resolution and Alternative Dispute Resolution methods and approaches have in common is the elementary requirement to negotiate, which derive from all human

interactions. Therefore, negotiation is entirely behind Dispute Resolution, Alternative or not, as the basic and most common form (Goldberg, Sander, Rogers and Cole, 2012, p.1). Negotiation is present at formal Dispute Resolution techniques and informal social liaison, which gives a wide range of elements to learn from and that can be used in many different interactions, as it has fundamentally the same characteristics, turning it to be an extremely exciting area of study.

Nevertheless, a lot of preparation accompanies negotiation and many theories and techniques were developed around the best ways to prepare before a negotiation meeting. According to Fisher and Shapiro (2005, p.207), negotiation has seven elements that one must be prepared for Communication, that one should be ready to effectively engage to make clear one's point of view and also to active listening to the other side; BATNA, to learn to explore your Best Alternative To Negotiated Agreement keeping in mind it will probably have to be adjusted during the negotiation to meet both parties goals; Interests, to be ready to disclose your interests without giving how much they are valuable at the same time respecting and taking into consideration the other's interests too; Legitimacy, to anticipate and require standards of fairness that would fit both sides; Relationship, to establish affinity and understanding using empathy to jointly work to decrease the adversary feeling and build trust; Commitment, aim for candid commitments that both sides can realistically achieve; and to create legitimate Options if the parties are unsuccessful to commit to a fair plan of action.

The impasse is also under the negotiation umbrella and is one unpredictable element in negotiation one is never certain if it is going to happen. It certainly all depends on how well one is prepared regarding their own goals and limitations, at the same time that it shows how much one is determined to work with the other side to come up with an ultimate agreement. Therefore, it is not possible to study the impasse without analysing the dynamics of negotiation.

Moreover, the impasse is intrinsically connected with negotiation as a Dispute Resolution field of study, in which Mnookin (2012, p. 93) affirms that one way or the other everyone has witnessed

conflicts that the lack of settlement imposed considerable costs that could have been prevented to both parties. Through analysing the aspects of an impasse with the sole aim to develop a technique or protocol that are applicable to surpass an impasse in a negotiation, by investigating what kind of negotiations are more likely to reach an impasse and why, it is intended to ultimately help people to also prepare for the possibility of a deadlock, understand its signs and aspects, and finally overpowering it, so the negotiation can move on.

If compared with other aspects of negotiation, the impasse has not been studied as much as the other elements of a negotiation. Given its unpredictable and uncertain nature, the impasse is considered a grey area that should only be thought of if one finds oneself under the impasse's paradigm. A positive or negative attitude towards the impasse can affect the way people deal with it also in a positive or negative way, so this dissertation also aims for people to think of an impasse taking into consideration different points of view and trying to make the most of it in order to surpass it.

Therefore, a multi-method qualitative study, research methodology chosen for this dissertation, falls into place for the purpose described previously. By taking into consideration the opinions of people who deal with negotiation in a daily basis in the professional environment, it gives a practical perspective of the impasse, especially if one would like to apply the protocol later on developed in this study into their professional lives, which will be seeing in the next Chapter 4.

Acknowledging the experience of professionals of the area of negotiation along with the research presented in Chapter 1, the study will have a broader perspective of the topic impasse under the umbrella of the area negotiation. Consequently, it allows a more complete outlook necessary to develop a protocol in the direction to be of good use in aiding people to better understand the impasse and ultimately overpower it.

Chapter 6 – Data Analysis and Findings

In this Chapter, there will be a reasonable description of the other part of the research conducted through the interviews. This practical approach of data collection was described with details in Chapter 2 of this dissertation, along with the specification on how the interviews were conducted, the sample used, what same set of questions were going to be asked, etc. At this point in the dissertation, however, it will be narrated the results of the research, describing and exploring the points made by the five interviewees, who participated in the study.

The same set of questions were asked to each of the interviewees neutrally in order to be fair and not risking any bias to be inflicted on the interviewees by the interviewer, which protects the integrity and validity of the answers from any unfairness that could have been imposed to the results. From the five interviews, four of them were conducted via Skype and one was conducted in person. All were audio-recorded, not video, due to avoid any confidentiality issues, as well as the identity of the interviewees will not be revealed anywhere in this written dissertation. Due to the semi-structured interviews method chosen for this study, the good engagement on some interviews resulted in interviewees approaching additional topics consistent and relevant to the topic of this study that further explained their perspectives.

When asked to describe and to define an impasse, and to comment on how to recognize an impasse, interviewee A, a barrister and an adjudicator in the Workplace Relations Committee (WRC), said in an impasse the parties have difficulty to compromise, to meet in the middle, to carry on and move on with the negotiations. Also, the parties would stop talking and, in the WRC context, they give up on the adjudication process and decide to move the dispute to the Courts, particularly when parties do not agree on a sum of money to settle, according to Interviewee A.

Interviewee C, a mediator specialised in education, who was part of the faculty of Mediators Institute of Ireland, recognizes an impasse when one gets stuck in a part of the conversation or stuck in a

position they believe they are better prepared for and there is a certain resistance to go forward in the conversation, which can be caused by one or both parties. In the same line of thinking, interviewee D, a barrister and a mediator specialised in online mediations understands an impasse as the parties reach a stage in the negotiation that one or both parties are unwilling to move forward or compromise any further, also signalling one or both want to end the negotiation.

Interviewee E, who is a barrister, characterizes an impasse as a point in the negotiation when the parties were harsh to one another so far, that it seems there is no possibility of reconciliation due to the situation. She identifies an impasse in her experience after both sides putting their offers on the table which are so far off from each other than the possibility of compromising is not evident at first.

Interviewee B, a mediator specialised in industrial relations negotiation comments using a very interesting point of view discussed by Ken Gergen (2010), that an impasse is a socially constructed idea, as well as other social beliefs. He illustrates the concept of explaining that an impasse is part of the social sciences as a notion people constructed in the world and, if one could take people away from this equation, there is no impasse and no negotiations. Therefore, an impasse is something people use to describe a particular socially accepted idea of conflict.

Interviewee B also states a skilful negotiator is able to deal with difficult situations, such as an impasse, which could be a matter of the other party is more anxious to go through their list of things to discuss that could be different from one on the other side of the table. Like interviewee D, he adds that a negotiator should welcome the signs the other negotiator is giving, as it is not possible to know exactly what is going through the mind of the other person, especially when the negotiation is happening through another way of communication that is not in person. That way, it would be more difficult to recognize important signs the negotiation is reaching an impasse, such as emotions and body language, as it could be a sign that the other side is struggling with an aspect of the negotiation.

When asked in which stage of the negotiation impasses are more likely to happen, the interviewees had very similar answers, but, two out of the five interviewees (A and B), shared the same opinion that an impasse can happen at any stage of the negotiation, however, it could be more likely either in the beginning or at the end. Interviewee A said that it depends on each process and how those people involved are willing to engage in a beneficial outcome for both.

However, interviewee A adds that it is more likely to happen early in the negotiation because the parties might not be prepared to talk, unless they are encouraged since the beginning to engage in settlement talks, or at the end of the negotiation while discussing the last hurdle, which could put the whole process off its tracks. In addition, interviewee A explains in whatever type of negotiation, with or without a dispute, that parties are unrepresented, or behaving unreasonably, or don't have enough knowledge to know the value of their case is the kind of negotiation that makes people more reluctant to reach a settlement.

Interviewee B argues at the end of the negotiation, some people can also try to get something extra after everything was already tidied up. They do so because those negotiators bet on the other party ending up accepting it at the last minute to not undo the whole agreement, which, in interviewee B's opinion, is what could cause the impasse. So, anything that can create negative energy in the negotiation, at any time, meaning anything that could impede progress or slow things down maybe to a stop, says interviewee B, can create an impasse.

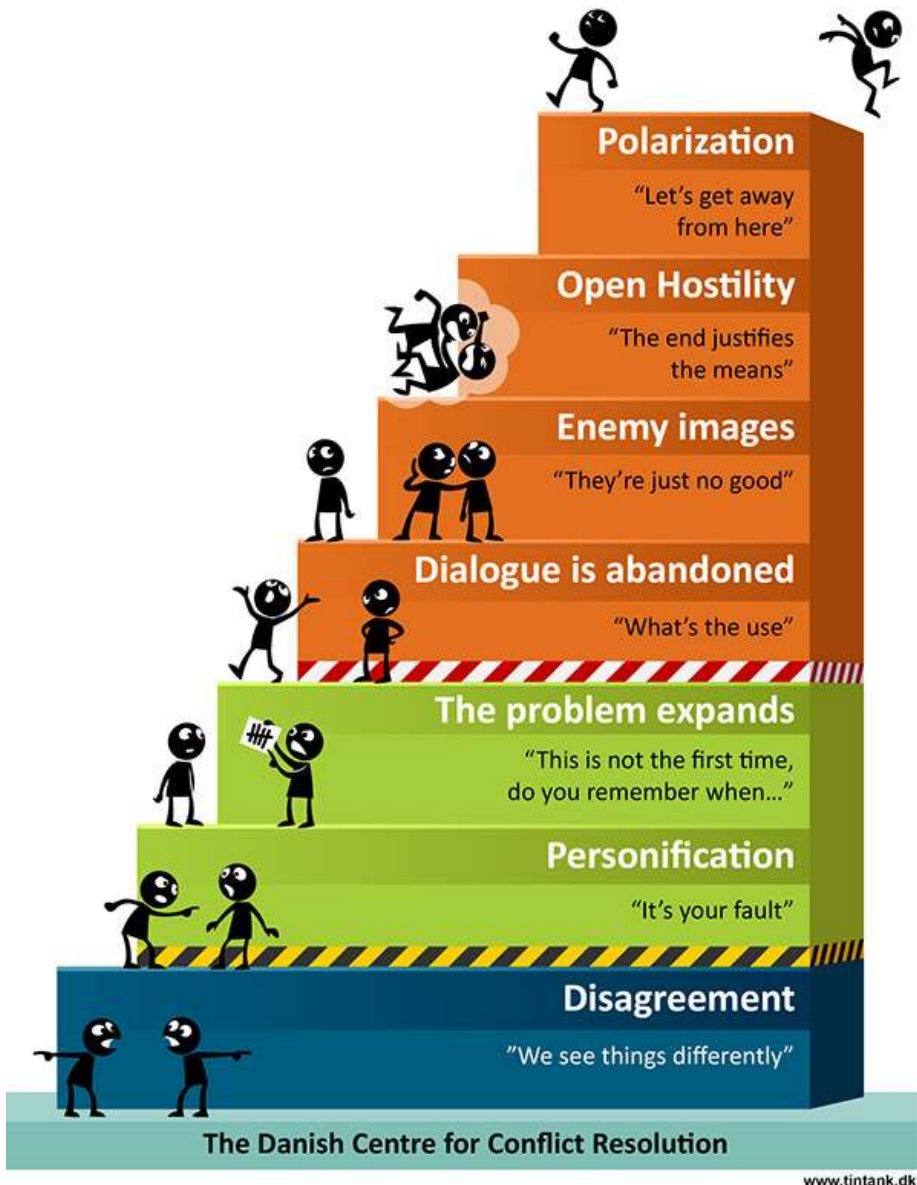
Regarding this last consideration, Interviewee E adds that, in her experience as a barrister, impasses often happen when almost reaching the deal because people might get suspicious of feeling things are evolving too easily. That way, people wrap their heads around the common pre-conception that in litigation things should be difficult to go forward due to the amount of time and money they had to dispose to go through this process, starting to make small things difficult. Interviewee E reflects on situations the parties are fighting is the kind of negotiation that is very hard to get to a resolution

and, on the other hand, if the parties negotiate with mutual respect, knowing their strengths, allowing the other side to work together on a solution and not make them feel humiliated or bullied the negotiation will never reach a dissolution.

Interviewee D also believes that litigation and workplace disputes parties get entrenched positions and are highly charged than an ordinary negotiation, without a dispute, that parties are more relaxed and not under time pressure. When the negotiation has a dispute, interviewee D explains, people are financially and emotionally invested and maybe there is a lot at stake, therefore, impasses are more likely to happen at the end or in the middle of the negotiation, however not in the beginning.

Interviewee C assumes the impasse can happen in the early stages of the storytelling because people are not ready yet to hear, or in the negotiation stage when people are trying to negotiate something they are not able to. Besides, the impasse can be at the end when a party feels that has had enough or that the treatment of the other party is not enough to keep negotiating, showing signs such as putting the pen down. Interviewee C continues with a very interesting evaluation of the impasse as part of the conflict escalation theory, although she doesn't mention or refers to any particular author or piece of academic work and shares the image below, from TinTank (2013) to illustrate her point.

CONFLICT ESCALATION



Taking the image into consideration, interviewee C infers that the higher the conflict is in the conflict escalation, the more likely to have an impasse and this impasse will become more positional. This model of conflict escalation theory is important to take into consideration when in an impasse, according to interviewee C, because it might help the parties to evaluate where they are, where they could get to by making the conflict worse and decide to go around it through inviting a third neutral party to mediate the negotiation, if the parties don't think they can stop the escalation of the conflict by themselves.

However, interviewee C concludes that if the mediator is inexperienced and does not have a supervisor to help, it can have the opposite effect than it was expected and worsen the conflict. Also, according to interviewee C, the type of negotiations that negotiators are more comfortable only dealing with the factual circumstances of the case or are positional based rather than interest-based are more likely to reach an impasse.

She illustrates her point of view using the iceberg as a symbolism, if an iceberg represented the whole of the negotiation, which is about ten percent above the water and the other ninety percent under the water, to explain that the factual and positional negotiations happen in ten percent of the iceberg and only that bit can be properly resolved. In contrast, interviewee C continues, the emotional circumstances, such as respect, trust, integrity, etc happen in the ninety percent of the iceberg and that's where the real resolution will take place.

When asked if they considered, based on experience, an impasse to be positive or negative, the interviewees had similar answers. Interviewee A and interviewee C had the same answer and responded that it was neither a positive or a negative thing, but just a matter of it being part of the process that could happen at any time for the smallest of details and, this way, when one faces an impasse is just a matter of going through the process hurdle by hurdle. Interviewee C complements her answer saying an impasse is one of the things that can happen, and one should not be afraid of it because what one can only do is to hope to go beyond it through talk in the negotiation.

Interviewee E particularly infers that an impasse can be a positive thing as it can often result in a better deal because there is no point in the negotiators to come up with an agreement up to the point of signing it if it is not essentially going to work for them. In the same direction, interviewee B replied that impasses are a natural part of the negotiation and represent some sort of challenge, which is expected from an interaction such as negotiation. Just like interviewee E, interviewee B has the point of view the agreements that come out of hard-fought negotiations and went through an impasse are

more valued and better supported by both parties, at the same time that resilience is an important part of the process because there is no point in coming up with an agreement that is not going to be followed or survive when it is time to put into practice in the future.

In addition, interviewee B concludes an impasse only becomes a problem if the positive atmosphere to negotiate wasn't built in a way that parties can deal with it or perhaps the negotiators can't deal with the impasse. Moreover, interviewee D does not believe an impasse is an opportunity and, as it represents a blockage in the process, it could only be seen as a positive thing because it shows negotiator's where they stand and what are each other's limits. It can be useful, according to interviewee D, as it demonstrates the issue can not be resolved if the conversation continues through that path and forces people to be creative to overpass it.

When asked for what reason the interviewees believe people reach an impasse, the interviewees presented diverse perspectives in their answers. Interviewee A mentions again the problem with unrepresented parties who don't have the necessary knowledge or information access to the subject under negotiation or the skills to negotiate, along with being too emotional, due to the parties' history, for example, up to a point it gets on the way to proceed with an auspicious negotiation.

To interviewee B, who has the perspective the impasse is part of the social science spectrum, an impasse can happen for many reasons because it is more about the people themselves, what is their perspective of the process and their vision of the world, then the issues being negotiated. Interviewee B continues that it could be because of a lack of engagement and understanding between the parties or if any of the parties use the strategy of playing games with the other to get what they want and validate their position. Similar to interviewee A, interviewee B believes not knowing how to negotiate, meaning, about the Best Alternative To Negotiate and Agreement (BATNA), the timing of exchanging the information, etc., can be the reason why negotiations reach an impasse too.

Furthermore, in interviewee C's opinion, much like as interviewee B's, impasses can happen for many different reasons in both professional and informal social interactions, therefore accompanying the movement the more committed one is at a position, the more enable one is to move from it. Interviewee C adds that an impasse can happen for reasons associated with party A, with party B or due to the energy between the parties or the neutral third party, even though the mediator is supposed to help the parties to be assertive and engaged, or even because of a third party outside the room, not necessarily involved directly or indirectly by the negotiation. Regarding this last one, interviewee C believes a third party who is not part of the negotiation per se (a family member, a lawyer, a co-worker), but the negotiator assumes he has to report to or is afraid of this third party's judgement on the agreement reached inside the room can jeopardize the whole process because the negotiator will not fully commit to the negotiation.

Interviewee E commented on the same perception as interviewee C, regarding a third party not necessarily involved directly or indirectly in the negotiation matter, as an important reason to highlight in order to answer the question. She states that for this type of third party, who is advising the negotiator while not part of the process, there is no risk involved, financially or otherwise, and decide to play this part for their entertainment or build up their ego. Because they are never physically present in the room it is hard to deal with them, making things more difficult, interviewee E continues. She advises the only way to deal with them is to treat with respect and try to get them engaged with the agenda of the negotiation.

Furthermore, interviewee E share the same point of view as interviewee A regarding people who are too much emotionally invested in the negotiation that it becomes part of their lives find it difficult to reach a settlement and move forward. Moreover, similar to interviewee B's opinion, for interviewee E lack of trust and lack of understanding between the parties are also reasons why impasses happen. Interviewee D relies on lack of flexibility, preconceptions on what a fair outcome would be and new information that can change the outlook as to why negotiations reach an impasse because, that way,

people need more time to consider, for example, one party disclosing they are in financial difficulty, which can be translated by the other party as not an act of good faith but a strategy.

When asked about interviewees' experience on negotiations that went through infinite loops, it is important to highlight the interviewer didn't mean to give any extra information or explanation on the concept in order to safeguard the interviewees' interpretation on it and not contaminate the answer with any bias. Therefore, the interviewees were free to develop their answer based on their experience and perspective of an infinite loop alone.

Interviewee A gave examples of her experience with infinite loops in both family law and workplace adjudication, saying that in those type of disputes people are emotionally charged and is very common to have unrealistic perspectives of what a fair outcome should be. Interviewee A adds that even under those circumstances it is difficult to predict how people will deal with this kind of negotiation, as some can be easy to settle while others there is no settling.

Interviewee B referred to it as a "doom loop" and disclosed that he hasn't witnessed this kind of circumstance because he wouldn't have the patience to endure a repetitive and constant impasse. The best way to deal with this situation according to interviewee B is to go back to the issue that caused the first impasse because it was not solved and only caused more problems. Interviewee E declared that, although infinite loops can go on for a while, one must stay positive and try to keep negotiators engaged thinking. Interviewee E highlighted that the fact parties are sitting down negotiating means that deep inside they know there's a solution to their issue but maybe they are not ready to give it a chance.

Interviewee C commented she did go through an infinite loop and the parties were so committed to their positions that it was not possible to untangle the impasse or move on from it. Similar to interviewee's C answer, interviewee D mentioned an infinite loop happens once the parties are particularly inflexible, have clear views to what they want and are unwilling to accept anything else.

Like interviewee A, interviewee D mentioned his experience of an infinite loop in a workplace mediation that one party raised a grievance, but there was a clear power imbalance between the parties, and the parties with more power could insist upon their requirements because they had more resources.

In terms of avoiding an impasse, the interviewees gave different sets of answers based on their professional experience. Interviewee A stated this would be a matter more related to mediated dispute resolution than to litigation, however, the strategies she would use to avoid an impasse is to be candid with the other side about one's position and what one wants, to assess the situation to understand what issues one is dealing with and never adopt an aggressive approach. Analogous to interviewee A, interviewee E mention that treating the other party with respect and listening to what it has to say is the best way to avoid a situation such as an impasse because if one side talks down to the other, one can react quite strongly and impulsively.

Interviewee C arguments that in tough talks it would be a good strategy to avoid an impasse to start with easy agreements of less controversial issues, which could be about agreeing on to whom the mediation will be disclosed to given the confidentiality, for example. By acknowledging those small agreements, it is easier to maintain a positive atmosphere when dealing with more difficult elements of the negotiation, interviewee C says. Interviewee D disclosed a similar strategy as interviewee C informing that if one knows the conversation is leading to an impasse, one should use it as an advantage to manage expectations avoiding, that way, the impasse all together.

However, interviewee B has a different point of view to the other interviewees as he says he would not try to avoid an impasse at all, instead he would welcome it because it would point out to both negotiators what need to be further discussed and added to the agreement, if the agreement was already in place. Interviewee B continues saying that good negotiations take their time and if the other negotiator is not up to take their time to find a solution together with the other side, then it is an

indicator that it would lead to a bad negotiation and whatever agreement that comes from it wouldn't last anyway, so in this situation, it would be better to walk away from this negotiation. Interviewee B still goes a bit further on his perspective and informs that miscommunication is an indicator that distinguishes a skilled negotiator from the ones that think their skill is to "not follow the rabbit down the hole".

Perhaps the most important set of question in the interview was directed more or less towards the end of each interview, because the interviewer had the opportunity to ask the interviewees about what sort of skills they use to manage or handle an impasse with the ultimate objective to overpass it. Naturally, none of the interviewees comment on only one or two skills, but the answers from all included many techniques, and some of them were virtually the same and others not so much.

Interviewee A ventures in allowing people time to consider their position, which could be by adjourning the meeting for another day, so parties can get legal advice or seek more information, or to take a break, take a step back to reflect on where the person is in the negotiation and relax to later make an informed decision. The key to interviewee A is to have patience, to be able to listen and to pay attention in the body language because sometimes the reason for the impasse is not just about one thing, for example, money, but some other principle that is at stake and not clear to the other party. As communication is paramount in negotiation, interviewee A says that before sending the parties apart to think about the negotiation, to ask parties to keep the communication line open, as people sometimes just want to tell their stories and once they did it they are more prepared to be open to listen and get to a settlement.

To interviewee D, pointing out the worst and best-case scenarios and stressing the consequences if the parties fail to reach an agreement can be very effective, as well as meeting the parties separately in a caucus meeting in order to try to build a bridge between them by exploring if it is a real impasse or something that can be resolved. Like interviewee A, interviewee D also invests in taking a break

and come back again another day, in addition to communication being a key negotiation skill, so making the parties meet to discuss the impasse without their lawyers, for example, can lead to great positive results.

Now, interviewee E highlights empathy, respect, and engagement with the other side targeting their intellect, creativity to come up with solutions and to focus on the solutions rather than the problems are important techniques to put in practice in any tough conversation, as when enjoyable, problem-solving can be appealing and makes parties continue the negotiation no matter how difficult the impasse might be. Interviewee E uses similar methods to interviewee A and D as to invest in taking a break to put things in perspective and to advise the parties on the best and worst-case scenario if they don't start working together to overpass the impasse and, that way, people would get into the mood of objectively contemplating where they are in the process, without emotions that can make progress more difficult.

Interviewee E continues saying that by putting things objectively in perspective parties would be more willing to compromise other than one being told what to do because it must be their choice to overcome the impasse or not, especially if they want that resolution to be definite and to last. To do so, interviewee E informed she creates a pleasant atmosphere with the other side and tries to brainstorm to come up with mutually beneficial solutions by using active listening skills and always treating people with respect, as a way to find out what results the other side of the table wants to achieve through asking questions such as "is there any way that we can kind of be creative and ingenious and work on a mutually beneficial solution?".

At the same time, interviewee E adds, building rapport, being humble and not competitive towards the other side, and, when putting an offer on the table, make the other side aware of the strengths of the one's case and the weaknesses if they reject it, also taking into consideration the other side also has strengths and weaknesses in their offers too are all strategies that work when trying to overcome

an impasse. Nevertheless, interviewee E discloses an interesting piece of advice, as to if one feels the need to walk away because the other side is being hostile, do so with confidence and firmness but also respectfully with the intention to leave an open door if the party wants to resume the negotiations, making sure they don't feel distressed about it.

For interviewee B, when facing an impasse it is important to keep in mind that the negotiation is about the talks more than it is about the substantive issues, so the parameters of the negotiation should be established from the start, making sure that everything that is going to be discussed is put up at the beginning of the conversation and everything that comes afterwards would be out of bounds. But, if an impasse gets in the way, re-establishing those principles is an effective way to take a step back from the impasse itself, which is very pro-active. Regarding this last one, interviewee B comments on his support to an Alternative Dispute Resolution method called Med-Arb, a hybrid technique that uses mediations and arbitration techniques, as a good alternative to an impasse that happens in a negotiation assisted by a neutral third party because this party, given its neutrality, would resolve the impasse through its arbitration powers and, that way, overcome that particular hurdle.

Similarly to the other interviewee B also uses good negotiation skills, such as communication, information exchange, to show the other side one is committed to the process, getting the other side engaged in the conversation, to balance the power between the parties, making the other party feel happy about the negotiation and with the conduct of the other negotiation to build trust between them, not play any games and to apologise if anything went out of hand or if the other side did not take lightly an aspect that for the other negotiator wasn't a big deal.

Nevertheless, interviewee B differs from interviewee D's technique of going for a caucus if reaching an impasse, as interviewee B would avoid attending to caucus, when the neutral third party takes one person out of the room to have a chat, can get the other party suspicious and create a negative atmosphere in the future of the negotiation, dismantling the trust between the parties. Interviewee B

included in other different perspectives, going back to Ken Gergen (2010) that an impasse and the issues that led to the impasse are a social construct, in order to overpass a deadlock is imperative to deconstruct this problem. The way to do it, according to interviewee B, is to venture in open-ended questions, not judgmental, facilitative and that shows the other party how much one cares about the negotiation, taking the focus off whether it is a negotiation or not and just talk about the talks themselves, for example:

- How is this going for you?
- How are you feeling about it?
- Are you enjoying this process?
- Should we get back to it later?
- Have I done something that might have offended you?
- So, if we can't do A and we can't do B, is there a C, we can do?
- What needs to happen to get them back on track?

Interviewee C says the skill to recognize the other side wants something different before it reaches an impasse is advantageous to any negotiator, but if it comes to an impasse, the techniques that are also very convenient and pragmatic to overpass this situation are reality test without taking away the other party's power in the negotiation; to provide a space of calm to take their time to understand the other's perspective and where one is now in relation to the negotiation; to summarise what people say and be able to come back and call out the key pieces of what they said, both factual and emotional; to make use of caucus; to apologise because it acknowledges the suffering of the other, showing the other person one understands how the other side felt; and similar to interviewee B's opinion, to ask questions in a nonintrusive way, so people don't feel under pressure.

Moreover, other interesting method interviewee C referred to are reframing what the other party said but substituting the negative language with more neutral language because it enables the person to begin to open up, and, more importantly, test it later on with the other side to make sure what one understood is what the other meant. Interviewee C also revealed resolution is a consequence of a good negotiation, that does not focus on finding a settlement, but a negotiation which parties are mutually engaged in the process.

Finally, interviewee C comments on a technique that involves the development of diagrams or mental pictures to present the problem in 3D, as she says, which is very much like an empathetic approach and making use of empathic listening, in which interviewee C draws a simple diagram for the one party around what that situation looked like to him to make the other party see how it might have been to go through that situation under one's perspective. Through putting the relationship in diagrammatic form it can completely move the negotiation for somebody who is very positional into a place towards one begins to see where the other man might have been and how he also would be if found himself under the same circumstance and feeling the same pressure.

Chapter 7 – Discussion

7.1 – Analysis

Taking into consideration the information gathered in Chapter 1 and Chapter 4 for this dissertation, many opinions, perspectives, and points of view regarding the impasse in negotiations from both literature and the interviews are very similar. Although they could also be considered diverse and designed to fit a specific impasse case, some are deliberately intended to serve as tools for the impasse in general terms, perfectly conforming with the purposes of this study.

In negotiation, a skilful negotiator uses a variation of approaches to be effective on getting what one wants while one engages with the other party, listening and brainstorming together through their Best Alternative to a Negotiated Agreement (BATNA) to come up with a mutually beneficial agreement. Moreover, no negotiator uses the same approaches the same way, nor deals with impasse the same manner, so to study impasse in negotiation is necessary to gather information from different practitioners and theorists, considering their experiences and approaches that help to deal with impasse. Therefore, this research's multi-method qualitative design fitted perfectly to gather diverse information and, by doing interviews instead of other method, be able to collect deeply perceptive data.

When it comes to the word impasse's definition, it is not odd dictionaries give similar results, as epistemology is the science that defines the meaning of words to create a common sense on what that word means. Most of the definitions found in dictionaries have a negative connotation, describing a disadvantageous situation with a difficult possibility of an outcome. This same description was given by the interviewees B/D, A and E, respectively, when solely looking at the meaning behind the word, so definitions such as “problem”, “parties are stuck” and “no evident possibility of reconciling” were among their answers.

Nonetheless, it is interesting to also find material that describes impasse, not as much as a positive outcome per se, but a circumstance that has the potential to provide possibilities in the future. This impression is given, for example, by Collins Robert French Dictionary's (2008, p.494) definition of the word, the language the word impasse comes from, specifically when it uses the terms "missing out" or deliberately "to choose to overlook something". Also encompassed by interviewee's answers is the definition of an impasse as a challenge, specifically determined by interviewee B, who said the impasse must be welcomed by the parties, instead of being afraid of it, and negotiators should see it as an opportunity to be empathic and think more thoroughly about issues, helping one another to get to a mutually beneficial result.

In addition, interviewee B presents an alluring illustration in his answer through a theory called *social constructionism*, based on the scholar and American Social Psychologist Kenneth Gergen, that offers a singular perspective in which hegemonic views shaped and defined our reality, ignoring the needs of a plural and diverse social world (Misra and Prakash, 2012, p.122). Gergen's social constructionism defends multiple views of reality helping to shape and appreciate other's point of view through encouraging dialogue in a "non-reductionist way" (Misra and Prakash, 2012, p.122).

Then, the same would work with impasse as a socially constructed idea filled with negative understandings and a difficult situation to overcome, a dead-end, far from ideal, that also induces people to want to avoid impasse because it makes them feel like failures and, therefore, leading people to accept any deals that would prevent impasses from happening, as well mentioned by Tuncel et al (2016, p.9). However, using social constructionism's method is also possible to deconstruct this negative idea of impasse and replace it to a favourable circumstance, part of the process, that can enrich negotiation's dialogue and become the starting point to break free from impasse.

As mentioned by Cotter and Henley (2017, p.3), negotiators see reaching an agreement as their ultimate goal, therefore anything that prevents this goal to be reached, like an impasse, is of

considerable consequence. This recurrent social construct idea contributes to a negative perspective on impasses, so changing the mindset and deconstructing this socially accepted idea to an opportunity is fundamental.

References that relate the word impasse to a negative connotation also relate it as being a waste of time, and that is when engaging with the other side becomes more and more scarce, up to a point the impasse becomes irresolvable. If the negotiation comes to that point, parties will most probably just walk away from it, which is one of the reasons why impasses endure. Evidently, when one walks away from the negotiation because of an impasse it is not a desirable result neither seems like a positive outcome, which is why an impasse has such a bad reputation and became negatively stigmatized.

Moreover, once the relationship between the parties suffers a breakdown, bouncing back from an impasse can be very difficult, particularly if the negotiators lack motivation and used all good ideas (Spector, 2006, p. 274). Nevertheless, walking away from the negotiation when it reaches an impasse is as likely to reach an agreement as not negotiating at all. Therefore, being tenacious and resilient when negotiating is a crucial factor that can make a difference between resolving or not resolving an issue (Spector, 2006, p.284).

Although, when one negotiator tries to keep the other engaged in the negotiation and the other negotiator is being hostile, it does not give much choice to the one negotiator to walk away at that moment from the negotiation. When emotions are too high up and people adopt a belligerent position, it is difficult to even continue dialoguing. So, interviewee E makes an interesting remark saying, in those situations, walking away is a good move and should be done with confidence and firmness, but also respectfully with the intention to leave the communications channel open until the parties are ready and decide they still want to resume the negotiations after taking a break.

In addition, it is important to highlight that walking away from the negotiation can also be used as a strategic move to test the other party, monitoring their reaction, their emotions when there is some kind of suspicion the other party is hiding something or not being genuine somehow, to find out what is their real position, what is their ultimate goal and how far they intend to go to reach it. The interviewees C and E share the opinion that this strategy is commonly used if one side is trying to take advantage of the other side or if parties see each other as adversaries and face the negotiation as a win-lose paradigm.

On the contrary of popular belief, engaging in a competitive arrangement in negotiations is a complete waste of time because the negotiation should be about parties being interested in finding common ground to achieve both their goals. If parties insist on adopting a positional approach and a win-lose negotiation, the result will be reaching an impasse, as people will only defend what they want and their point of view or they will reach an agreement that will not last in the future because one of the sides gives in just so the negotiation does not reach an impasse, preventing from feeling like failures.

Authors like Susskind and Cruikshank (1987), Shonk (2019b), Debora Kolb (2019b) have expressed their concern about those circumstances, saying it is more difficult to overpass impasses that way because competition between parties lead to a positional and defensive approach, focusing on one's own goals and completely disregarding that a negotiation is a team effort. Negotiations that involve people from adversary backgrounds, for example, working for adversary governments or companies, usually take people to adopt a competitive position, but, even in those situations, what people must focus on is that while in a room negotiating they have to work as a team to have the chance to achieve their goals and get a long-lasting agreement that is good for both, which is the whole reason why parties had to negotiate in the first place.

Another factor worth further consideration was raised by Mayer (2012, p.249) on how much emotions influence negotiations to a point of contributing to the impasse. However rational one must be while

negotiating, human nature is difficult to ignore when working under stress or in an uncomfortable situation, getting out of the comfort zone. Not that it is even possible to leave emotions completely outside the negotiation room, but the point is that in an emotionally charged negotiation parties miss the opportunity to be productive and come up with solutions that benefit both sides of the table. This way, parties would not be open to actively listen to one another, which can lead to lack of trust, understanding and flexibility, ultimately resulting in an escalated conflict with a more difficult impasse to overcome.

Regarding conflict escalation, interviewee C points out it is one of the major factors responsible for the occurrence of the impasses. First of all, the negotiation is not supposed to be a conflict or seen as a competitive win-lose circumstance or a space for passive-aggressive behaviours, but a mean to resolve an issue in a mutually beneficial way. Second of all, if it gets to a point the negotiation turns into a conflict, the higher the level of conflict the more profound is the impasse. Therefore, not letting the negotiation become a conflict and being able to control whatever is the reason why negotiation is turning into a conflict is crucial, so it does not develop into an impasse impossible to overcome.

Furthermore, an interesting comparison interviewee C does between emotions and rational is by using an iceberg to perfectly illustrate the negotiation dynamics. First, the tip of the iceberg symbolizes what negotiators unveiled: their position and opinions, what they want and their demands. Second, the part below water in the iceberg represents what is concealed: the internal desires that drive negotiators conscious or unconsciously, what is behind the rational of people's positions and motivations, what O'Sullivan (2018, p.181) called underlying interests. Given the second part is the larger portion of an iceberg, it deserves attention and consideration because there can lie the key to overpass an impasse.

Emotions are very powerful, hence knowing how to control, manage and identify why one is feeling the way they are is necessary to make sure one's emotions do not contribute to reaching an impasse.

The more people are aware of what drives them, their real interests and motivations, the better negotiators deal and understand their emotions, not letting their emotions be the reason why the negotiation is leading to an impasse. And many are the ways that this could happen, such as parties going to the negotiation with a preconception on what a fair outcome should be, parties believing their needs were not adequately met, parties individually going through their agenda instead of discussing or respecting the other's agenda too. Being able to realize emotional cues is essential for the sake of the negotiation to avoid an impasse.

Concomitantly, this dissertation's research demonstrates that impasses are more likely to happen in situations like illustrated previously, where parties present lack of commitment and unwillingness to interconnect to one another. Interviewees A and B said impasses can happen at any time when parties are not ready to talk or try to add addendums to the drafted agreement at the end of the negotiation, expecting the other party will accept it to refrain from going back to negotiating.

Therefore, the type of negotiations that reach an impasse is classified by Olekalns, Smith, and Walsh (1996, p.68) as distributive (competitive) approach, in which parties are stuck in their position, envision only their goals, look at the other party as an adversary and understand the negotiation as a win-lose situation with higher probability to reach impasse and lower chances to overpass it due to their lack of engagement to the process and one another. So, adopting an integrative (cooperative) approach, in which parties engage to find a mutually beneficial resolution to their issues, look at the negotiation as an interaction that has the potential of being beneficial to both (win-win), the probability of an impasse is lower and, even if the negotiation reaches an impasse, parties have a higher probability to overpass it due to their commitment to the process. Moreover, a cooperative approach evokes empathy between negotiators because it demonstrates interest, mutual commitment and appreciation, as inferred by Shonk (2019b).

Therefore, however antagonist the parties may be regarding points of view and goals, it is part of a good negotiator's skill to be able to maintain the other negotiator engaged in the process. If that fails

to happen, finding a neutral third party can help parties to keep engaged in the negotiations, at the same time that it focuses on working through the issues that are causing the impasse, also helping to deal with any power imbalance. A neutral third party benefits the process by making sure the parties continue to engage and oversees the process by carrying it out with fairness and without hostility between the negotiators (Susskind and Cruikshank, 1987, pp.65-66). When the negotiators recognize the need for a third party, even if it came from an inability of the parties to overpass an impasse, it already shows a willingness to work their way through the issue that caused the impasse in the first place, which like it or not is a positive outcome to start with.

The most common Alternative Dispute Resolution (ADR) that include a neutral third party are mediation and arbitration. On one hand, the third party in mediation assists the negotiators to build a golden bridge and help them to find out what better alternative would mutually benefit the parties, ensuring each person is able to make knowledgeable and informed decisions, proving to be a valid alternative to resolve impasses. On the other hand, the neutral third party in arbitration also treats the process with fairness and keeps the parties engaged, in which the ultimate outcome from the impasse is decided by the arbitrator, not the parties, and in favour of one of the parties, meaning there will be a loser side and a winner side, possibly shaking the parties' relationship and creating a long-term problem.

Furthermore, interviewee B, as well as White and Sae Youn Kim (2017, p.24), indicate Mediation-Arbitration (Med-Arb) as another common ADR to resolve impasses, which is a hybrid of both mediation and arbitration. It has a neutral third party and uses the same mechanisms of dispute resolution as mediation, assisting parties to keep engaged, however, in the end, it is based on keeping an adversary character between parties, creating the same negative outcome as arbitration, as ultimately one party loses and the other wins and the outcome depend solely on the third-parties' decision. Therefore, this ADR method misses the opportunity for the parties to work together and

decide what works better for them instead of leaving the decision to a third party that will not be affected by the outcome at all.

However, Med-Arb is less drastic than arbitration because, at first, the parties go through mediation, the problem starts when parties may not be willing to cooperate and be completely honest because it can get the third party biased and, in the arbitration phase, the third party might favour one of the parties in their final decision. Therefore, if the parties recognize failure to surpass an impasse and reach an agreement, mediation proves to be the most advantageous practice, as the third party is neutral and has the role to facilitate the interaction and acknowledgements between parties, making sure they will keep being engaged to one another. In addition, the neutral third party must be experienced and well trained, otherwise it can only aggravate the impasse and make things worse, as inferred by interviewee C.

For that reason, to keep the issues between the parties and being able to deal with them to overcome the impasse can be crucial to ending up with a long-lasting agreement the negotiators are happy to follow. So, appealing to a third party must be a last resort. Parties have to prioritize investing in their relationship and allocate as much time as necessary to create an atmosphere of calm and safety for negotiations to move forward and, as explained by interviewee E, praising for mutual respect, inviting the other side to work together on a solution. To rush through negotiation or not allocate as much time as it is needed according to how the parties' interactions and issues come along can lead to an impasse, as it is interpreted as a lack of commitment. As well as forcing a deal can also lead to an impasse (Forsyth, 2009, p.16).

Allocating time to the negotiation also includes negotiators taking a break to consider what has been said, done and proposed so far or to give time to people relax and keep their emotions into place. Taking a break or reconvening to talk again at another day and time convenient to both parties is more straightforward and productive than insisting on negotiating, especially when parties show signs of

being tired or fed up with the discussion. In this sense, being aware and taking into consideration other's body language is important to recognize the timing to suggest a break to avoid an impasse or at least to avoid aggravating the impasse. All interviewees manifested their support for being aware of other's body language and offer a break as a very effective technique that often has a very positive effect, especially if the negotiation find themselves in an infinite loop, that is they have being in an impasse for some time and parties are having a hard time agreeing how to move forward.

On another note, interviewee C encourages both sides to take be patient and use their time to build a trustworthy relationship, even if this relationship is meant to last only during the negotiation itself, to discuss and brainstorm proposals, to listen to other's proposals and respect it, however different from one's point of view or how far from what one is willing to go to, for the good of reaching a mutually beneficial agreement. Furthermore, by showing the other side one is engaged and committed to making the best out of the process is a good start to get acquainted with the other negotiator's points of views and goals, establishing, this way, trust in the parties' relationship. It is important to point out that respect one another also include to be aware of cultural differences, which can be from different countries, ethnicities, regions, etc.

Nonetheless, another interesting technique used to overpass an impasse is related the manner how one presents their proposals to resolve an impasse. The technique "*Multiple Equivalent Simultaneous Offers (MESOs)*" presented by Leonardelli et al. (2019) suggest putting on the table three proposals at the same time, showing equal value to all of them and asking the other negotiator to pick whatever proposal fits best their goals. This method can work if the proposals are not introduced in an evasive way and do not sound like an imposition, leaving open the possibility to discuss and further improve them together. It is indeed interesting because it offers options that fit the one side and negotiations can start from there either by debating the proposals on the table or modifying them to fit the other side's needs or it even shows both sides to which direction they are willing to proceed.

Furthermore, interviewee D and C revealed techniques that help to present proposals and improve chances to keep moving the negotiation forward are, respectively, pointing out best and worst-case scenarios and start with easy agreements. By pointing out the best and worst case scenarios of continuing stuck in the impasse, it shows what they have to lose if not reaching an agreement, which usually indicates loss of time and money, and how both could be benefited while using the time to negotiate to move forward and come up with a mutually beneficial agreement. This is a valid attempt to change a competitive approach to a cooperate one, which can start by parties deciding on smaller issues and coming up with easy agreements and the frustration on not moving forward can switch to a more positive attitude towards the negotiation itself.

Another crucial element and quite often effective to overpass an impasse, while it improves relationships, is an apology. Apologising to another party has the same effect as many techniques combined, such as showing respect and engagement, having patience, attaining emotional cues and body language, practicing active listening and investing in the relationship. As mentioned by Clark (2006) and reiterated by interviewee B, a poorly executed apology, when one justifies the wrongdoing or misunderstanding, with no real humility or empathy has the same value as none at all, even if one did not consider it to be a big deal. To have value and be effective, an apology has to be honest, meaning the negotiator must exercise empathy and try to understand other's perspectives.

7.2 – The Protocol

Both pieces of research in the literature and through the interviews pointed out many elements that orbit around an impasse while in the practice of negotiation. For this dissertation, the best guidelines were discussed in the previous subsection of Chapter 5. Now, this subsection will discuss frameworks that outline when, where and why these best practices would help people surpass an impasse, creating a protocol.

The research showed that impasse is part of the negotiation process. That does not mean that necessarily all negotiations will go through an impasse, but the fact that people tend to avoid an impasse, in general terms due to its socially constructed bad connotation, many negotiations were considered successful only because it did not go through an impasse. Therefore, it does not necessarily mean it was successful, in terms of parties coming up with a long-lasting mutually beneficial agreement.

Through the interviews, it was especially highlighted by professionals that practice negotiation one way or the other that an impasse evidence issues that were not well defined and its resolutions do not satisfy the needs or interests of both parties. The word *both* is important in an impasse context because, while people might have the impression a successful agreement is one that was easily and quickly signed by both parties, time and time again the literature and practitioners opinions demonstrate that an agreement is only truly successful if and when parties get out of the negotiation truly feeling satisfied with the outcome. Otherwise, the agreement might not even last very long, as in fact parties will not be committed to it, which is the absolute opposite effect an agreement is expected to have. Therefore, both negotiators must be equally willing to overpass an impasse for the best interest of coming up with a mutually beneficial agreement.

Notwithstanding, facing the negotiation with true commitment and seriousness, not having the mindset it is a competition or to see the other party as an obstacle to be defeated, are important values to start with. However, none of the techniques and methods presented in Chapter 1 can guarantee complete avoidance of the impasse. Given that negotiations rely on human relations, interactions and emotions, and those are certainly unpredictable by itself, the notion of a method that assures complete avoidance of an impasse under the paradigm negotiators are committed to genuinely engage in the negotiation is undoubtedly unrealistic. For that reason, people must be more concerned about how to overpass impasses than to avoid it altogether. This is the aim of the protocol in this dissertation.

It is important to take into consideration that many of the techniques described to overcome an impasse were designed to work in specific situations/ negotiations. On one hand, the protocol's step-by-step is based on a generalization over possible different levels and paradigms wherein impasses are entrenched. On the other hand, following the structure established in the protocol is also important to reach a favourable outcome.

The *first stage* and starting point of the protocol comprehends in parties changing their mindset from the impasse as being a negative problematic obstacle in the negotiation to an opportunity that must be welcomed by the parties. Going back to Gergen's (2010) social constructionism, mentioned by interviewee B, the idea of an impasse, like many other things, was socially constructed and accepted as a negative thing to be avoided, but surely anything that is constructed can be deconstructed. So, breaking free from the impasse first takes a necessary transformative attitude, which undoubtedly demands people deciding to be tenacious to overpass the impasse.

The *second stage* of the protocol envisions the tenacious attitude from stage one to persist and to keep communication channels open and regain one's trust and overpass an impasse, as a lot of the techniques necessary to pass this phase rely on how resilient and determined parties are to surpass the impasse. It is crucial to always keep in mind that if one of the parties is not truly interested to engage and overcome the impasse one of the following two things will happen: one, the impasse will endure forever, which can cost parties' time and money, or two, one of the parties will have to give in and accept an unfair and sometimes unrealistic, agreement.

Therefore, cooperation and respect are essential in this stage. Parties will find worth it to have the courage to engage in this phase of negotiation, mutually showing interest to commit to the interaction and allocate as much time as necessary to invest in parties' relationship by getting familiar with each other's goals and needs in order to discuss reasonable possibilities to overpass the impasse for both. Accordingly, both parties must be genuinely willing to invest their time and attention during a negotiation because an effort coming only from one side is not enough to have positive outcomes and

supposedly both sides have the interest in overpassing the impasse to reach a mutually beneficial agreement.

No negotiation will be truly successful if parties see each other as adversaries, so working as a team for both parties to have the chance to meet their goals is fundamental. Respecting each other's cultural differences and points of view, paying attention to other's body language and emotional cues will naturally lead to a fortunate outcome. Emotions, as discussed previously, are unpredictable natural responses to the environment and human relations, so practicing empathy and developing emotional intelligence to recognize other's emotions, and, at the same time, learn to identify and understand one's own emotions, with patience and respect is key to a successful outcome. Now, the second stage may prove to be challenging and may take time, but increases the chances to overpass an impasse if done correctly.

The *third stage* of the protocol foresees a conflict escalation, which not necessarily will happen but derives from miscommunication or misunderstanding during the second stage of the protocol. If there is no conflict escalation, parties should skip the third stage and go straight to the fourth stage. However, if a conflict escalation happen two methods stood out when considering the literature review and the interviewees' answers: first, to take a short break or to reconvene at another day and time can prove to be a simple and effective method because it depends purely on parties agreeing to do so and gives time for parties to consider what was discussed; and second, to appeal to a third party to assist in the negotiation, which is positive if taking into consideration that it can be the first thing parties agree on and at least show commitment in wanting to resolve the conflict. It is important to make clear that by third party is referred to facilitative mediation and not Med-Arb or arbitration because they reinforce the adversary sentiment between parties and the outcome is not decided by the parties.

The second and third stages are designed to assist parties to engage and commit to their relationship while negotiating until the impasse is overpowered and a mutually beneficial agreement is reached. For that reason, the *fourth stage* of the protocol contemplates approaches that can work as a combination or individually on their own, but, anyway, all depend on a prior engagement, cooperation and time investment by both the parties, just like the second and third stages envisage.

As mentioned by interviewee A, sometimes people just want to tell their story, have their emotions noticed, respected and understood, and recognize they matter, they are important during the process. Thus, an apology can prove to be valuable to one that wants their feelings remarked and for the negotiation as well, as impasses can happen because people hold on to past emotions so tightly, they are not ready to move on. So, Clark (2006) argues an apology must be sincere and genuine to be effective, no trying to justify what one said or did, but recognizing the other's emotions as a valid response and acknowledge repentance on making the other feel that way.

Following an apology, if parties find themselves stuck in one issue and constantly disagreeing even in the small agreements, the MESO method described by Leonardelli et al. (2019) is a valid proactive way to overpass an impasse because it consists of one negotiator presenting several proposals (three seem to be a sensible number of proposals) and, by giving them equal value, ask the other negotiator to pick the one that fits him/her best. This way, parties can visualize exactly what they want from one another. Once carefully discussing the terms of each proposal, adjustments are expected to be done to accommodate the other party's concerns and goals, maybe starting with small agreements, which means less contradictory issues that might give the sensation the negotiation is moving forward and exciting parties to keep negotiating positively. However, if all proposals are completely rejected and the impasse persists, presenting best and worst-case scenarios if the impasse is not resolved can give negotiators the change of perspective needed to be more collaborative. This technique is openly used by practitioners, according to the interviews and has very good outcomes.

In the end, all those techniques and methods depend on parties engaging and be willingly open to exploring ideas that ultimately will lead them to surpass the impasse and reaching a mutually beneficial agreement. In order to do so, the most straightforward method is parties asking questions to unveil and better understand the underlying interests causing the impasse. Asking questions is a simple but powerful way to surpass an impasse because it teases out and assists negotiators to focus on real doable options to reach a resolution.

Lelia Gowland (2007) explains that a question used to conjure empathy is useful when one of the parties assumes a positional argument and refuses to move from it, so the sentence “*What would you do if you were me?*” would be important to invite the other party to explore different perspectives of the problem. In the same sense, interviewee E informed the following question generated positive engaging responses: “*Is there any way that we can be creative and ingenious and work on a mutually beneficial solution?*”. A combination of both questions mentioned earlier has the effect of inducing empathy and engagement between parties, which is extremely useful when trying to overpass a deadlock. Pynchon (2009b) prefers using the diagnosis type of questions “*Why?*” to encourage parties to disclose information and explore unnamed issues causing the impasse.

However, it is crucial to be careful with the type and tone of the questions. O’Sullivan (2018, p.72) believes inquisitor why questions can be interpreted as embedded with a judgemental connotation on party’s actions, which is not what someone would want because it can make people angry having to justify themselves and break the trust between parties. When investing time to build trust between negotiators, people can not in any way be judgemental or make the other feel threatened or uncomfortable because the other side will be afraid to commit to the other and the impasse will persist. If people feel threaten even a little, they will not think clearly or logically, and only react emotionally. This is the opposite of what one would want when trying to overpass an impasse, especially because the brain alters the information it receives through deletion, distortion, and generalization to cope with storing a huge amount of information, which creates a unique biased interpretation of reality

(O'Sullivan, 2018, p.21). By creating an atmosphere that allows people to think logically and clearly about what is going on for them, allowing people to be more susceptible to step outside their positions and give a chance to look things from a different perspective.

The most effective way to do so, according to interviewee C, is by using a combination of well-known mediation techniques, such as reality test, summarizing and reframing. Adding to that, O'Sullivan's S Question Model served as an inspiration to the following set of questions, as an attempt to have a powerful effect when dealing with an impasse, especially a long-lasting one, to soothe any resistance from the parties, explore underlying interests and together come up with possible resolutions.

First of all, start with asking questions that contribute to revealing past biased interpretations, that bring more information and clarity to misunderstandings, exposing parties' different points of view. It explains why parties have been acting the way they do and helps parties to blow off steam and show their emotions. Only after that, parties would be ready to think clearly.

- How is the negotiation going for you? How are you feeling about the negotiation?
- In what way has this been impacting you?
- What is that upsets you most about the scenario I pointed out?
- What needs are not being met?
- What needs are you worried may not happen in the future?
- What did you think X meant?
- This is my understanding of what you said. Is this correct?

Second of all, ask questions to explore parties present expectations, to deconstruct discrepancies between what was understood and what is reality and identify the underlying interests, adapting people's expectations to reality. Taking into consideration the information gathered with the previous set of questions and the clarity it brings, now is possible to understand what really matters to the parties and brainstorm possible outcomes together.

- What had been your expectations?
- How would you like things to be different?
- What is the most important thing missing for you?
- What would happen that would make all the difference?
- Would you be willing to do this if I do that?
- So far, we have the following suggestions. Would you agree with them?
- Are there any other possible outcomes that you suggest?

And finally, ask questions that incite future planning, inspire solutions and explore doable and realistic options. The central idea is to make negotiators focus on solutions for their underlying interests and think about what they want for their future.

- What do you think would make a doable and realistic solution?
- If you do this, what could happen?
- What might be the advantages and disadvantages of this solution? Would it meet your needs and interests?
- Imagine everything is going well, how does it look like? What could have enabled it to happen?
- If we could go back to the beginning of this negotiation with the knowledge you have now, what could be done differently?
- What else could happen that would make a difference in your decision?
- What actions need to be taken to prevent this from happening in the future?

Therefore, the fourth stage consists of a set of questions that intend to alter the negotiator's paradigm and provoke a congruence between what one experience and the underlying interests, by bringing new information and gently challenging party's perspectives to gain new insights (O'Sullivan, 2018, p. 12). Therefore, before walking away from a negotiation due to an impasse, going through the stages

of this protocol is crucial, which also reveals parties' willingness to be part of the process, a far better option than not even trying to resolve the issues and impose solutions that only benefit one side.

Chapter 8 - Conclusion

The purpose of this research is to study more profoundly the impasse as an intrinsic and intermittent circumstance within the negotiation umbrella, to identify what kind of negotiations are more likely to reach an impasse and, ultimately, to develop a protocol to assist people easily overcome an impasse. In general terms, impasses occur due to people's relative and personal interpretation of what is a successful or unsuccessful interaction, in which different perspectives, cultures, beliefs, emotional intelligence and social competence to deal with others can collaborate or collide.

Therefore, because of the diverse potential of this subject, the research was designed to use different types of sources to gather enough variant information on the impasse, meaning through a multi-method qualitative methodology, and develop a protocol accessible and feasible to a bigger audience. To do so, it is fundamental to comprehend impasses' main features: definitions, what causes it, positive and negative aspects, and techniques to overpower it.

Through the research, theories, and practices were raised that proved to be fundamental for the developed protocol. Gergen (2010) stimulates different thinking on socially constructed ideas, as an impasse, that can modify defined negative mindsets and deconstruct it towards positive rational. Many good practices to face an impasse in negotiation were mentioned by different sources, such as resilience, patience, respect, cooperation, empathy, emotional intelligence, reading body language, as key aspects to facilitate the engagement and commitment of parties to deal with the impasse.

However, being able to perform these good practices can prove to be challenging, as it demands mature skills with practice. Therefore, the research revealed that negotiators agreeing on appealing to third neutral party ADR methods is common practice with high chances of positive outcomes, but only mediation can facilitate negotiation, assisting parties to come up with mutually beneficial solutions, at the same time it preserves relationships, assuring a long-lasting agreement.

Moreover, the research showed other interesting techniques to overcome the impasse, such as taking a break to consider aspects highlighted in the negotiation, apologizing to acknowledge one's feelings

and start building a relationship, and Leonardelli et al. MESO method that endorses the presentation of ideally three proposals, so the other negotiator picks the one that seems a better fit, allowing further discussions now based on concrete proposals that can be adjusted (Leonardelli et al., 2019). Nevertheless, the techniques that seem most sensible and assertive to overcome impasses, even for the untrained in the art of negotiation is through asking questions with the purpose to keep negotiators committed to finding out the underlying interests behind the impasse and engaged in thinking of solutions that benefit both parties.

The interviewees mentioned many examples, which illustrates asking the right question at the right time has the power to invoke parties' empathy and understanding, which can make all difference to move on from an impasse. Now, in the literature, Gowland (2007) and Pynchon (2009b) mention asking questions as an effective way to start dialogues and get parties to engage, however, O'Sullivan (2018) mentions the manner how questions are asked is also important because it will dictate a positive or negative reaction from the other. In addition, O'Sullivan's S Question Model is of extreme value to overcome an impasse because it demonstrates how each type of question should be asked to get to the underlying interests of the impasse.

The protocol developed through the research successfully shows how to ask questions that matter most to overcome an impasse, giving examples, and follows a rational based on investigating emotions that erupted from past biased interpretations and adjust expectations, so parties can go back to cooperating and focusing on future planning. Based on the research, this is the rational a set of questions should follow to have higher chances to succeed in overcoming an impasse.

Besides, in negotiation, like any human interaction, it is elementary to take into consideration each other's emotions, perspectives, goals, and needs because those undoubtedly influence parties' decision-making process that can end up in an impasse or a mutually beneficial agreement. Also, this research successfully showed that choosing to overlook those aspects and deciding to invest in a positional, competitive or purely rational (or emotional) interaction are the types of negotiations that

are more likely to reach an impasse and proves not to be the most clever or effective way to deal with negotiations because by insisting in a win-lose paradigm, parties lose the opportunity to exercise empathy and to look at things from a different perspective, which is fulfilling at a human level.

However rational parties can be, other elements such as building and maintaining a trustworthy and frank relationship and investing in mutual respect are the keys to a positive outcome, which benefits both negotiators with an ultimate agreement, that is the whole point of negotiating in the first place.

Reflection

The idea for this dissertation originated while taking the Negotiation module in the Dispute Resolution Master's Degree offered in Independent College Dublin. The set of brilliant classes conducted by Professor Anastasia Ward intrigued and got me interested in the dynamics in negotiation. The choice of the impasse as a focused study for this research derived from a personal pursuit to understand human interactions and develop abilities to deal with personal conflicts, that is, to offer more than the win-lose paradigm I only knew back then.

Writing this dissertation was not as easy as I premeditated, however, it took me into a journey of research and investigation like I have not experienced since my graduation in 2013. Doing the literature review was a challenge, but a fun one, as I managed to utilize the resources available in Independent College Dublin's library, including making use of the inter-library loan with the help of Gillian Connors, our librarian. A lot of research was done in the space of four long months, although the more I read, the more fascinated I got with the topic.

Another challenge I had to face for the good of my research was the interviews. As an introvert person, who had never interviewed in life, it was not exactly fun to talk to strangers, as most of the interviewees I met online and only saw once through the screen of my computer. However, I decided to focus on the task and take the interviews as seriously as possible, which for my relief turned out to be fruitful and source of many insights I used in Chapter 5 and the Conclusion.

Only after doing the interviews and the literature research I was assigned a supervisor, which for my pleasure and delight was Professor Anastasia Ward. Writing this dissertation also proved to be a challenge, as I had never written such an extended academic text in a foreign language before, but, fortunately, this challenge also proved to be a fun and enrichen one, as I have now definitely extended my vocabulary and grammar abilities in English.

Finally, finishing a Master's Degree, going further on my education, and having an academic experience abroad have been in my bucket list since I was a teenager and now I have the pleasure to cross it. With all things considered, a lot of planning, dedication, and eight Gantt Chart reviews later, I find myself meeting the initial goals I had in mind when I came up with this dissertation's proposal and finishing my dissertation a day before my twenty-eighth birthday, I certainly feel victorious.

Bibliography

Alexander, J., Schul, P. and McCorkle, D. (1994). An Assessment of Selected Relationships in a Model of the Industry Marketing Negotiation Process. *The Journal of Personal Selling and Sales Management*, [Online] 14(3), pp.25-42. Available at: <https://web.a.ebscohost.com/ehost/pdfviewer/pdfviewer?vid=6&sid=02022185-4363-4831-a0ab-388d07144459%40sdc-v-sessmgr02> [Accessed 03 Mar 2020].

Bashin, H. (2019). *7 Key Differences Between Research Method and Research Methodology*. [Online] Marketing 91. Available at: <https://www.marketing91.com/research-method-and-research-methodology/> [Accessed 06 Feb 2020].

Cambridge University Press (2011). s.v. Impasse. In: *Cambridge Business English Dictionary*. Cambridge: Cambridge University Press, pp.421-422.

Clark, M. (2006). The Legal Value Of an Apology. *HR Magazine*, [Online] 51(3), p. 14. Available at: <https://web.b.ebscohost.com/ehost/pdfviewer/pdfviewer?vid=1&sid=2c23ab60-1a73-42ca-9a74-1a647d6d7b9f%40sessionmgr101> [Accessed 14 Mar 2020].

Cohen, T., Leonardelli, G. and Thompson, L. (2014). Avoiding the Agreement Trap: Teams Facilitate Impasse in Negotiations with Negative Bargaining Zone. *Negotiation and Conflict Management Research*, [Online] 7(4), 232-242. Available at: <https://web.a.ebscohost.com/ehost/pdfviewer/pdfviewer?vid=6&sid=61ba13eb-7054-4840-b41e-b82c1e35c73c%40sdc-v-sessmgr01> [Accessed 03 Mar 2020].

Collins Robert French Dictionary (2008). s.v. Impasse. In: Allain, J., Larroche, L. and Gough, J. (eds.) *Collins Robert French Dictionary*, 8th ed. Bishopbriggs: HarperCollins Publishers, p.494.

Concise Oxford English Dictionary (2011). s.v. Impasse. In: Stevenson, A. and Waite, M. (eds.) *Concise Oxford English Dictionary*, 12th ed. New York: Oxford University Press Inc, p.713.

Cotter, M. and Henley, J. (2017). Gender Contrasts in Negotiation Impasse Rates. *Management*, [Online] 12(1), pp. 3-25. Available at: <http://www.hippocampus.si/ISSN/1854-4231/12.3-25.pdf> [Accessed 03 Feb 2020].

Druckman, D. (2001). Turning Points in International Negotiations: A Comparative Analysis. *Journal of Conflict Resolution*, 45 (4), pp. 519-544.

Fisher, R. and Shapiro, D. (2005). *Beyond Reason: Using Emotions as You Negotiate*. New York: Viking Penguin, p.207.

Fisher, R. and Ury, W. (2012). *Getting to Yes: Negotiating an Agreement Without Giving In*. 3rd ed. London: Random House Business Books, pp.19-41.

Forsyth, P. (2009). *Negotiation Skills for Rookies*. [Ebook] London: Marshall Cavendish, pp.11-42. Available at: <https://web.a.ebscohost.com/ehost/ebookviewer/ebook/bmxlYmtfXzMxNTAwM19fQU41?sid=9fa755e0-3bb9-44f3-9eab-a46259e67685@sessionmgr4007&vid=3&format=EB&rid=1> [Accessed 13 Feb 2020].

Goldberg, S., Sander, F., Rogers, N. and Cole, S. (2012). *Dispute Resolution: Negotiation, Mediation, Arbitration, and Other Processes*. 6th ed. New York: Wolters Kluwer, pp.1-9.

Gowland, L. (2017). *Overcome a Negotiation Impasse With This One Question*. [Online] Forbes Women. Available at: <https://www.forbes.com/sites/leliagowland/2017/06/19/overcome-a-negotiations-impasse-with-this-one-question/#11224bda7cb3> [Accessed 10 Feb 2020].

Hollon, J. (2008). Apology's Sorry State. *Workforce Management*, [Online] 87(15), p.42. Available at: <https://web.b.ebscohost.com/ehost/detail/detail?vid=1&sid=dbaa33b9-b379-4f47-93b4-fee21766a0a7%40pdc-v->

sessmgr06&bdata=JnNpdGU9ZWhvc3QtbGl2ZQ%3d%3d#db=buh&AN=35126539 [Accessed 14 Mar 2020].

Jap, S., Robertson, D. and Hamilton, R. (2011). The Dark Side of Rapport: Agent Misbehavior Face-to-Face and Online. *Management Science*, [Online] 57(9), pp.1610-1622. Available at: <https://web.b.ebscohost.com/ehost/pdfviewer/pdfviewer?vid=3&sid=61008f03-56e5-4694-aa27-bc3247f8c335%40pdc-v-sessmgr01> [Accessed 14 Mar 2020].

Ken (2010). *Ken Gergen talks about Social Constructionist Ideas, Theory and Practice*. [Video] Available at: <https://vimeo.com/showcase/2109901/video/15676699> [Accessed 20 Feb 2020].

Latz, M. (2011). *Negotiation Impasse Has Some Value*. [Online] Expert Negotiator. Available at: <https://www.expertnegotiator.com/tip/negotiation-impasse-has-some-value/> [Accessed 14 Feb 2020].

Leonardelli, G., Gu, J., McRuer, G., Medvec, V. and Galinsky, A. (2019). Multiple equivalent simultaneous offers (MESOs) reduce the negotiator dilemma: How a choice of first offers increases economic and relational outcomes. *Organizational Behavior and Human Decision Processes*, [Online] 152 (5), pp.64-83. Available at: <https://www.sciencedirect.com/science/article/pii/S074959781630557X#!> [Accessed 13 Feb 2020].

Mayer, B. (2012). *The Dynamics of Conflict: A Guide to Engagement and Intervention*. 2nd ed. [ebook] Jossey-Bass, pp. 245-255 Available at: <https://www.dawsonera.com/readonline/9781118178225> [Accessed 14 Feb 2020].

McCombes, S. (2019). *How to write a research methodology*. [Online] Scribbr. Available at: <https://www.scribbr.com/dissertation/methodology/> [Accessed 07 Feb 2020].

Menkel-Meadow, C. (2014) Toward Another View of Legal Negotiation: The Structure of Problem-Solving. In: Korobkin, R. (ed). *Negotiation Theory and Strategy*. 3rd ed. New York: Wolters Kluwer Law & Business, pp. 14-16.

Misra, G. and Prakash, A. (2012, Apr 14). Kenneth J. Gergen and Social Constructionism. *Psychol Stud*, [Online] 57(2), pp.121-125. Available at: <https://link.springer.com/content/pdf/10.1007/s12646-012-0151-0.pdf> [Accessed 31 Mar 2020].

Mnookin, R. (2012). Why Negotiations Fail: An Exploration of Barriers to the Resolution of Conflict. In: Goldberg, S., Sander, F., Rogers, N. and Cole, S. (eds). *Dispute Resolution: Negotiation, Mediation, Arbitration, and Other Processes*. 6th ed. New York: Wolters Kluwer Law & Business, pp. 93-94.

Olekalns, M., Smith, P. and Walsh, T. (1996). The Process of Negotiation: Strategy and Timing as Predictors of Outcomes. *Organizational Behaviour and Human Decision Process*, [Online] 68(1), pp.68-77. Available at: <https://pdfs.semanticscholar.org/1d95/2e56290296aefb00cff89d01adfdd30a9ff1.pdf> [Accessed 14 Mar 2020].

O'Sullivan, G. (2018). *The Mediator's Toolkit: Formulating and Asking Questions for Successful Outcomes*. [Ebook] Gabriola Island, BC, Canada: New Society Publishers (DesLibris). Available at: <https://web.b.ebscohost.com/ehost/ebookviewer/ebook/bmxlYmtfXzE4NDE3OTdfX0FO0?sid=4d943e83-d492-4185-acf8-654606718a52@pdc-v-sessmgr02&vid=2&format=EB&rid=1> [Accessed 20 Mar 2020].

Oxford Corpus (2007a). s.v. Impasse. In: *Compact Oxford Thesaurus for University and College Students*. Oxford: Oxford University Press, p.404.

Oxford Corpus (2007b). s.v. Impasse. In: *Shorter Oxford English Dictionary*, 6th ed. Oxford: Oxford University Press, p.1334.

Program on Negotiation Harvard Law School. (2010). *To Avoid an Impasse, Keep Talking*. Available at: <https://www.pon.harvard.edu/daily/to-avoid-an-impasse-keep-talking/> [Accessed 14 Feb 2020].

Program on Negotiation Harvard Law School. (2013). *When impasse looms, bring them back from the brink*. Available at: <https://www.pon.harvard.edu/daily/business-negotiations/when-impasse-looms-bring-them-back-from-the-brink-nb/> [Accessed 05 Feb 2020].

Program on Negotiation Harvard Law School. (2014). *When Facing an Ideological Impasse, Appeal to Status*. Available at: <https://www.pon.harvard.edu/daily/conflict-resolution/when-facing-an-ideological-impasse-appeal-to-status-nb/> [Accessed 13 Feb 2020].

Program on Negotiation Harvard Law School. (2016a). *Breaking Through Impasse*. Available at: <https://www.pon.harvard.edu/daily/dispute-resolution/breaking-through-impasse-nb/> [Accessed 11 Feb 2020].

Program on Negotiation Harvard Law School. (2016b). *Negotiation Research You Can Use: When Fear of Impasse Leads to Bad Deals*. Available at: <https://www.pon.harvard.edu/daily/batna/when-fear-of-impasse-leads-to-bad-deals-nb/> [Accessed 11 Feb 2020].

Program on Negotiation Harvard Law School. (2018a). *Conflict Management: A Creative Approach to Breaking Impasse*. Available at: <https://www.pon.harvard.edu/daily/conflict-resolution/a-creative-approach-to-breaking-impasse/> [Accessed 05 Feb 2020].

Program on Negotiation Harvard Law School. (2018b). *Negotiation update: At last, Illinois lawmakers agree on a budget*. Available at: <https://www.pon.harvard.edu/daily/dispute-resolution/at-last-illinois-lawmakers-agree-on-a-budget-nb/> [Accessed 21 Feb 2020].

Program on Negotiation Harvard Law School. (2019a). *Undecided on your Dispute Resolution Process? Combine Mediation and Arbitration, known as Med-Arb*. Available at:

<https://www.pon.harvard.edu/daily/mediation/deciding-on-arbitration-vs-mediation-try-combining-them/> [Accessed 14 Feb 2020].

Program on Negotiation Harvard Law School. (2019b). *What to Do When Negotiation Hit a Wall*. Available at: <https://www.pon.harvard.edu/daily/negotiation-skills-daily/what-to-do-when-negotiations-hit-a-wall-nb/> [Accessed 08 Feb 2020].

Program on Negotiation Harvard Law School. (2020a). *How Negotiations Can Stay on Target at the Bargaining Table*. Available at: <https://www.pon.harvard.edu/daily/batna/how-negotiators-can-stay-on-target-at-the-bargaining-table/> [Accessed 12 Feb 2020].

Program on Negotiation Harvard Law School. (2020b). *Negotiations and Logrolling: Discover Opportunities to Generate Mutual Gains*. Available at: <https://www.pon.harvard.edu/daily/mediation/mediation-breaking-a-partial-impasse-in-negotiations/> [Accessed 14 Feb 2020].

Pynchon, V. (2009a). *The Five Most Effective Ways to Break Negotiation Impasse*. [Online] Mediate. Available at: <https://www.mediate.com/articles/PynchonVb120090824a.cfm> [Accessed 11 Feb 2020].

Pynchon, V. (2009b). *The Five Most Effective Ways to Break Negotiation Impasse: Part II*. [Online] Mediate. Available at: <https://www.mediate.com/articles/PynchonVb120090824b.cfm#> [Accessed 14 Feb 2020].

Saunders, M., Lewis, P. and Thornhill, A. (2007). *Research Methods for Business Students*. 4th ed. Harlow: Pearson Education Limited.

Shonk, K. (2019a). *What is alternative dispute resolution?* [Online] Program on Negotiation Harvard Law School. Available at: <https://www.pon.harvard.edu/daily/dispute-resolution/what-is-alternative-dispute-resolution/> [Accessed 14 Feb 2020].

Shonk, K. (2019b). *Will You Avoid a Negotiation Impasse?* [Online] Program on Negotiation Harvard Law School. Available at: <https://www.pon.harvard.edu/daily/negotiation-skills-daily/will-you-avoid-an-impasse/> [Accessed 14 Feb 2020].

Slife, B. and Melling, B. (2010). Method Decisions: The Advantages and Disadvantages of Qualitative and Quantitative Modes of Inquiry. *Semantic Scholar*, [Online] pp.1-28. Available at: <https://pdfs.semanticscholar.org/0006/fd1b9d2de3139bb99db70f563404e82c026d.pdf> [Accessed 24 Feb 2020].

Spector, B. (2006). Resiliency in Negotiation: Bouncing Back from Impasse. *International negotiation*, [Online] 11(2), pp. 273-286. Available at: <https://web.a.ebscohost.com/ehost/pdfviewer/pdfviewer?vid=6&sid=9fa755e0-3bb9-44f3-9eab-a46259e67685%40sessionmgr4007> [Accessed 5 Feb 2020].

Susskind, L., and Cruikshank, J. (1987). *Breaking the Impasse: Consensual Approaches to Resolving Public Disputes*. New York: Basic Books, Inc.

TinTank, (2013), *Conflict Escalation* [Online]. Available at: <https://www.behance.net/gallery/7611461/Centre-for-Conflict-Resolution> [Accessed 3 Mar 2020].

Trotschel, R., Huffmeier, J., Loschelder, D., Schwartz, K. and Gollwitzer, P. (2011). Perspective Taking as a Means to Overcome Motivational Barriers in Negotiations: When Putting Oneself into the Opponent's Shoes Helps to Walk Toward Agreements. *Journal of Personality and Social Psychology*, [Online] 101(4), pp.771-790. Available at: https://pdfs.semanticscholar.org/1bf0/57ac77caf75c12bc9dcc5803a2e15e5189af.pdf?_ga=2.137115764.591384803.1584194717-393743087.1584194717 [Accessed 14 Mar 2020].

Tuncel, E., Pinkley, R., Mislin, A., and Kesebir, S. (2016). *Agreement Attraction and Impasse Aversion: Reasons for Selecting a Poor Deal over No Deal at All*. [pdf] Washington, D.C: Association for Psychological Science, pp.1-10. Available at: <file:///C:/Users/gabri/Downloads/RESEARCH->

AGREEMENT-MANUSCRIPT-PsychologicalScience-2016-Tuncel-0956797615619200-OFFICIAL-2016.pdf [Accessed 11 Feb 2020].

White, A. & Sae Youn Kim. (2017). Early Resolution of Disputes in Korea: Negotiation, Mediation, and Multi-Tiered Dispute Resolution. *Dispute Resolution Journal*, [Online] 72(1), pp.15-26. Available at: <https://web.b.ebscohost.com/ehost/pdfviewer/pdfviewer?vid=2&sid=0bbcdfec-4743-4518-8e97-b3c7070aae4e%40pdc-v-sessmgr04> [Accessed 14 Feb 2020].

Wolfe, C. and Murthy, U. (2005). Negotiation Support Systems in Budget Negotiations: An Experimental Analysis. *Journal of Management Information Systems*, [Online] 22(3), pp.351-381. Available at: <https://web.b.ebscohost.com/ehost/pdfviewer/pdfviewer?vid=11&sid=61008f03-56e5-4694-aa27-bc3247f8c335%40pdc-v-sessmgr01> [Accessed 14 Mar 2020].

Appendix A

Interview's transcriptions

Appendix A1 - Interview A

Interviewer: How long have you been a barrister?

Interviewee A: I've been a barrister for almost 20 years now. I can't quite believe it, but I started in 2000 and I'm still here and I've worked in all different areas of law, including civil and criminal, but I've specialised in employment law. And as you know, I also work as a WRC [Workplace Relations Committee] adjudication officer.

Interviewer: What sort of skills do you use in negotiations with a dispute?

Interviewee A: Well, obviously, good communication is paramount. And I think you need great patience to deal with disputes and help people resolve their differences. Being able to listen, I think is really important and not just listen to what people have to say but try and pick up the body language and although much matches that might be at stake. So, sometimes it's not just about the money. It's about somebody's reputation or some other principle that's at stake.

Interviewer: Would you say there's a kind of negotiation that is more likely to reach an impasse? If yes, why?

Interviewee A: I think it can be difficult where parties are unrepresented in whatever type of dispute. But I can only really speak about civil disputes and employment disputes. But I have found it more difficult with lay litigants who perhaps don't have the knowledge base to know what the value of their cases. So, often the other

side will be more reluctant to reach a settlement because they will feel that they were renege on the settlement once you've thought about it. And that has actually happened in some cases and we have to protect ourselves from getting too involved in negotiation.

So, I will say each party in a hearing: you're free to discuss the matter between yourselves, I could go to give you time, I'll give you time to implement your settlement, but I'm not going to get involved in the in the negotiation process. So that if I a WRC adjudicator shooting or adjudicating on a case.

However, I have done lots of civil cases and family law cases, mainly personal injury cases or cases around divorce, settlement divorce or judicial separation and do it. It depends on the type of dispute. But I think employment law is like family law. There are a lot of emotions at play. People are very vested in their situation. They put that life into it and they define themselves by how they're regarded by their employment. So, you know, your work situation is not going well. That can be a reflection of how people feel about themselves.

Same with family law. Arguably, it's worse. I don't do it anymore because it was so troubled. But a lot of it's to do with the emotional investment they have made over the years and trying to resolve matters on a piece of paper, ultimately. And at the end of the day, it comes down to providing the best provision for the children in a family law case or, in an employment case, it may be more likely than not comes down to money. And sometimes people don't find that fulfilling.

So, I think where people are unrepresented, where somebody clearly is behaving unreasonably and there are people that behave on recently for different reasons, sometimes have mental health issues, other difficulties going on. But those are the main examples of where I would say that a negotiation situation is likely to reach an impasse where you can't move on from the parties' positions.

Interviewer: What is an impasse in terms of negotiation and how would you recognize them? How would you describe them?

Interviewee A: Well, I recognize them [the impasses] when both sides come back to me and they say this is just too much between us in terms of money. You know, one person is saying, I want twenty thousand and the other person is saying, I'll only give you ten thousand and that's my tops, I won't go any further. And until one side says, look, I'll go to fifteen [thousand] and the other side's happy to accept fifteen [thousand], you know, you have an impasse.

But, you know, there's an impasse where you say in an employment or WRC situation, they stop talking and they say, let's get on with a hearing. And, you know, that one side has to lose. Ultimately, you might try and encourage to go on. So, that's how you would recognize it or describe it, where there's such, so much water between the parties that they can't meet in the middle to bridge.

Interviewer: Do you consider an impasse in negotiation, a positive or a negative thing?

Interviewee A: Neither, really. I think it is part of the process. I think you have you can be going along very well and then you'll reach something silly, like in a family law situation it could be a treasured painting and everything was fine until it came down to who would get that painting. I've seen settlements, clamps on something like that. I think it's a case of going hurdle by hurdle. So, I think it is part of the process.

Interviewer: In your opinion, why negotiations reach an impasse?

Interviewee A: Well, as I've already said before, I think it's because people don't have the necessary knowledge or information to assess what the value of their claim is or the emotions are unreasonable and get in the way or other factors are at play. Other underlying issues.

So, I think that is why an inequality of arms, one person is not represented [and] the other is. Too much emotions around the financial side, a bit too much for history between the parties that they're not able to see beyond that.

Interviewer: And in your experience, in which stage of the negotiation are in passes is more likely to happen?

Interviewee A: Early on, I think. But sometimes it can be right at the end. Some you can fall at the last hurdle. You can have a settlement and then somebody says, oh, well, I didn't think about that. And it's all off. The deal is off. And, you know, sometimes cases come for large sums of money, come within 500 euros of settling. And just because one side isn't prepared to bridge it in some way, the whole thing falls and somebody ends up with a big award against them.

I think, definitely, it can happen at any stage of the process, to be honest with you. Usually they're at a late stage. They would have settled by the time they would have got to WRC adjudication if the issues were simple. And it's because the issues are complicated that the matches with us and you may be sure that 99 percent of all the other disputes in the workplace have settled and we're dealing with the most difficult ones. So, you could say it's already at a very late stage. You encourage people to talk and sometimes, where you people are well-represented, they know exactly what they're talking about financially. And before you know it, they've come in and the case is struck up.

Another case I had recently involved a company and an ex-employee. They clearly had not abided by fair procedures in terms of dismissing him. He hadn't been very confident in his work to a standard they would have liked. They had tried to assist him with training. He had decided he wanted to leave. They tried to assist them with finding alternative work.

And then ultimately, he sent them a fairly damning letter and they dismissed them summarily. Clearly, there weren't fair procedures that should have been some sort of process or hearing about the letter that he had sent, but they dismissed them with the letter saying, hey, we're making an open offer of more than ten thousand euros. I was quite surprised to see a note for mediation saying, you know, we can't make any progress on this case at all, even though it's a good offer. Whatever was said to him or suggested to him within my remit, I couldn't get him to see that this was a very good offer. And in fact, if I heard the case, I probably would have

been giving him five [thousand euros] less. So, I suggested that he'd go away and get some legal advice. And I referred it on to another adjudication officer to hear it. So, hopefully, it came to a successful conclusion.

Interviewer: If you don't mind, I'd just want to go back a little bit. You said it's more likely to reach an impasse in the beginning, do you mean in the WRC environment?

Interviewee A: Yes, I do. As I am saying to you, these are the cases that don't settle. They are at the last stage of adjudication. They would have been offered conciliation. They may have had clauses within their contract to deal with the dispute at an earlier stage. So, I mean, at the very beginning of the hearing, if you encourage settlement talks, they may not be prepared to talk.

What I do find is, if I hear some of the evidence, they will know how strong their case is. Say, halfway through, by the time, say, the complainants give them their evidence, some move by lunchtime, whether it's a good case or not. Sometimes it has to go a little further than that. Sometimes it takes hearing all the evidence and giving people some time to think about their position to settle it.

So, what I'm dealing with is not a mediation or settlement process. So, if you people who come to mediation, which are not which I don't deal with, they're coming minded to try and resolve the matter using mediation. And one would hope that they reach a point at the end ultimately that they can find common ground when it come to some sort of settlement. So, they're very different processes. I don't think you can say it's at the beginning or at the end. It depends on the situation.

Interviewer: What skills do you have to manage an impasse? What kind of tools would you use to handle it?

Interviewee A: I would sometimes allow people time to consider their position. So, I would say, you know, look, we'll adjourn to another day for you to get legal advice, you get the information you need. I might direct that more information be provided. It depends on the situation because as I say, that probably taking place

alongside a formal adjudication process. But patience and more information, I find, and perhaps leave it over to another day. Sometimes people just want to tell their story. Once they have told their story, they are more prepared to be open to some sort of settlement. I often find that to be in employment disputes, family law, as well.

Interviewer: And how do you avoid an impasse? Do you avoid it at all?

Interviewee A: Well, as I say, it's not really part of my role as a barrister or a WRC adjudicator. It's more after for a mediation. But I would imagine if I'm negotiating a settlement, I would avoid them by being very candid with the other side about my position and about what my bottom line is, so that they know where I'm coming from at an early stage and they can gauge whether or not it's worth talking and whether or not they're prepared to meet in the middle. I think just having an even handed approach rather than coming in aggressively in any way, it often helps. Sometimes tough talk. You have to just assess each situation and who you're dealing with. You can be dealing with insurance companies, you can be dealing with other solicitors in a family case, which is my main experiences of negotiation.

Interviewer: Have you ever had any experience with a negotiation that had an infinite loop in the impasse, meaning that impasse that would take a long time to get resolve or to move on?

Interviewee A: Yeah. Probably in the family law case would mean often what was probably a reasonable way of dealing with matters between, say, a couple. And clearly [A] was being quite unreasonable. [A] wanted to stay in an apartment that was owned and paid for by [B]. And [B] was in rental accommodation, but [A] didn't want to contribute to the mortgage. And they had no children together. It was really time for them to move on and deal with matters.

A sum of money had been offered for [A] to leave the apartment and find accommodation. [A] wasn't prepared to accept that. So, what I did was they made an open offering in Court and it can be a useful tactic for both sides to put their cards on the table. And that happens in some WRC cases, particularly that one I mentioned.

It is important when you're signing off on negotiations with clear instructions from the client to accept that, sometimes, by having them sign something in writing, you know, the last thing you want is to have a situation where you've signed off on an agreement and they want to go around it or say they want some sort of duress.

So, yeah, on that point, I had a case that came before me, slightly off the point, of course, and there was a young man who had been offered a termination of employment. Clearly, they weren't happy with his competency during a probation period. They had extended it, monitored him, still not happy. They didn't want him to continue working with them. So, they effectively fired him, summarily, which obviously they can do with very few ramifications if it's less than twelve months, or, obviously, if there is some discriminatory on any of the grounds. But they took their chances and offered a sum of money to him and a very well drafted agreement that outlined all the statutes on employment law that he was signing, waiving his rights to bring a future claim over. And you have to, in the contract, confirm they had obtained legal advice before he signed it and they gave him time to sign it and they sent an explanatory letter.

They also sent it separate from your statutory entitlements. So, he came before me and he said, even though I've taken the money and I've spent the money, I still want to pursue the complaint to the WRC and I want a big sum of money. Totally unrealistic. So, at that point, I heard the evidence in relation to the settlement. And you know how he felt there was some sort of unfairness or duress. There's no settling with some people. Other people are very quick to settle and move on. It depends on the person.

Interviewer: What would you say is the key to overcome an impasse? What aspects, you think, in a negotiation, people that are negotiating should do or should say to overcome an impasse successfully?

Interviewee A: So, I think they take a step back, take a deep breath, relax, have a break, come back another day. You need patience. So, I think it's about taking a step back and reflect on where the person is would be the biggest factor in terms of moving forward again. I often send the parties off for coffee or two different restaurants. I'll send them separate ways. I'll invite them to come back and talk again and find each other or to commit to keep the communication lines open, ensure that they've exchanged details so that they can keep that dialogue going before the next drone date or whatever.

Appendix A2 - Interview B

Interviewer: What is your qualification as a mediator and how long have you been a mediator?

Interviewee B: I sort of started as a mediation 2013. And my background is as an industrial relations negotiator, going back maybe fifteen, twenty years.

Interviewer: What sort of skills do you use in negotiations with a dispute?

Interviewee B: I actually train negotiators now, as well. And I suppose one of the reasons that I started that workshop was in my practice as a negotiator, that I've been approached by people who can't negotiate and try to do it, you know, from what they think is negotiation these negotiations. And in what concern an impasse, a set of skills really is essential to negotiation.

So, the skills that I would bring to negotiation really it would be defined by theory, I read a lot of theory research. I critique a lot of theory and data reflective practice. So, you have this circular thing of your theory as in forming practices in forming theory. So, you're engaging with the literature, you're critiquing what's out there, you're watching, you're observing. And you have a framework that you would continually work on and adapt as any skilled person in any type of a craft would do that. They would have a skill that would never remain particularly constant.

Interviewer: Would you say the skills you use in negotiations with a dispute are any different from the set of skills of negotiations without a dispute? And if yes, why?

Interviewee B: In terms of dispute, I mean, a lot of negotiations are going to have disputes and they may yet come across one that didn't.

Interviewer: Would you say that the skills they use in negotiations with a dispute would be different from negotiations without a dispute or negotiations?

Interviewee B: No. And my approach to negotiations is always the same. It's always based on my practice. I will always involve communication in negotiation, information exchange.

Interviewer: Would you say there's a kind of negotiation that is more likely to reach an impasse? Is there a specific type or kind of negotiation that, in your experience, is more likely to reach an impasse?

Interviewee B: Well, I sent you a link today. Did you get to watch a video?

Interviewer: Yes, about social construction?

Interviewee B: Yes. And I think to be talking about negotiation theory, especially in relation to impasse is that, you know, negotiation theory is part of the business and academia in University. But it's really, like, the people that have done it for a long time know that it's actually better suited to social science.

And because, as William Ury would say, issues rarely conflict, it's the people behind them that will conflict. And what we don't tend to know about impasses is that anything that's bringing negative

energy into a negotiation, and by negative energy I would say it is something that's going to impede progress, something that's going to slow things down almost maybe to a stop.

Anything like that can create an impasse and that can come from a lack of understanding and people are playing games. It happens in a lot of different ways that an impasse can come to a negotiation. And it's really more about the people themselves, where they are at and how they're viewing the world, what they've heard so far, what that is going on they don't know about. So, it's not really about the issues itself.

Interviewer: I believe you have already answered my next question: What is an impasse in terms of negotiation. So, how would you recognize an impasse? Is there any way that while you are mediating a negotiation you feel that it's reaching an impasse? If there is, what would that be? What do tell you that it is going to reach an impasse?

Interviewee B: There will always be signs of difficulty and challenges in negotiation. Sometimes you've put them there yourselves and sometimes you're responding to the ones from the other party. Like I presume you read "Getting To Yes" and "Getting Past No", you know, in terms of the BATNA and your own preparation. I mean, you're going to have your own set of agenda, items and objectives for the negotiation that afterwards you are going to discuss. You know, and that is one of the reasons why it is a skill to be able to navigate those difficult parts of a negotiation where one person maybe wants to show off their list, doesn't really want to talk about the other list. So, you know, it all serves as signs. And sometimes I would welcome those signs because I would say to myself, okay, let's get their list out of the way, I'll just listen. Don't have to do anything if I'm listening except listen and then we'll talk what I want to talk about. So, part of being a negotiator is deciding whether you respond to those signs or not.

Interviewer: What would you say those things would be? Can you think of anything particularly?

Interviewee B: I mean, you could certainly look at the emotions that you can see or, you know, the body language, that type of stuff. It depends on the type of negotiation. Lots of negotiations happen without people in the same room. They might be by email, you know: When are we going meet to discuss this? You know, when you will sign the contract?

Going back to the whole social sciences bit, you know, you can't see inside another person's head, so you really have to decide what's right for you and what's right for the negotiation. And, you know, negotiations have been killed off because people reacted in a way the public shouldn't have to sign that misinterpret. So you have to be very wary that, you know, even if you are seeing a potential impasse, that you don't just, you know, start running around yourself as if door is on fire or that you might need to let that impasse happen. That might be something that the other side is struggling with. And it might be just better to get a doctor on and get through it.

Interviewer: So, do you consider an impasse a positive thing?

Interviewee B: And this is a question that comes up a lot, actually. And it's one of the reasons I asked you to watch Kim Gorgon's video with the water bottle. The thing about the water bottle is that the water bottle isn't asking us to see anything about this. We're deciding what we're saying about it. And that might be very different to you when it might be very different to me and we conflict. You know, it drives almost all of our interactions.

But it doesn't expect anything of us. It's what we put into it. So, I see him passes it as a very natural thing. If I had a negotiation that didn't have some sort of a challenge to it, I'd probably be looking for my money back. So, something would have been wrong with that negotiation. And in my experience and in the research, negotiations that are hard fought are better supported, the agreements are more valued and people understand that they've got something worthwhile and there is a cost in terms of energy or money or whatever to reach that agreement.

So, those sort of agreements tend to be more resilient and agreement resilience is a big part of negotiation. You know, we can make a deal here now, but if it's not going to survive the outside world, then it's of no use. What's more, from that point of view impasse is a very natural thing. It's about you bringing your problems to me and me helping you with it and vice versa.

From that point of view, where an impasse becomes a problem is when you and I don't have the capability to deal with it. And it hasn't been built atmosphere by both that we can deal with. So that's again, where the skills come in. You're talking about empathy, you're talking about a certain amount of understanding and, you know, and impasse might mean, I have a really good BATNA, I have a job offer with a company up the road. That could be an impact. You know, I might not want to work for you. So, when I get to things like that, where an impasse isn't just a problem, it's actually something good, then for you to respond to that as a plus is a challenge.

And what has worked for me in the past and probably works for a lot of other people is to take the focus off whether it is a negotiation or not and just talk about the talks themselves. [Questions like] how is this going? Are you enjoying this process? Have I done something that might have offended you? If I have, then I'm very, very sorry for that. I'm just maybe going back to how we started this whole thing. You know, what was that got us together talking about this, in the first place? At this stage, I'm just trying to take your mind off whatever is holding up and getting things back on track from a point of view that fulfils my objectives.

If somebody felt, you know, I'm not really interested in this negotiation, I have other things going on, that could lead to an impasse. And again, that boy back to the skills of the other negotiator and getting that person engaged in the conversation. You really don't want to be pushing on that because, at that stage, things are kind of in a metaphase position, a stable position where they can go one way or the other. So you really need to manage that carefully.

Interviewer: So, would you say, in your opinion, negotiations reach an impasse because of lack of engagement?

Interviewee B: It could be that. It's fearful for me as a negotiator that one wants to come in really, really hard, with really, really outrageous demands. And thinking because they saw this in movies, they see some sense in it. This pains to me, that sort of thing. So, it might be that you just go back to the talks themselves. You know, we really don't need to be, you don't need to act like that. You are re-instating my reasons for having the talks. Like, there's a lot of just a lot of navigational work involved in impasse and it can be time consuming.

But again, as I say it, it's the reason that people get other people to do their negotiations for them is because for the that person, it's very, very difficult to know and you really, really need to know what is the theory around BATNA, even the exchange of information how should you do it in a whole. And so on and so forth. And I suppose as a mediator, and I've mediated negotiations, that brings a new perspective dealing because we can have people that respect each other's power very well, and they may know that because they are a very large organization, say a merger or something like that, the fact that they are both so powerful might work against them. Somebody like a facilitator can really manage the toing and froing. These are the things that prevent an impasse. But again, it's not that the impasse isn't there, but that that it's been managed better. I think that's critical.

Interviewer: In your experience, in which stage of the negotiation do you think is more likely to result in an impasse?

Interviewee B: If I could go back to Ken, right, and this idea of impasse as a social construct. So, we have this we call it an impasse. That, it's a thing that we have constructed in the world. If you take the people away, there's no such thing as negotiations. There's no such thing as impasse. That doesn't say it doesn't exist, but it just means to say that impasse is something we use to describe something that we both think we know. If you say impasse, I understand what you mean. OK? That's all it is. It's just a description of conflict and a particular description of a conflict and it can happen at any point.

It can happen at the start. I've seen negotiators who, you know, they try something at the end of the negotiation to try and get something in when everything has been all tidied up and suddenly they haven't signed. And why not? Because they want something extra. And they think because everything that has been said and ready to go, that, you know, they just get what they want. And that could be an impasse. So, it can happen anytime.

But again, it's going to come back to the same sort of things. It's going to be about the talks themselves rather than the substantive issues. And then it's about you getting them to behave themselves, basically, to get back. So you have to, you know, re-establish principles. Again, that's all a mediator can help in negotiation, to establish those sorts of parameters at the start. You can have an agreement about how the motivation is going to proceed. You can have an agreement about making sure that everything that is to be discussed is put up at the start. And anything that comes in afterwards will be out of bounds. Those sorts of things, again, come back to the negotiator or the mediator as a process manager. Certainly not really interested in the building, but they're more interested in making sure that there's enough concrete and there's enough blocks and et cetera. Again, mediators in mediated

negotiations, you know, they're going to get paid for their services. They're really going to benefit from the deal in itself. So that gives them a power over the parties. And so that, you know, they'll be seen as being fair arbitrators.

And it brings me to my other point which is Med-Arb, which is mediation and arbitration. So, I may offer to mediate the talks. And if it gets to an impasse, I'll decide. So, I mediate between you and your friend might be, you know, the sale of a house or might be, it could be anything. You will both engage with me and I facilitate your negotiation. And if the gets to an impasse I'll decide upon this, that you would have decided in a rush.

Again, mediation-arbitration is a very good method of getting past impasse. It's a social construct, going back to Ken, it's just a way of talking. But it seems to solve a lot of the puzzles that come from people that are very heavily invested in what their negotiation is. When you are heavily invested in what you are negotiating, it's difficult for you to manage the process. If the other person is not in the same boat as you, there's a risk neither of you will get what you want because you're so heavily invested in what you want. You can't spare room for the process. So mediated negotiations and Med-Arb negotiations are good ways of dealing with negotiations where there's not a lot of time, does probably [involve] a lot of money, just a healthy respect on each side for the polarization of the conversation. Those types of negotiations can come into an impasse situation very quickly.

If you imagine a difficult negotiation, say a merger, with all of the financial situation, where would they even start? And with so many constituents in the background in terms of their shareholders and everything like that, depression would be really, really on both of them to get such a good deal. The chances are neither of them would. And that could be the case for Apple and Samsung, it can be the case for me and my brother. You know, it doesn't really matter the sides. It just matters that there isn't a huge power differential. And people are really heavily invested in what goes on here.

Interviewer: What are the skills that you would use on how to handle/manage the impasse?

Interviewee B: There are a sort of strategies you can use. You can just call for a cup of tea or a cup of coffee. Needs everybody get a breath of fresh air. You can have a caucus, which I tend to avoid because I feel it in a caucus situation, where you take a person out of the room and maybe have a chat with them, I think it sets up a distrust in the other person that, somehow, I'm going to try and leverage them when I come back. And so if I can avoid a caucus, I will. And my go to tool for impasse is to step back from the talks, the substantive issues, and talk a bit about themselves. How is this going for you? What happens if we don't reach agreement? Is there something that needs to happen before we proceed? Those really sorts of open questions and not judgmental, facilitative, caring is probably a word that doesn't get used enough in negotiation literature. If show somebody you really care about the negotiation, they're far more likely to be open with you about what exactly is holding up the negotiation.

And maybe they can't tell you, and if it's that, you know, you can say, look, you may not be able to tell me what's holding up a negotiation. Should we get back to in a later case? But it's really about just having talks about the talks. How they are feeling? What needs to happen to get them back on track? If it is something like, going back to Ken and the water bottle, one person feels the water bottle as an environmental abomination with a carbon footprint and the other person sees the bottle as sacred water, you're going to really, really find it difficult to get those two people in agreement about the substantive issues themselves. Not exactly, but it can be socially deconstructed, and may be remade. So, if we can't do A and we can't do B, is there a C, we can do? We can get the flip chart, we can just do some sort of, you know, workshop, really collaborative brainstorming on the problems that are in front of us.

Going back to the fact that its value, as Ken says, that people are putting on a war review that needs to be tackled. So, if it is a carbon footprint or if it is the same thing, well, what is the value of that? Is there more qualitative additions? If there's not, then you should walk away. If there is, then stay and try to work it out. Those are the sorts of skills that I would be using over the years: focusing on the process and less on the substantive matters of those.

Interviewer: Is there any way, in your opinion, that you can avoid an impasse? And how would one avoid an impasse?

Interviewee B: Yeah, I wouldn't. It's going to be trouble if you do. Because it's speaking to something that's in the world, and if the negotiation agreement doesn't cover it, then the negotiation agreement isn't going to last. So I would welcome, if afterwards if there was a problem, you showed that we need to discuss what they know about when we're discussing it. And again, it goes back to how we describe it. It may not had been a problem.

You know, there was an example in one of the negotiations, but I think it was Bazerman may have been mentioned the cold war, where Americans said twelve and the Russians would only agree to like six days, they hadn't discussed how long the inspection would take. For the Russians it was like a day, but for the Americans it was like a week. Miscommunication, it's the thing that would distinguish the skilled ones from the ones that think their skill is to not follow the rabbit down the whole. And maybe that is a deal breaker.

If it is, you really shouldn't be spending too much time on it, you should be going back and say, well, look, we can't get over this, it doesn't really meet our objectives to try. So, we're going to thank you for your time. We hope we'll see you down the road. But for us, for now, it's all over. And knowing

when you make that call is a really, really good skill. Too often, people try too hard to solve the other person's problems.

And, you know, if I was to maybe fill the negotiations with problems, just to burn down your resources, your energy, your wish to live. Problem after problem, at some stage, you've just got to say, well, look, this is too much. I mean, it's all so annoying, but as well so important. Impasses are a really, really good indicator of negotiations that are very good from negotiations that are very bad. If the impasses cut through and do as, you know, a reasonable amount of time, you would characterize that as a really, really good negotiation. If that is not done, I would call it a bad negotiation.

Interviewer: Have you ever had any experience with a negotiation that would reach an impasse and go into an infinite loop? And if yes, could you give an example or describe a situation?

Interviewee B: I haven't witnessed. I mean that, again, this is what was when we when we think about and write about theoretical constructs like impasse, you know, and this idea of a doom loop. I've heard of it. I haven't witnessed one because I don't think I would have the patience to tolerate it. But I would see that if one impasse led to another, I would probably go back to the first one to see what we did wrong. You know, because it hasn't been solved, it has just led to more problems. Or maybe it's that we didn't dig deep enough. Maybe we didn't examine all the angles. Those sorts of things. So, again, you're going back to talking about the talks rather than the issues themselves.

Interviewer: Now, thinking about the experiences you've had with impasses. Were you able to overcome those impasses? Were you successful?

Interviewee B: Sometimes. I mean, and again, it comes back to the power that you can bring to the negotiation. If you have a lot of power, you can get through any impasse that comes in your way. And it depends how you negotiate and how willing the other party is to, you know, move from their positions and how effective you have been in convincing them to do that. And again, going back to William Ury, he cites Sun Tzu and the golden bridge.

It would be constantly in my toolkit to make the other party feel happy about the negotiations. And feel happy about negotiating with me again. If negotiating is something that I'm going to be doing for a long time I want to have a good reputation as a fair negotiator. So, I'm not going to use impasses or other tricks, unless I have to, but I will use power if I have to, if I see it necessary.

It may be that something that somebody sees as an impasse is really, really important to them. It may not be important to me at all. And, in that case, I can trade one impasse against another possible impasse down the road. I didn't create a big fuss over that issue, so I'm expecting you to not create a fuss over this issue now. I think it's an issue of cloud issues. I'm not expecting that you will create an issue over this issue. You can trade them as well, if it's not really important to you.

Appendix A3 - Interview C

Interviewer: What is your qualification as a mediator and how long have you been a mediator?

Interviewee C: Ok, well, I'm an advanced mediation with the Mediation Institute of Ireland. My profession of origin is a teacher. In the 1990s, I returned to law in UCC because I was interested in the voice of the child in education.

While I was doing law, I came across Alternative Dispute Resolution. So, in the year 2000, I successfully applied for the training program with the family mediation service, where I was accepted, and I qualified as an practitioner to mediation. I am a mediator for 20 years. Over that time, I have worked in the field of workplace mediation and family mediation and I found RoundTable in 2006, when I left the family mediation service because I wanted to look at wider areas that I was interested in. So, I do extensive work in mediation and I mediate constantly. Along with mediation, I'm also an investigator.

I undertake workplace investigations and reviews. So I am the mediator on the panel of mediation with the Medical Council. And so, I am in a number of different panels for investigation and reviews, as well. I have been quite involved in mediation in the Mediation Institute of Ireland, I took a break from 2007 onwards. And I have I have returned to it recently. I was asked to head up the family sector within the Mediation Institute. I also am a member of the APC. And I'm a council member.

Interviewer: What sort of skills do you use in the negotiation with disputes?

Interviewee C: The first primary skill that is important to me is empathic listening and understanding the perspective of each individual who comes to mediation. So, as I work on disputes, I always meet

people on an individual basis. And during that time, understanding how difficult it is for somebody to come into the mediation room . We may not always have a natural empathy towards people who come in for a whole variety of reasons. And it might be their demeanour, how they are reluctant to or resistant, and understanding that person, as an individual, who probably has spent the night before worried and going through what they are going to say in mediation.

So empathic listening when the person comes into the room; understanding that providing structure and providing a space of calm and seeing the individual as an individual and then listening intently to where they are and not just quickly trying to get through that part of the mediation. I usually take two hours to do individual sessions. People tell me quite a lot.

The second the next skill is the partner to use after empathic listening is the whole area of questioning. Being able to ask questions in a way that are nonintrusive, that are not direct. If I wanted to go from point A to point B, I would usually go to point A one, A two, A three and then get to be. So I'm very much get it in the back door so the people don't feel under pressure. I know where I want to go in a particular thing and being able to summarise what people say.

But sometimes it happens that somebody needs to talk and talk and talk. And then being able to summarise and call out the key pieces of what they set, both factual pieces and also the feelings pieces, that can be hugely, hugely powerful.

The next skill is reframing. Somebody comes in with a problem and the problem is within a lens, and very often that's though a very narrow lens. And reframing by substituting the negative language with more neutral language, enables the person to begin to see things through the wider lens. And then we test it, around what does this mean to you? Those things are probably the key skills.

And the fun one, I think that would be a particular piece that I would use because of the way I think, I'm a very spatial thinker, I would use a lot of diagrams or pictures and to present the problem in a 3D way. So, say, for example, recently in a mediation, I was undertaking it was between a sixty-year-

old man and a thirty-six-year-old man. And they had worked together for twelve years. The younger man was twenty-four years old when he started, and the older man had been around in his 40s. And the older man was a mentor, the younger person then developed strength and matured and became an ambitious, and the older man began to have different priorities in life, i.e. retirement coming up with so many years away from retirement. So that longevity of work of a lifetime in employment wasn't there. And being able to draw a simple diagram for the thirty six year old around what that looked like, putting the relationship in diagrammatic form completely moved the mediation for somebody who's very, very positional, which is your impasse piece into a place where he began to see where the other man might have been and how he also would be in 20 years' time when it's his turn to be 60. And that had a huge impact on moving the person to beginning to look for resolutions and start thinking.

As a mediator, you look to yourself and you reflect with yourself: What can I bring into the room? I might not use a diagram with everybody because sometimes we will have people who are very logical. So understanding the psychology of thinking, the different styles of thinking, and working in that space. So if I'm working with you, I need not only to be very comfortable and aware of where I am, I also need to pick up cues from you to see what are the things that might best help you because these mediations are as much about you and not about me. How can I use my repertoire of skills to best help the situation that I'm working with? I tend not to go down a narrow path.

If I give another example. It's different, for example, in workplace, I do quite a lot of my work in a workplace now, and if I'm working in a workplace, I have no difficulty whatsoever in crossing the boundary into family. So, what's it like in the family? Tell me about your spouses. Tell me about your children. How are they working? What is it like for them when you come home with this burden? And that understanding family life. So sometimes people are a little bit afraid to go on and work with this wider aspect of work life and stay within the boundaries of the workplace only.. While I would take a much, much more flexible approach if something makes sense to me by trying it. And if it

doesn't work, it just doesn't work. I don't have any problem in apologizing. Yesterday I was in a mediation and I said to the parties, when I felt that they were not understanding my train of thought: 'I'm sure I'm the only one who understands what I'm saying. Maybe I should try this again'. This in a way brings fun into the room. Just because it's conflict doesn't mean that if people can't have a smile on what they're doing in the room.

Interviewer: Would you say there's a kind of negotiation, a type of negotiation, with a dispute or without a dispute, that is more likely to reach an impasse? If there is, why?

Interviewee C: I think there's a type of negotiation that's based on fact that if you deal with the factual circumstances that negotiation is more likely to reach an impasse. If it is a positional based negotiation rather than interest-based negotiation, it is more likely to reach impasse.

If you take the symbolism of an iceberg - you are most likely to have come across the diagrams of the iceberg, you will find the factual negotiations happen at the top ten percent of that iceberg. And then the emotional pieces such as respect, trust, integrity, etc. happen in the lower ninety percent. There are times that people feel comfortable only dealing with the fact and clients that prefer to just deal with the facts, the facts of the case and what we have to do. If the mediator stays in that factual piece, only ten percent of disputes can be resolved properly in that ten percent in that space of factual position making. Until you go down in under the other, that's where the real resolutions will happen. So, based on fact and position is very likely to come to an impasse.

The lack of experience of a mediator is also more likely to bring you to impasse because the one skill they want is the skill to get through that. So the importance of going in with humility and working with a supervisor or an experienced mediator and each mediation you can learn.

Interviewer: to you what is an impasse in terms of negotiation? How would you recognize it? How would you identify it?

Interviewee C: There's a number of ways you do it. You identify firstly in the person becoming stuck, sort of speak. So, there's a resistance in that conversation, on their body language will show that actually they're getting stuck from where they are. You'll see an impasse very quickly when somebody comes in, they have prepared what their piece is and they're going to stay with that and they're not going to work with anybody. And this is each part, nothing else.

Ah, you might find an impasse at the end of a negotiation where somebody has had enough. They feel like the treatment of this other person is just not enough. I'm not prepared to negotiate any longer, therefore, I am not negotiating. I am not moving. And you must recognize that somebody picking up that note out in a workplace, somebody's closing their books down their pen. So, you'd see it in those kinds of areas.

Interviewer: Do you consider an impasse in negotiation, a positive or a negative thing?

Interviewee C: Neither. It is just part of it. It is one of the things that we shouldn't be frightened about. It just means that, when it happens, it's something that we hope to get beyond through talk. Again, through our questionings – e.g. 'what else could you do?' 'It is okay to be where you are,' 'if that's what you want to be, but what is another way to be?'

Interviewer: In your opinion, why negotiations reach an impasse?

Interviewee C: As I said earlier, it reaches an impasse because somebody might be so committed to that position that they are unable to move from it. There could well be a situation whereby the person is in mediation, but has third parties waiting outside the room, spiritually waiting outside the room, such as a family at home, such as that co-workers, such as their lawyers who might say: 'you didn't agree to it, did you?' And so they are afraid inside in the room to agree to something beyond what they came in with, because they have to justify that the when they go outside. All of these things, there's so many different things that would happen.

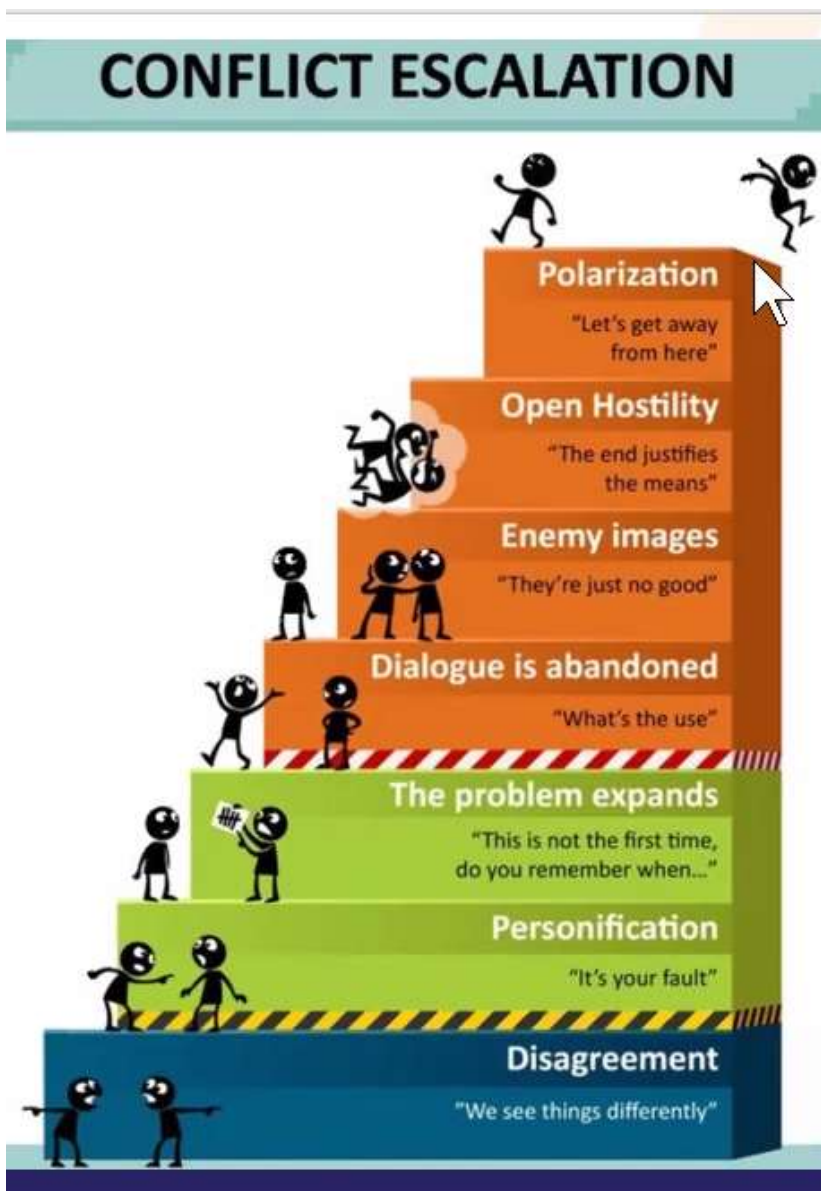
If you think about what happens inside of the room, you know, and I just take a simple mediation - a two party mediation, party A and party B, you have the energy party A brings with them and the view they bring with them, you have the view and the energy the party B brings with them. You also have the mediator inside in that room and the energy mediator brings with him. And then inside in the space that exists of the middle, you have all of the energy of the three people. And that energy can be the type of energy that sits there. And the mediator's job is then to look at that. So that can be an art and can be an aspect of it.

Past behaviour of one person towards the other can cause an impasse, the mediator skill can cause an impasse, the mediator saying things to individuals where the person becomes in conflict with the mediator as against being in conflict with the other person. If I just summarize it, it can be party A, it can be party B, it can be the energy between them, it can be the mediator or it can be the third party outside the room.

Interviewer: Would you say then, if it's a negotiation with just the two people, without a third impartial person, would you say it will be less likely to reach an impasse?

Interviewee C: I think that if there isn't a third party there, but most disputes the majority of disputes we all have, if we look at any day, the dispute is the selection of pour out a cup of tea this morning. These are disputes that we have. And there's the negotiations: who turned up the heating of the office? Again, negotiation. Why did you lock the door of the apartment? All of these things negotiate, and they don't get to an impasse. As we increase and go around the better curve, as we get up there, the more position we're going to get. And as we do this, there are levels in which we go.

I'm just going share my screen with you:



Have you seen this before, this model? OK, so this would be very useful for your question that you look at here. We have our normal disagreements and then we go up the spectrum. We are more likely, the higher up we get, to reach an impasse. And in looking at that you can see that the impasse is going to be more positional, as you go up. It can get to us and we can't move from there, as long as we stay in the impasse. That might help you to see around it. So, people on their own can get into an impasse and then it can move by, but the further they get into disputes, the more they go to that level, the more they need the third party to get out of that impasse.

Interviewer: In your experience, in which stage of the negotiation are impasses more most likely to happen?

Interviewee C: They can happen in the early stage, during the history taking, because people are not able to hear, and you might go in circles. However, I think in the negotiation stage, which is quite a hard stage to be at, when you have to put people who try to negotiate and they're not able to negotiate what they really want. That's when an impasse can happen.

Interviewer: What skills do you have to manage the impasse? What tools would you use in your skills box to handle it?

Interviewee C: Ok. There's a number of things, again. So with these skills that I looked at, recognizing and being able to name it. Such as, [saying] 'I can see that this is something that you didn't really want, tell me about what that looks like'. This is the art, to recognize they really want something different. And even when there's somebody else in the room, let the other person wait.

Reality test. So, somebody wants such a thing. I'll take an example. I have an undergoing mediation in a dispute around a vehicle, and you'd think it's just a vehicle. But, actually, it's not just a vehicle, it's about 'who I am' and 'my integrity'. And somebody wants a vehicle parked in a particular place, and the organization says absolutely no way. So, the impasse is: We want it to have our way or else we're going to papers. And the organization is saying it can't stay there because it's not useful, it's not safe. So that's the impasse. So, the reality testing might be through questions of even knowing that this is what you want and, having heard the organization, do you think that this is the likely outcome? The answer to that is no. So now if you have control over the decision making in here, what would your next stage be? What else would you do? And that's where we that's where we are.

Your reality test puts people out of it, being empathic towards people. And then sometimes I take caucus. I don't use caucus a huge amount because I prefer to deal with things with the room. However, it can be very useful. That can be very useful as well, because it can be much, much more direct in an individual meeting around [questioning] is this really going to be resolved? What are you going to do? What does it mean if you go to the newspapers, etc? I can reality test without taking away somebody's power in the negotiation.

Interviewer: And how do you avoid impasses? Do you avoid them at all? And how would one avoid impasses?

Interviewee C: I think the experience of working in mediation, you learn to know when to move something, when to act on something, how to structure the mediation, how to let it go for a second. You start with easy agreements. So, an easy agreement might be that they both, when they're signing the contract to engage, agree who's actually going to know about the mediation outside, given the confidentiality, who's got to know about it? So you can work within, you can kind of knowledge them

it by saying: so you already have an agreement, it's a small agreement, but then they could have an agreement if they start with one agreement. Then, they have another agreement and another agreement because it has set a scene. So, it's working on the positive space and working on the positive language.

Interviewer: Have you ever experienced a negotiation that had an impasse in the meaning of an infinite loop? That [people] wouldn't get out of it and they'd be stuck?

Interviewee C: So, in a specific industry, there were two people who worked on [a project]. One was [in one area]. It was on the ground that came in and helped. And the other person was the [leader]. And they came into a dispute and the junior person was female and felt she had been spoken to inappropriately in front of her colleagues. The [leader] was of the view that he was in charge of the [project] and, therefore, it is for him to decide what would be the behaviour of everybody on his [project], .

During individual sessions, both were deeply, deeply upset at it. All of the work, all of the reality testing was how it would look to be resolved, etc., etc., etc. And when the two came into the room, there was an absolute impasse because they had such anger towards one another. And I made a decision that it was not safe for the two of them to be in the room together and that needed to be sorted in an investigation by a third party. Now, I couldn't make that recommendation, but this was in my own head that they needed an answer from a third party about who was right and who was not. And then they could come back to mediation. Very rarely happens. It was really, really strong. And it was how committed they were to their position around how other people reviewed. And they were just in an absolute impasse.

Interviewer: What did you do to overcome this impasse? Were you successful?

Interviewee C: No. And normally I would. But this was at such a level that it was so deeply ingrained into where they were, it had split the team. It was a disaster. I did not move forward with it. I didn't think they were safe.

Interviewer: Have you had any other experiences with an impasse that you were able to overcome it or surpass it?

Interviewee C: Yes. I was working with two people and we were twenty minutes into the history taking. He had said: my experience is that you shouted at me, you undermined me in front of everybody when we were at this event in front of other people, you did X, Y and Z. And her response was: I don't have any recollection of that, I remember the event, but I don't recollect that. And his response was: well, I might as well leave here because there's no point in me having this conversation with you if you can't even accept these things have happened.

So, I said: why don't we wait a second? It's your choice to leave as any time you want, however, we're twenty minutes into this and we already agreed it will be three hours. Why not tell me what has happened?

And then there was a lot of settling down, there was a settling period and caucus wasn't the appropriate piece. It was about talking an analogy. So, [I said] you have a very strong memory of it, the other person doesn't have a strong memory of it. It might be a good idea to go to the second person to talk about something interesting with you. And now in this case, in fact, we haven't come to an agreement, which would be quite unusual again, because normally three hours would be more than sufficient for

the circumstances. But in fact, we were going to meet again for a second time. This is what he told us, because he needs to walk on himself around what has happened here.

And I think it's very interesting that, in commercial mediation, when we think about them in terms of money and money settlements, etc., we can look at this and know the different ones whereby people want to be heard. So, if we look at some of the public disputes that have been resolved through the Courts, say, for example, the medical disputes, which are disputes people look for money, the apology is the important piece. Much, much more important than the money.

We say, for example, there was a medical case last night they reported it on television, in Kerry, and there was private settlement made. But the apology was an important piece because of the suffering. We look at the mortgage pieces, which is another big commercial area and financial sector, we have families at the basis of that they want and understanding by the bank of how it felt to lose their home because of the tracker mortgage. And it's going back to that iceberg, the fact piece is the mortgage and the mortgage calculation, but underneath the water level is this huge impact it had on me and my life and how long it took me to get to where I am. We take a commercial mediation around, say, the dissolution of a partnership, where the partnership is buying out somebody out of the partnership and what people want to know is the contribution that the partners are having integrity for the person who's going, as well as the person who's staying.

So, the money is only one aspect of it and understanding the human element of the commercial side of mediation is as important as it is. We just won't spend as much time in it, which is correct because, as you rightly say, the companies need something to be decided on. Now, in relation to resolution, I don't connect with resolution. Resolution will come when resolution comes. That's a little bit like baking the cake. When I bake cake, the cake will rise if I look after the ingredients properly. If I mix

the properly and if I put it into the oven properly. The resolution will take care of itself if it's done properly, but it has to be more than just that.

Appendix A4 - Interview D

Interviewer: How long have you been a mediator, and do you have any qualifications on this?

Interviewee D: Hm, 10 years. Qualified with ADR agreement

Interviewer: What sort of skills do you use in negotiation with a dispute?

Interviewee D: Communication skills is the key one and negotiation skills, that's probably the main ones.

Interviewer: When you say communication skills, what do you specifically refer to?

Interviewee D: Well, I have to explain the process to the parties and how it all works. That its confidential, etc, that it's voluntary and after that we have an enabling meeting, right. Just speak to the party in individual sessions.

Interviewer: Would you say that the skills you use in negotiations, for example, with a dispute, are they any different from negotiations without a dispute?

Interviewee D: Yes, I mean, but with a dispute you've got very entrenched positions of the parties, there's a lot invested in it. I think it is more highly charged than just an ordinary negotiation. There's a lot at stake.

Interviewer: What kind of set of skills would you use with a negotiation without a dispute?

Interviewee D: I'd use similar skills. It would be a more relaxed situation. So, you know, it's not under time pressure as much and they under the same professional obligations as to disclosure and confidentiality. So, it's a bit different, I'd say.

Interviewer: Would you say there's a type/ kind of negotiation that is more likely to reach an impasse?

Interviewee D: I think that you are more likely to reach an impasse with a formal negotiation involving a litigation dispute or a workplace dispute than just ordinary negotiations because, as I say, there's a lot at stake financially and emotionally and parties are very involved in their disputes and they don't want to give them up necessarily. So, I think it can be difficult. You can definitely reach an impasse with whether it's a dispute where there's no dispute. I think it's more straightforward.

Interviewer: Now, talking about negotiations with an impasse, what in your opinion is an impasse in terms of negotiation? How would you recognize an impasse?

Interviewee D: An impasse I would recognize as being where the parties tell you that they don't think they can move any further than what they have and that they want to end the mediation. Perhaps they just don't think they're getting anywhere and they're not willing to compromise any further. That would be the kind of situation where they actually tell you as an impasse, basically. And then you understand that there's no more movement possible or it's difficult to see where that movement's gains come from.

Interviewer: And in your experience, in which stage of the negotiations are impasses more likely to happen?

Interviewee D: Well, I would say as the negotiations become more advanced towards the end of the day, if it's a full day mediation. Well, you have already made some progress and you're getting closer possibly to an agreement. But people are expressing that they cannot go any further with it. They feel they can give any more because they've already given enough. So be towards the end. Generally speaking or in the middle, but not at the beginning. You really need at the beginning whether there's going to be an impasse or not.

Interviewer: Why do you think negotiations reach an impasse?

Interviewee D: Because people lack flexibility. They come with preconceptions as to what they see as a fair outcome and they draw a line in the sand and are not prepared to cross that. Or it may be that something's happened in the mediation. Some information is being provided that changes the situation and therefore they did feel that they don't feel the parties have come there in good faith, for example,

or there's more information that's being provided they need to go and consider it. All the information changes the outlook.

So, a frequent example might be one party might say that they are in financial difficulty. So, whatever happens, they can't pay whatever the other party wants. That's quite a common scenario. And then you reach the impasse because if they cannot pay anything that means that it's unlikely that the case will be resolved.

Interviewer: Do you consider impasse negotiation a positive or a negative thing?

Interviewee D: An impasse is a blockage or a hurdle to cross. In my view, I don't really see it as an opportunity. Although, at least if you reach an impasse that can't be crossed. You know that you've reached the end of this process. Say, it can be positive in that respect and these parties know where they stand because they know what the red lines are for each side, even if they haven't resolved so, they may not have resolved that they speak, but they all know where the other party stands and that they're not prepared to move from that position. So that's useful information for them. It can bring the matters ahead because at least you know where people stand.

Interviewer: What skills do you use to manage an impasse? What tools would you use to handle it?

Interviewee D: Yeah, I have certainly in the past suggested a meeting of the representatives. Or meeting of the parties themselves in a caucus meeting, for example. Or I can suggest they are trying to bridge the gap between them and exploring whether or not it really is a real impasse or whether it's something that can be resolved.

Interviewer: How would you develop this bridge between the parties?

Interviewee D: Well, I think, once again, one would try to point out the worst case scenarios and best case scenarios, for example, and stress the consequences if the parties fail to reach agreement. Look at the consequences of that, for example.

Interviewer: How do you avoid an impasse? Is there anything, in your opinion, that you could do as a mediator to avoid reaching an impasse?

Interviewee D: I think that if you know that there's going to be an impasse, then you can maybe try and sugar the pill with the other party. So, forewarned is forearmed, if you know that's likely to happen, you can try to manage the expectations of the parties so they know that might be happening or the bottom line of the other party. So, I mean, there are ways you can deal with it, I suppose, but it is difficult to do.

Interviewer: What do you do to overcome an impasse? Have you ever had the experience in a negotiation that you reached an impasse or an infinite loop?

Interviewee D: Yes, it does happen when people are particularly inflexible to one party, have very clear views as to what it wants and be unwilling to accept anything else. And they maybe in a more

powerful position. They may have more resources so they can insist upon their requirements. So, I've certainly had that where you've got power imbalance.

Or in a workplace scenario I've had a situation where the parties were. One of the parties has raised a grievance which has to be dealt with before the mediation can conclude. And in those circumstances, you've reached the impasse and there's nothing you can do about it really apart from come back again another day.

Interviewer: So, in the particular situation that you mentioned, were you able to do anything to overcome this impasse?

Interviewee D: No

Interviewer: Have you ever been successful to overcome an impasse when it happened?

Interviewee D: Yeah, again. I have been successful when I had the parties speaking to each other without the lawyers or if the lawyers speak to each other and try and resolve the impasse. Or I've had a situation where the one party got to take further information to persuade the other party that there is justification for the position they're taking and therefore that the other party should compromise and that does sometimes help reduce tensions to break the impasse.

Interviewer: What will be the best description of an impasse?

Interviewee D: The best description would be an impasse is a situation where the parties are unwilling to move any further from that position to reach an agreement.

Appendix A5 - Interview E

Interviewer: How long have you been a barrister?

Interviewee E: I've been a barrister since 1999. So, which would be 21 years this year.

Interviewer: What sort of skills do you use in negotiations with a dispute?

Interviewee E: In terms of skills with negotiation, listening is useful. And trying to talk to my clients first to see what results my clients want to achieve and what other results there are, that there might not be their first choice to achieve, but that they might be, you know, happy with. I try to build up a bond of trust with my clients because if they're to instruct me in the negotiations, it's important that they trust in me to negotiate on their behalf. And I try to relax them because I find that people make better life decisions in terms of litigation if they're relaxed.

So, I have my initial meeting with my clients and then I meet with the barrister of the other side, because the barristers usually meet together in negotiations in the courts. And I try again to build up a rapport with the other side, you know. So that they know that I'm respectful to them and that, you know, there isn't any hostility as such. And we're, you know, working together to try to find a mutually beneficial solution for our clients.

It usually happens then in negotiations one side puts an offer and they know which side puts the offer first will depend on the nature of the case and it may depend on whether you're acting for the plaintiff or the defendant. If I put an offer, I will usually put the offer and then what I will do is I will often give reasons for the offer if I think that would be helpful. And the other side may then respond to me and make comments on my reasons. And, you know, I will deal with them and often things need to be checked. So, it's a little bit like arguing the case, but you have to do it in a different way. You have to kind of make the other side aware of the strengths of your case and the weaknesses of theirs accepting, however, you know that there are probably strengths on their side and weaknesses on the other side. The aim really in terms of that is to put an offer to them in such a

way that they realize that there is a risk for them. If this offer is not accepted by them, that they will lose the case.

Now, the first offer is never accepted, because the first offer will always be, you know, to my advantage, because the principle is you don't bet against yourself. So, my starting point would always be something that usually is much more favourable, as I would actually expect to get at the end negotiation. So, it's important before I make that first talk to have an end point, because that will depend, you know, where I pitch my first offer.

Being in negotiation for me is to make the other side feel that they have had gotten a good deal and it's better to go out of the negotiation with the other side feeling that they've got a good deal. And you know, because that often means that you can get a better deal for yourself. So, a lot of it is about perception. Letting the other side believe, you know, that they have got a good result for themselves. And sometimes to do that, you know, you have to be prepared to be a little bit humble in terms of, you know, not competing with them.

Interviewer: I want to go back a little bit based on your answer, you said that you try to relax your client. How do you how would you do that? Do you have a technique to do that?

Interviewee E: I try to treat them with respect, first of all, you know, so I treat them as human beings who are of value and need to be treated with value and listened to and not patronized or spoken down to. The second thing then is to listen to them. So, people will not be happy with someone negotiation on their behalf unless they feel that the person fully understands their position. So, I might have had a consultation with them previously, but if I haven't I would normally sit down and listen to them.

You know, it can take a while. It can be very repetitive. You know, you do often don't learn much from it other than what you know already about the case. Sometimes what they know say about the law may be wrong or whatever, but it's really important to let them, you know, talk and sometimes you find things in that process as well that can be useful in relation to negotiation. So, I listen to them. It's very important to listen.

And then what I do is I try and talk with them, the solicitor, at that point when they have trusted me to discuss various solutions. You can't plan everything. You know, sometimes things may come up and change the negotiation strategy. But that can only be done in conjunction with the client. So you often have to go back to your client during the negotiation on quite a few occasions. It's very important that you have the trust there with your client and that you have respect for the other side in negotiations. Because when you start harassing somebody's ego, by the way, you negotiate, it becomes very difficult to negotiate because it becomes a difficult atmosphere and relative in an atmosphere of respect and working together to see if we can find a mutually beneficial solution.

Interviewer: Would you say there is a kind of negotiation with a dispute or without a dispute that you think there will be more likely to reach an impasse?

Interviewee E: I think between barrister's, certainly, if you get into a situation where you're fighting, it's very, very hard to reach a solution and never reaches a dissolution if you negotiate with mutual respect, knowing your strengths. Also, you know, allowing the other side to come to a solution with you without feeling humiliated.

Interviewer: What is an impasse in terms of negotiation to you and how would you recognize it? How would you identify it?

Interviewee E: Well, an impasse, I suppose, is where you were so far harsh that there didn't really seem to be any possibility of reconciling the situation.

Interviewer: How would you identify that a negotiation is reaching an impasse?

Interviewee E: If an offer had been put to me or I had put an offer and the other side came back to me and that was just too much distance between it. And so saying a damage action, maybe perhaps the other side for the plaintiff is looking for twenty thousand euro and the other side was offering ten thousand euro, I mean, that would be an impasse in the sense that it wouldn't seem to be any possibility of us reaching any kind of compromise or solution in relation to it.

So, what I do in relation to that situation is I assess how important it is for my client that we're trying to resolve this immediately and maybe sometimes people get more nervous as cases come to trial. So sometimes it may be impossible to settle but as the case gets closer to trial, it gets easier. I suppose what I do is I try to create a pleasant atmosphere with the other side and I try to do a bit of brainstorming both with my own client and with the counsel for the other side, and I say, is there any way that we can kind of be creative and ingenious and work on mutually beneficial solution? I try to get them engaged in resolving a solution. If you can get the other side engaged, it's amazing what people can think up in terms of resolution.

Sometimes you do have to walk away and in cases where I would walk away would be where the other side would be so hostile that there was really no point in brainstorming. You know, they were being absolute, just getting a block wall. And then the only thing to do is to walk away and possibly on another day things might be different. You know, sometimes by walking away with confidence and being respectful, but at the same time, you know, firm, the other side can cause the other side to look at deposition again, because they think, well, if that person is confident, maybe there's more to their case than we think. And the other client may think that too, you know, the problems with their client rather than the lawyer on the other side, because lawyers egos intrude into negotiation all the time. But if the problem is with the client, the client can think up too because everyone thinks the same way, lawyers and non-lawyers, like people are not stupid just because they're non-lawyers, they instinctively understand the negotiation process. So you walk away with confidence. They will often come back, but when they come back, you have to give them an opening to come back in a way that they don't seem to be climbing down.

The ways that I would try and deal with an impasse would be either to brainstorm, to come up with a solution and try and engage intellectually with the counsel for the other side in coming up with solutions, with their clients and with me. And the other way then would be just walk politely and to leave the door open in terms of them coming back and coming back in a way that doesn't seem like climbing down to it.

Interviewer: Do you consider an impasse a positive or a negative thing?

Interviewee E: It can be a positive thing in the sense that there's no point in people coming up with a solution and signing up to a deal that doesn't work for them. So it can often result in a better deal, the fact that there was an impasse.

Interviewer: Why negotiations reach an impasse?

Interviewee E: There are a number of reasons, one of which is the ego with the lawyer on the other side. And, because I only negotiate really with lawyers, the ego of the negotiator and both negotiators really, I mean, you know, if one negotiator comes across as hostile, the other negotiation won't fall there. Or maybe the other negotiator is the one really who is being hostile. And they just have a hostile nature. Maybe they're not experienced in negotiation. Maybe, you know, they're just having a bad day.

You can also get it from the client for the same reasons. I don't see the other side's client in negotiation, but I know from my clients it could be a lack of trust between the client and the lawyer. It could be, obviously, a deep lack of trust between both sides. It could be a situation where they don't understand the concept of negotiation. And it could be a situation where they don't understand the issues involved. Usually it's either a lack of understanding or a lack of trust, either the negotiator or the client.

Oh, it could be a problem often I find to negotiation is a third party who's advising one of the clients, someone other than the lawyer who's there with them. The third party has no financial interest, but they are a bit of a

busybody. They don't understand things. And they are there just for entertainment. They may not be realizing it, but they're entertaining themselves and they're building up their own ego by their involvement in the case. And unfortunately, because it's entertainment for them and there's no risk involved, no financial risk involved, they can actually be really, really difficult to deal with. You know, it makes them feel part of the negotiation. And it's quite hard to deal with that because they're often not there. They're on the phone or whatever, you know.

It can certainly make things difficult, but the only solution is to treat the third party with respect and you know, try and get them on your side and try and get them engaged with the things that you are discussing.

You know, because they just can be very, very difficult to deal with.

Interviewer: In your experience, in which stage of the negotiations are impasses more likely to happen?

Interviewee E: Funny, I find often the impasse happens when you've almost reached to deal, oddly enough. And I think it's because the person who reaches the deal, even when it's a good deal, for them maybe just get suspicious. Maybe they feel it's going too easily, and they have to then in their own head justify the fact that they got involved in litigation, often spent quite a lot of money in litigating something that can actually be quite easily solved. So they have to consider their past life choices. And that's when they start making difficulties about small things.

And that's a process that has a lot of stuff that a second negotiation should never got done far and really should have been sorted out earlier. It's just a process of just, you know, going along with small things. While they are in their head, come to the conclusion. Well, perhaps this should have been sorted into earlier. Perhaps I could have engaged earlier. Perhaps this should never have happened in the first place. Perhaps it was unnecessary but I'm going to move forward now, so it can be difficult moving forward. I only deal with negotiation in the context of litigation, you see, so it could be different in another context. But I often find things reach an impasse, often quite late on when you've actually agreed the important things.

Interviewer: Why do you think that is?

Interviewee E: I think it's because people emotionally have difficulty in reaching a settlement because either they don't want to leave the litigation behind because they're emotionally invested in it, it becomes part of their life. They get a relationship with the negotiation. Or alternatively, they don't want to admit that this is a problem that could be quite easily solved and probably could have been quite easily solved without this litigation.

Interviewer: What skills do you do you have to manage the impasse?

Interviewee E: Empathy, respect and engaging [with] the other side, you know, engaging their intellect, really engaging their creativity. You know, it can be quite fun problem-solving, you know, try and make it appealing to them to continue with the negotiation. Engage them into thinking about the solutions rather than the problems.

Interviewer: Would you say those are the tools that you use to manage and handle the impasse?

Interviewee E: Yes, and sometimes a cup of coffee can really help, too. People, you know, often goes to an impasse where people get just get hungry and they just need a break. That to put things in perspective.

Interviewer: How do you avoid impasse? Do you think it's possible to avoid them?

Interviewee E: I think the best way to avoid an impasse is to treat the other side with respect, because often an impasse comes with hostility. Listen to the other side. Respect the other side. I think that's really important. And, you know, if it seems that you are talking down to the other side or your client is talking down to the other side it makes it very difficult and that's when people tend to react quite strongly and that's when an impulse often arises. Usually with me it doesn't happen, I don't allow it to happen.

Interviewer: Have you ever had any experiences with a negotiation that reached an impasse with an infinite loop?

Interviewee E: Yeah. I mean, you would have situations where, you know, the other side said, I'm not going to do this. And your client said, well, I'm not going to settle if they don't do this. And, you know, I mean, that can go on for quite a while. But you just try and get them engaged, thinking. There's always a solution. Positivity is really important, but there is always a solution there. It's just a question of finding it and getting both sides engaged in the process of finding a solution. And make them see that it's their job to find a solution. It's very rare you can't sort it out. You don't see the very fact that the parties are sitting down and negotiating means that inside they know there's a solution.

They may not admit it and then they say, oh, well, I'm doing it, but there's no point. They wouldn't be there otherwise. They know in their hearts that there is a way in which to matter can be resolved. There is something one can offer that the other can accept and they can go away happy with. They just wouldn't be there otherwise.

Interviewer: So, does that mean that when they come to the realization that they're in this dispute, because it's their interest to have it sorted out in a way, do you think it makes them more engaged to actually overcome the impasse?

Interviewee E: What you have to do in an impasse as well, if it's your client that's, you know, presenting the last, you have to advise your client as to the best case and the worst case scenario in the litigation and I give them percentage of chances, you know. So I say, well, if you go and you run this case and you lose, this is what will happen. And if you win this, this is what will happen. And I say, you have so much chance of winning, it's never absolute. You can't predict it. Judges can, you know, be surprising. And I tell them that I think I would do in that situation.

I think that usually works because even if they wouldn't do what I would do, what they usually do is they start thinking, then they get into the mood of contemplative objectively thinking about it. It's just getting them onto a frequency where they are able to look at the matter objectively without emotion that gets in the way. People bring their whole histories into negotiation. Their history of dealing with people generally, their history of the dispute in question, it's important that you can get them to look at the picture objectively and you can present it in terms of moving forward that this is you know, you can do this, you can move forward, you can get on with your life.

You know, people are much more willing to compromise if it's put them that way rather than you have to do that. You never tell people what to do. Even when talking to your own clients in a negotiation. It must always be their choice.

Interviewer: What would you say that this is what you do to overcome an impasse successfully?

Interviewee E: Yeah.