

**CONNECTED LIVES:
HOW COULD THE PROCESS OF MEDIATION AID IN
LONG-TERM EFFECTIVE CO-PARENTING?**

REMENDA GRECH

Dissertation submitted in partial fulfillment of

Masters of Arts in Mediation

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L-Università
ta' Malta

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Abstract

This study investigates the mediation process in the context of CO-PARENTING. There is a growing interest in shared parenting and this study aims to look at present literature, offer an overview of Maltese legislation and compare it to European and non-European legislative systems.

The research involved the gathering of pertinent information through means of semi-structured interviews with various professionals. Primarily, mediators and lawyers, both important and pivotal parts of the mediation process in Malta, were interviewed. Their experiences were complemented by family therapists, who are included in this study in an attempt to study co-parenting plans from a SYSTEMIC APPROACH.

The findings of this study show that mediation is a mandatory alternative dispute resolution, however, professionals view it as an opportunity for growth for parties and a possible ground of negotiation and preventive method from going to Court. All professionals recommended changes in the system, and this research shows that the mediation process has, over the years, become an extension of the court hearings, resonating very often with the same practice methods as courts.

The need for more in-depth mediation sessions will also be presented with the importance of the mediators taking more control of the sessions and giving structure to the mediation. This study will show the importance of more frequent yet more in-depth sessions to make mediation faster and more on-target.

This study also explores the need for mediation to be more CHILD INCLUSIVE. PARENTAL ATTUNEMENT is explored as one of the methods that could potentially be used to bring the children's wishes to the table during the negotiations.

Finally, the research advances a number of recommendations such as the need for GUIDELINES for mediators to ensure that a common approach is being adhered to. These guidelines, especially concerning co-parenting, will also serve as suggested proposals for Court to consider when decreeing on co-parenting agreements.

*This dissertation is dedicated to my daughter Maria.
May my actions be worthy for you to follow as you grow older.*

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ABBREVIATIONS

The Foundation for Social Welfare Services	(FSWS)
Young Children in Divorce and Separation	(YCIDS)
Educational Parental Programmes	(EPP)
Association of Family Therapists	(AFT)
International Social Services	(ISS)
Faculty of Laws, Research Ethics Committee	(FREC)
The Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition	(DSM-5)
Parental psychological flexibility	(PPF)

JUDGEMENTS

AB vs CD, First Hall, Civil Court (Constitutional Jurisdiction), Hon. Judge Dr. Robert G. Mangion, Ref. 82/2019, 30th June 2020

TABLE OF STATUTES

Maltese Law

Primary Legislation

Civil Code, Chapter 16 of the Laws of Malta

Chapter 474, The Mediation Act

Chapter 602, Protection of Minors (Alternative Care) Act, of the Laws of Malta

Criminal Law, Chapter 9 of the Laws of Malta

Subsidiary Legislation

Legal Notice 397 of 2003, Maltese legislation

Subsidiary Legislation 12.20, Maltese legislation

Legal Notice 396 of 2003 4(3), Maltese legislation

Regulation 4 (3) of Subsidiary Legislation 12.20, “The Civil Court (Family Section), the Civil Court (General Jurisdiction) and the Court of Magistrates (Gozo) Superior Jurisdiction (Family Section) Regulations”, Maltese legislation

Ministry for Social Justice and Solidarity, the Family and Children’s rights, Mandatory Reporting Guidelines for professionals in terms of the Protection of Minors (Alternative Care) Act, 2020

International Legislation

Mediation Act 2017, Article 6 (1), Irish Legislation

Mediation Act 2017, Article 6 (2), Irish Legislation

Mediation Act 2017, Article 16 (1), Irish Legislation

Mediation Act 2017, Article 14 (1), Irish Legislation

Mediation Act 2017, Article 14 (2), Irish Legislation

Mediation Act 2017, Article 21, Irish Legislation

Act of Sederunt (Sheriff Court Ordinary Cause Rules) 1993 No.1956 (S.223), Scottish legislation

Chapter 6 of the 1995 Civil Evidence (Family mediation) (Scotland) Act, Scottish legislation

Family Law Act 1975, Australian legislation

The Uniform Mediation Act (UMA), National Conference of Commissioners on Uniform State Laws (NCCUSL), (2001) USA Legislation

CHAPTER 1: INTRODUCTION

1.1 Background

Since the beginning of history, the family has been an important element in every society. Murdock (1949) claimed that the nuclear family was universal and is so valuable to humankind that its appearance is inevitable. Horowitz (2005) suggests that the family acts as a bridge connecting the individual to the wider society. The family has evolved, and society is now more diverse with the introduction of civil rights, yet the core remains. Two people whether married or not, irrespective of their gender, come together to form a relationship. They may or may not have their offspring or through various means, become responsible for a child.

Conflict may occur between these two people, leading to a relationship breakdown. When conflict occurs in families, there begins a period of change, where the couple might either attempt to resolve their issues and start afresh or else decide to break up. In Malta, we have seen a rise in separation cases, and this could be confirmed through various Parliamentary questions, which clearly show that numbers have indeed increased in recent years. In 2011, Malta registered 704 separation cases, whilst in 2019 there were 1182 cases and 1143 cases in 2020. In Gozo there were 11 registered separation cases in 2011, 69 in 2019 and 58 in 2020. (*Parliamentary Questions 11429 and 19103*). The Parliamentary Question 19279 tabled in February 2021 also sheds light on divorce figures in Malta, reporting 3,279 registered divorces from the introduction of the divorce bill in 2013 to the date of PQ.

In such occurrences, stress is experienced mostly as families' transition from one state to the other, as these families rebalance, possibly re-evaluate and re-adjust their relationships. If parents decide to split up, co-parenting comes into play. Through this study, the researcher will look at how families, who are in conflict and decide to separate, could still agree on how to parent their children together.

The researcher encounters several children juggling between one parent and the other in her own professional capacity. For example, children caught in parental disputes are ordered by Court to attend supervised access visits with one parent, as the other party alleges misconduct or mistrust in the parenting of the other party. Through this experience, the researcher notes that in some cases such supervised access visits may be the result of pique; indeed, in some cases, no harm is found in the parenting of the accused party.

The researcher was thus interested in exploring opportunities for parents locked in a parental dispute to untangle from their situation. Mediation is mandatory in Malta (Legal Notice 397 of 2003) for couples to go through before separating. Hence the researcher will look at mediation as a forum where parties will try to reach a parenting agreement and is curious as to how the system works at present and whether the system could be enhanced for better results which will positively impact the children involved.

The researcher holds the well-being of children very much close to heart. Literature shows us that the most vulnerable and innocent victims of separation are very often the children. Indeed, children who experience their parent's divorce often report low levels of mental wellness (Amato 2010) and higher levels of behavioural problems (Weaver & Schofield, 2015). Similarly, Raschke and Raschke (1979) concluded that conflict in families could be damaging to children's self-perception which perception might prove to have an adverse impact on children's confidence in themselves and will impact their journey towards independence in adulthood (Ben-Ami & Baker 2012).

1.2 Aim and Objectives

With the knowledge of this evidence, this study will attempt to delve deeply into how parenting arrangements are being negotiated in Malta, through mediation. In addition, this study will attempt to establish how the mediation sessions in Malta could further aid

couples in reaching co-parenting plans which would benefit the children, who are often the innocent victims of their parent's decisions.

This study will attempt to answer the following research questions:

- How could co-parenting mediation aid in the long-term parenting journey?
- What mediation strategies and processes serve to transform a relationship from a hostile one to one that leads to effective parallel parenting or co-parenting?
- Is the current mediation process conducive to a journey aiding parents to truly reach an out-of-court agreement that is aimed toward the best interest of the minors?

1.3 Outline of the Study

Literature available concerning mediation, co-parenting and local and foreign legislation in family disputes will be presented in Chapter 2, after an introductory chapter. It provides an overview of pertinent literature concerning the mediation process. This chapter starts by reviewing family mediation in co-parenting and proceeds to look at predictors of successful mediation outcomes before delving into a comparative review of international legislation.

Chapter 3 will then focus on the methodology used in this study, the choice of participants and how the interviews were carried out. The semi-structured interview style was chosen for this study. Chapter 4 will analyse and discuss these findings after themes from the responses of participants were identified. 9 themes were identified in total and this study will show how most of these themes resonate with the common themes found in the literature on the subject.

This study will present recommendations, in Chapter 5, on how mediation in Malta could be enhanced, in relation to co-parenting agreements. Most of the recommendations could benefit all aspects of mediation, making this study more relevant within the local context. This chapter will be concluding this study by summarising the main points discussed throughout this study.

CHAPTER 2: LITERATURE REVIEW

2.1 Introduction

Family mediation is an alternative dispute resolution method that is seen as an alternative method to litigation. This research will aim to delve deeper into how this resolution method could be an important element in devising co-parenting plans.

This chapter will focus on a deep analysis of literature found on the key aspects of this study, mainly mediation and co-parenting. The researcher starts by discussing the key elements of mediation as an alternative dispute resolution and how conflict could be resolved, aided by an impartial mediator. The term co-parenting will also be deeply explored. Finally, a look at the local legislation about separation cases and mediation will be established, and legislation of other countries will also be presented as a comparative exercise.

2.2 Mediation

Conflict is all around us, from the parent-child relationship, to family conflict, workplace difficulties and state conflict. Human nature has a whole array of personalities that blend into a colourful society. So colourful, that without rules and values, it might become too difficult to handle. During these studies in mediation, the author has realised that conflict occurs due to these different personalities of people, their different baggage and their different interpretations of the same reality. People's initial reaction would be that they are right; hence, if one feels blameless, why should s/he feel the need to change? This is often referred to as confirmation bias, a term often explained as a tendency to construe, seek or recall information in a way that reinforces a person's beliefs (Nickerson, 1998). It takes a third party, one who is not part of the dispute, one who could take a neutral stance, one who could win the trust of both parties, to help them find a resolution. It takes a mediator.

For a mediator to be effective however is no easy feat. Self-awareness is paramount to be able to distinguish between the emotions flying high in the room and the mediator's own biases and emotions. Self-awareness is a term used to refer to how a person consciously knows and understands one's feelings, motives, desires, and character and is often categorised into two elements, internal and external self-awareness (Eurich, 2018). A mediator has to remain in control and show a sense of control. However, a mediator will be using an array of skills that are all based on different theories of dispute resolution.

Lao Tzu's Art of War argues that there are different strategies for different occasions and one needs to use a strategy to create a favourable ambiance that will aid successful negotiations. This reasoning resonates with the Thomas–Kilmann strategic model (Thomas, Kenneth & Kilmann, Ralph, 1976). This model contains various interactions between the five components of the strategy. This portrays the need for flexibility and using various strategies according to the most effective one in a given situation.

Mediation is a process where parties aim to untangle their discord, with the assistance of an impartial mediator. The mediator's role is to aid and facilitate discussions and negotiations to help both parties reach an agreement on their disagreement (Boulle et al. 2008). This process is unique to other forms of dispute resolution, such as arbitration and adjudication, because it is the parties themselves who are negotiating and trying to find an agreement.

Fuller (1971 Mediation: Its forms and functions. S Cal L Rev., 44, pg. 325) states that *"the central quality of mediation"*, lies in *"its capacity to reorient the parties towards each other... by helping them to achieve a new and shared perception of their relationship, a perception that will redirect their attitudes towards one another"*. To achieve this, the mediator should primarily lay basic ground rules and try to gain trust of the parties before then aiding the parties towards negotiations.

2.3 Co-Parenting

Co-parenting occurs when two parents, no longer in a relationship together and often not living together, collaborate on the upbringing of their children. Parallel parenting on the other hand occurs when two parents are completely disengaged from one another and each contributes independently towards the upbringing of their children in their way.

In each family transition, there might be consequences for young children. It is therefore important, *“that essential components of early development are not jeopardized by the post-separation parenting arrangement”* (Pruett, McIntosh, & Kelly, 2014, p. 241). In addition, the importance of informed co-parenting is defined in literature as an important factor in the emotional growth of infants (Pruett et al., 2014).

Pruett et al. (2014) stated that an essential factor to build a secure base with children after separation is through working on achieving attachment security. Another important element is the involvement of both parents in the lives of their children. Through this, one realises the importance of finding ways to reduce parental conflict, especially when conflict is at its peak. In this regard, family mediation may be viewed as a means to reduce parental conflict and should try and work towards enhancing parents’ communication and co-operation (Deutsch et al., 2008)

Fabricus (2020), indicates that, in separation cases, children should be given the opportunity to spend the same amount of time with both parents as this would help in protecting the children’s emotional security with their parents. In fact, this was found to have a positive effect, with these children experiencing reduced long-term stress-related difficulties. Fabricus’ research shows that parenting time plays an essential part in the children’s emotional security in parent-child relationships. He adds that through more parenting time one might be able to build a more secure parent-child relationship which, in turn, is essential and could serve as a protection from stress-related mental and physical health problems.

Co-parenting is an important element of family life, that should not rely on whatever relationship the parents have with one another. Indeed, notwithstanding their relationship,

each party should make an effort to communicate on their parental duties as this could be their primary or only interaction with each other (Margolin et al., 2001)

Moreover, as Dunn et al., (2004) notes, parental collaboration is crucial for the child's development. Literature states that co-parenting consists of 4 main components mainly (i) the parent's support shown towards one another, (ii) any discord they might face in parenting their children, (iii) how they divide their duties as parents, and (iv) how parents manage the influences of their own family (Grech, 2018).

Co-parenting is important and relevant for children's behaviour. The social learning theory puts forward the idea that children tend to copy the behaviours of those closest to them, especially their main caregivers (Bandura, 1978). Thus, if children witness cooperation or disagreement, these actions could be replicated in the children's behaviour style. This suggests that parents' capability to collaborate may strengthen relationships within the family (Harris, Furstenberg, and Marmer, 1998).

Fabricus (2020) discusses shared parenting and how courts could interpret this. He states that policies often speak about sufficient shared parenting, but he questions what the term sufficient really amounts to. He proposes that rather than having a standard, which will not work in all children's best interests, one should start an agreement with the presumption that the child should have, as much as possible, as close to an equal proportion of parenting time with both parents. However, this should be on an individualised schedule that works for each particular family. A study held in 1999 by Amato and Gilberth, concludes that it is the quality of the time which is significant rather than the quantity. Fabricus (2020) states otherwise by saying that in his study, quality time was also described as achieved in those cases where fathers spend a quantity of time together doing activities homework with their children, and working on projects together.

This, Fabricus (2020) states, signifies that the fathers would spend a significant amount of time with their children to achieve this. Hence the quantity of time spent, Fabricus insists, is also paramount. In his study, using longitudinal analysis, he concluded that the more time each parent spends with the adolescent child in daily activities, such as games, movies,

sporting events, shopping, and cooking, the more secure the child feels one or two years later that s/he mattered to their parent.

In his study Fabricus also speaks about the importance of fathers having an overnight with children of all ages, including young children. He reports that the parent-child relationship improved with each increment of overnights with fathers during infancy. Interestingly none of these studies showed any deterioration of the mother-child relationship. Rather some improvement was noted, probably because the mother has time to rest and hence experiences less stress as a full-time single mother.

Conflict and co-operation were identified as two key aspects of co-parenting, in a major research by Maccoby and Mnookin (1992). This study presents important findings that when parents co-operate together, children stand to gain and on the other hand, could be negatively impacted when exposed to conflict in co-parental relationships.

Establishing a co-parental relationship is essential in the first months following divorce, and this could actually determine the involvement of the father, thereafter (Ahrons and Miller 1993). However, studies on family life, post-mediation, vary in their findings. Several studies show that mediation might not necessarily influence the parents positively to help them enhance their communication (Beck et al., 2004). Hann & Kleist (2000) state that studies in North America did not manage to find long-term impact on parental relationship after mediation. On the other hand, Kelly (2004) concluded that parents who concluded mediation successfully, were more likely to report that mediation aided their co-operation as parents, more than those who had to resort to litigation, and were more satisfied with the access agreed upon.

2.4 Family mediation concerning co-parenting

As already highlighted, family mediation requires a neutral party who facilitates negotiations between parties to attain a co-parenting agreement that benefits their children's best interest. Literature often shows that in order to determine whether mediation was successful or otherwise, researchers study the length of time for an

agreement to be reached, whether any costs were involved and if parties' expectations were attained (Shaw, 2010)

Kelly, (2004) found that around two thirds of mediations manage to conclude a parenting agreement. Similar data was registered in Australia, with 65% of mediations where successful (Moloney et al., 2013). The same study reports that the other 15% of families were still attempting to resolve their conflict after nine months of mediation. 20% of parents in this study, had to resort to Court after a failed mediation attempt. This group of parents, who litigated in court, reported that only half of them were satisfied with the final arrangement, whilst the others reported that their dispute remained unresolved (Moloney et al., 2013).

Moloney et al. (2013), also find that parenting arrangements decided by Court are often deemed unsatisfactory by parents, whilst almost all parents report that parental agreements reached in mediation are acceptable. However, same study observes that the characteristics of those who litigate are different than those who mediate, hence it is difficult to conclude whether it is the parties' characteristics or the mediation process itself which impacts on the satisfaction of the parties.

In 2012, around 20% of all children in Australia were living apart from one of their parents (Australian Bureau of Statistics, 2012). Around one-half of separating Australian parents report satisfaction in their negotiations of co-parenting arrangement done without the aid of third parties (Moloney et al., 2013). The other half however report the need to use professionals to conclude their negotiations on co-parenting.

2.5 Predictors of family mediation outcomes

Gale et al., (2002) suggest that favorable outcomes in mediation may be predicted by client and mediator characteristics. The following section looks into these characteristics to further the understanding of how each could impact mediation success.

2.5.1 Client and relationship characteristics

Participants who report successful mediation have higher economic status (Kelly, 2004) and manage to create a more secure attachment (Bickerdike and Littlefield, 2000). The parties' readiness towards communication and negotiations is viewed as detrimental towards the conclusion of mediation (Arbuthnot and Kramer, 1998).

When inter-parental violence and conflict are present in a relationship, these tend to predict aggressive and negative conduct in regard to the other party, as they negotiate. These parties also show resistance to accept suggestions (Bickerdike & Littlefield, 2000) and in fact will be less likely to negotiate successfully (Kelly, 2004).

Another significant characteristic is when either party has drug dependency problems or illness. In such circumstances, it is harder to discuss an agreement because the party or parties are impeded by their own problems, making it more difficult to focus on the sessions due to such factors impacting the parties. According to Beck et al., (2010) other difficult situations include when one parent is struggling to come to terms with the termination of the couple's relationship. In addition, Beck et al (2010) say that when either parent is in another relationship with a third party, this also predicts low rates of agreement through family mediation.

Relationship characteristics will invariably include the level of anger either party is experiencing towards the other parent (Sabourin et al, 1993) and apprehension on their children and co-parenting. Tan (2005) finds that the more hostile the parents are towards one another and the more bitter their conflict is; the less likely mediation will succeed.

On the other hand, mediation could more often be concluded successfully if a couple cooperate towards their children's well-being (Cohen et al., 1999). McIntosh (2009) finds that parents who trust one another in their parenting role, will be more willing to negotiate.

2.5.2 Mediator behaviour and mediation proceedings.

Various studies portray how mediators aid in the development of co-parenting agreements. Cohen (2009) reports how clients feel supported and guided when mediation sessions are

clearly structured. Structured sessions very often include the setting of ground rules, declaring a clear agenda of issues that will be tackled, ensuring neutrality and fairness and inviting parties to come up with some possibilities to tackle a dispute (Cohen 2009). Cohen goes on to say that an effective mediator should be able to effectively deal with conflict and aid the parties to focus on the well-being of the children.

Satisfaction with mediation is very often directly related to mediators being experienced as empathic and creating a safe and neutral space for both parties to voice their concerns (Cohen, 2009). In addition, mediators should be knowledgeable about disputed issues, such as when parties need direction or knowledge about co-parenting arrangements, and proper guidance is thus linked with the parties being more satisfied with mediation (Goldberg & Shaw, 2007).

Properly using of mediator's skills is also significant in a successful outcome. The ability to aid communication between parties, be empathic and create an atmosphere of trust are also very important skills to be used in mediation. Cohen says that success also relies on how much the mediator feels comfortable in establishing ground rules for communication, suggesting alternative solutions and helping parents focus on their children rather than on themselves. (Cohen, 2009)

Cohen (2011), conducted a study in Israel where mediators are social workers by profession, trained in family systems therapy. In this study, he found that two-fifths of the parties were successful in reaching some agreement. This success is attributed to the training and skills of these particular mediators. Cohen (2011) states that the specialized training given to these social workers probably contributed to the reported effectiveness. However, the same study also suggests that the spouses' negotiation skills and processes were also highly beneficial in addressing the issues in the dispute.

2.6 Co-Parenting agreements

The Australian Government Attorney-General Department (AGD) commissioned a research project entitled, Children and Young People in Separated Families: Family Law System Experiences and Needs project. The aim was also to gain a deeper understanding of the

experiences of minors after the separation of their parents and how the family law system of the county met their needs. As part of this project, Kaspiew et al, in 2015, held a survey amongst a sample of children living with separated parents. This survey found children living with their mothers was the most customary arrangement. 21% of cases reported access to be shared between parents. More time with the mother was registered however in most plans, with equal parenting occurring in less than 10% of cases. In earlier studies, particularly for toddlers, a common arrangement noticed is when children see their father in the daytime only with no sleepovers (18% of cases) (Kaspiew et al., 2009)

This study found that parents who do not reach an arrangement in mediation and go to Court, manage to resolve their conflict whilst the case is in litigation and, as a result, stop the proceedings. In most of these circumstances (94% of the children), shared parental responsibility is most common. This is comparable to those who reach an agreement in mediation, with 92% resulting in shared parental responsibility. Thus one can conclude that agreements are more possible to reach when there are no major issues and shared parenting could be achievable.

2.6.1 Child participation and child focused mediation

The same study went on to find that most children and young people (76%) reported a need for their parents to listen to their views concerning parenting arrangements and the separation. Children expressed the need to have time and space to process events, and for their views to be respected even though parents might disagree with them (Kaspiew et al., 2015). 21% of the child participants in this study reported being very close to their parents which resulted in them feeling included with both parents giving them time to listen to them.

In this study, parent-child communication has emerged as a common factor in helping children understand what is occurring in their life. However, it is challenging for children as they must re-build a new post-separation relationship with their parents. As a result, they might struggle to understand the parenting arrangements involved. In such circumstances, children need to be listened to, spend quality time with their parents and feel that the adults

in their lives are taking an interest in them. And, this quality time could happen with more shared co-parenting arrangements.

Kaspiew et al. (2015) report that children and young people feel that they should be kept informed with outcomes of the legal process. Most importantly children expressed their need to know through which means they could express their opinion on matters directly involving them.

Literature also suggests the importance of child-focused practices. Child-focused practice involves helping parents to consider the individuality their children. Such mediations aim to encourage a parenting agreement that protects family dynamics and aids the children's adaptability to the new state of their care-givers. Child-focused mediation is important to confirm that the outcomes reflect the psycho-developmental needs of the children involved. (Moloney & McIntosh 2006)

2.6.2 Flexibility

Flexibility is a common theme found in literature when describing the minor's satisfaction with co-parenting arrangements and the children's ability to voice their views in changing these plans over time (Cashmore et al., 2010; Campo et al., 2014.) Young people interviewed in these studies have shown their appreciation for flexibility and the ability of their parents to adjust and make changes when needed. Whatever the changes occurred, the young people showed their need to be listened to by their parents when spending time together.

2.7 External factors that could aid co-parenting agreements

2.7.1 Support services

A study conducted in Australia in 2018 by the Australian Institute of Family Studies found that counselling and peer support programs were beneficial especially when these sessions provide children with coping strategies. Data from this study suggests that support services are essential to support children and young people cope with changes during their parents'

separation. Support will allow them to process their thoughts in relation to access with both parents and feel empowered to communicate their views more effectively.

2.7.2 Co-Parenting Education

Mcintosh & Tan (2007) found, in a pilot study, that more than half the subjects studied, fared better when exposed to training through Young Children in Divorce and Separation (YCIDS). This group registered a 35% decrease in cases referred to litigation.

Fackrell, Hawkins, & Kay (2011) in their study of educational parenting programs, known as EPP's, reported that the control group who who attended a EPP, registered a 50% more positive parenting outcomes than the others who were not exposed to such training.

A key assumption that a mediator might make when negotiating parental agreements is that the parents possess the necessary expertise to manage the co-parenting plan, long-term. Kruk in 1993 was already supporting the idea that parents in separation should receive training and knowledge to sustain parenting plans following the mediation.

One presumes that co-parenting education will enhance the separated parents' ability to negotiate and actually sustain effective co-parenting. Studies have, in fact, found that positive effects were reported after completing co-parenting programs, such as less reported conflict and pressures (Whitehurst et al., 2008; Zhou et al., 2008).

In Malta, the location of the present inquiry, co-parenting programs are offered by the governmental entity, The Foundation for Social Welfare Services (FSWS). However, no studies are available on the effectiveness of these programs and whether parents attending them report changes in their parenting relationship with their former partner and their children. Some parents attend following a court decree whilst others reach out towards the service out of their own choice. Further study is needed in this regard to test the effectiveness of these programmes, especially as some of the parents are referred through Court and it would be beneficial to test their benefits.

An evidence based programme is implemented in Australia, namely the Young Children in Divorce and Separation (YCIDS) programme, an educational intervention, targeting parent

awareness of infant neurological and social-emotional development and significance for post separation co-parenting. The programme was studied and is evidence based with a clear aim to aid parents of infants to understand the complexity of separation and manage the relationship challenges within family separation. This study by McIntosh & Siyun Tan (2017) finds the appropriateness of this form of early education as it has the flexibility to be provided individually or in a group, both in person and online.

2.7.3 Pre-assessment mediation session

Literature also sheds light on the importance of pre-assessment mediation sessions. These sessions aim to allow parties to process their feelings and understand what they want from the mediation and what they plan to propose as a co-parenting agreement. In addition, these sessions could be used to assist those with little parenting experience with positive parenting training and explore alternative co-parenting arrangements.

Mediation could also be used to monitor how parties are managing to sustain the agreed upon plans. Couples could also, individually be offered counselling as they deal with their own issues and learn how to communicate effectively with the other party.

2.8 Comparative Analysis of Legislation regulating Mediation in Family Disputes

Family legislation differs in various countries thus, this section will shed light on different Laws in Malta as the national context, and review other jurisdictions with similar, well-developed and well-researched procedures for comparative purposes.

In recent years, Scotland and Ireland have been regarded in the social services networks, as having registered significant improvements in child and family policies and for this reason the author chose to visit the legislation of these two countries. Similarly, family mediation in Australia has a substantial history and various studies were based in this country and for this purpose the author will also be visiting Australia's legislation.

2.8.1 Malta

Under Maltese law, parents undergoing a marital or relationship breakdown seeking judicial intervention to regulate aspects governing their minor children are obliged by law,

specifically under Subsidiary Legislation 12.20, to file for mediation before attempting to file a court case.

Legal Notice 396 of 2003 also states, *“4(3) Before granting such leave the Court shall summon the parties to appear before a mediator, either appointed by it or with the mutual consent of the parties and where the Court deems it expedient so to do, either of its own motion, or at the request of the mediator, or of either of the spouses, may appoint a children’s advocate to represent the interests of any minor children of the parties.”*

Article 7 (1) of the Civil Code states, *“Parents are bound to look after, maintain, instruct and educate their children in a manner laid down in article 3B”*. This article is important because the emphasis is placed on the word parents, irrespective of their relationship. Articles 19, 20 and 54 all lay down provisions for maintenance due for children; however, the Maltese legislation is void of references concerning modality of access for children or any remedies where the non-custodian does not exercise his duty for access as stipulated in the court sentence or contact.

Mediation was enacted in Malta in December 2004. It is regulated through Chapter 474, The Mediation Act where mediation is defined as the: *“process in which a mediator facilitates negotiations between parties to assist them in reaching a voluntary agreement regarding their dispute.”*

It is important to note that in cases involving claims of domestic violence, Subsidiary legislation 12.20 states that (3) [...] *Provided that where the letter referred to in this regulation is accompanied by evidence substantiating a claim of domestic violence, the Court shall summon the parties to appear before it to determine whether appearing before a mediator is in the best interest of both parties.* In practice, several of these cases however are mostly still heard in front of the mediator, save for when the lawyer of either party asks the court to appear directly in Court. It would be in the mediator’s discretion to decide whether to proceed with the mediation or not. If none of the parties refer to this abuse, the skills of the mediator play an important role in identifying this reality and acting accordingly.

As per the direction of Judges presiding over the Family Court, a mediation process should be conducted in eight (8) sessions. Furthermore, it is pertinent to note that a particular Judge recently ordered that a couple or parents cannot file for mediation on more than two (2) occasions. However, the President Judge of the Family Court overruled the said order soon after.

2.8.2. Ireland

Shifting our focus to Ireland, a European Union member state, it is striking to note that, unlike the situation in Malta, mediation proceedings are not an obligation before the initiation of judicial proceedings before the respective Family Court. This is interesting as different jurisdictions within the EU adopt wholly different procedures.

Indeed, the Mediation Act 2017, through article 6 (1), stipulates that the *“parties to a dispute may engage in mediation as a means of attempting to resolve the dispute”*. Therefore, this indicates that mediation is not compulsory. In conformity to this line of argumentation, the same article elaborates that *“participation in mediation shall be voluntary at all times”*.

Notwithstanding the above, should the parties initiate judicial proceedings prior to attempting mediation proceedings, the Court may, either *ex-officio* or rather following a request by either party involved in the dispute, and where it feels fitting in the circumstances, entice the parties to consider attempting mediation as a viable means of resolving their disputes.

Of striking interest, notwithstanding that the Irish legislation does not impose a mediation procedure on the parties, the Mediation Act 2017 imposes an obligation on the legal representatives assisting the parties in such scenarios to inform their clients about the mediation process and its benefits as an alternative to court proceedings.

Should the client in question still insist on initiating judicial proceedings without recourse to mediation, the concerned legal representative would be bound to make a statutory

declaration under which s/he confirms that s/he exercised his/her obligation at the abovementioned law.

On the other hand, and quite similar to the situation in Australia, the Court, when deciding on the apportionment of the costs of the judicial proceedings takes into consideration, by virtue of Article 21 of the Mediation Act 2017, “*any unreasonable refusal or failure*” by any party to either attempt mediation or else to attend mediation.

2.8.3 Scotland

Similar to Ireland, in Scotland mediation proceedings prior to initiating court proceedings are not compulsory and the parties are at liberty to make the necessary decisions how to proceed in their case.. Nonetheless, then again similar to Ireland, through the Act of Sederunt (Sheriff Court Ordinary Cause Rules) 1993 No.1956 (S.223), specifically through rule 33.22, courts are empowered to refer the parties to mediation at any stage of the proceedings whenever it feels appropriate to do so in the circumstances.

This provision states, “*In any family action in which the custody of, or access to, a child is in dispute, the sheriff may, at any stage of the action, where he considers it appropriate to do so, refer that dispute to a specified family mediation and conciliation service.*”

Notwithstanding this, the legislator made it possible for separation and divorce proceedings to be heard immediately without needing mediation and left it solely at the sheriff’s discretion.

Chapter 6 of the 1995 Civil Evidence (Family mediation) (Scotland) Act is a whole act aimed “to make provision for the inadmissibility as evidence in civil proceedings in Scotland of information as to what occurred during family mediation.”

1.7.4 Australia

In Australia, on the other hand, similar to the situation in Malta, parents or couples in a relationship breakdown are prohibited from having direct access to Court but must rather attempt to regulate their relationship breakdown through a mediation process, unless impending issues related to family violence or child abuse surface.

Interestingly, the Australian legislation presumes that parental responsibility will be equally shared when making parenting orders. So naturally, the Family Law Act 1975, through Article 61DA (2), caters to justified and reasonable exceptions to general rule or presumption, specifically in two scenarios relating to child abuse or domestic violence.

In this regard, it is imperative to point out that equal shared parental responsibility cannot be equated to equal parental time. Indeed, whereas equal shared parental responsibility refers solely to the role and responsibilities of the parents when it comes to decision making processes relating to the minor children, equal parental time refers to the time within which the parent gets to enjoy with their minor children.

In comparison to Malta, this would refer to care and custody and access rights respectively, which are always treated separately, nonetheless in the Maltese legislation there is no express presumption indicated in this sense, albeit in practice care and custody is joint unless particular circumstances in the child's best interest dictate for exclusive care and custody.

Furthermore, the Family Law Act 1975 (Australia), through section 60I (8), provides for circumstances where the Mediator, or rather the Family Dispute Resolution Practitioner as most commonly called in Australia, issues a certificate to either of the parties in question prior to the parties initiating proceedings before the Family Court by virtue of which the mediator certifies:

- that the said party did not attend mediation simply because the other party refused to attend mediation sittings;
- that in the mediator's view, the mediation proceedings would be inappropriate in the circumstances;
- that despite the parties' best efforts to resolve their differences in mediation proceedings, the mediation could not lead to the desired agreement;
- that the said party did attend mediation sittings nonetheless the other party refused to be cooperative during the ensuing discussions;

- Despite the initiation of mediation sittings, the mediator believes that mediation cannot continue in the circumstances.

The said certificate would then be presented to the Court. It may influence the decisions about the apportionment of the costs of the judicial proceedings involved.

2.9 Conclusion

This extensive review has outlined important themes which will be explored further in the local context by employing semi-structured interviews with various professionals. This chapter reviewed how mediation plays a decisive role in establishing co-parenting arrangements between separating couples and then reviewed several predictors of mediation outcomes including, client and mediator characteristics. In this chapter, important elements to consider when drawing up co-parenting agreements were also reviewed, including child participation. It then reviewed legislation in Malta and other European and non-European countries where mediation is employed in juridical proceedings.

The research will attempt to study the local context, based on evidence found in the literature that co-parenting is indeed beneficial for children when done well. The next chapter will portray the methodology used in this study to give a context before presenting the data gathered.

CHAPTER 3: METHODOLOGY

3.1 Introduction

This chapter presents the methodology used for this study. The study involved a series of semi-structured interviews with multi-disciplinary professionals. It adopted a qualitative approach where mediators, family therapists and lawyers were interviewed. This method provides a deeper understanding and meaning of human experiences and aims to generate richer data. (Rubin & Babbie, 2005) The qualitative method is perceived to be richer and a more reliable method to truly present the beliefs and experiences of the interviewees, than quantitative methods (Haralambos & Holborn, 2008)

Thematic analysis was chosen as the method to analyse the data gathered through the interviews conducted. This chapter details the procedures by which interviewees were recruited and the rationale behind each decision. An overview of the background of each professional interviewed will be presented. The researcher will go on to portray which style was chosen for the interviews and how data was collected. This chapter will also present the rationale behind the choice of thematic analysis as the mode of analysis of data collected. Ethical considerations that were given due care throughout this study, will also be discussed.

3.2 Research question

This study was concerned with how parents could use mediation sessions to negotiate parental agreements agreeable to both parties and beneficial to the children involved. To this end, the present study investigated the following research question, 'How could mediation aid parents in reaching a co-parenting agreement which is in the best interests of the minors?' In addition, this study focuses on whether mediation could contribute to reaching such agreements. An answer to this question is sought by interviewing various professionals who each could contribute through their expertise.

3.3 Participants and recruitment

Face-to-face semi structured interviews were held with 15 different professionals. (Table 1) All of these interviews were conducted in the second quarter of 2022. Since this study deals with families and how mediation could aid couples in negotiating a future-focused agreement, a systemic approach was chosen, by looking at these negotiations not only from the mediation or legal aspect but also from a social aspect and using a systemic approach.

These professionals consisted of four mediators working in the Maltese Family Court, one foreign mediator working in International Mediation in Australia, five family lawyers working in the Maltese Family Court and five family therapists working in the local context.

<u>Participant</u>	<u>Years of Experience</u>	<u>Gender</u>	<u>Profession</u>
Participant A1	13	F	Local Mediator
Participant A2	17	F	Local Mediator
Participant A3	15	F	Local Mediator
Participant A4	8	F	Local Mediator
Participant A5	7	F	Foreign Mediator
Participant B1	3	F	Family Lawyer
Participant B2	4.5	F	Family Lawyer
Participant B3	12	M	Family Lawyer
Participant B4	3	F	Family Lawyer
Participant B5	5	M	Family Lawyer
Participant C1	6	F	Family Therapist
Participant C2	6	F	Family Therapist
Participant C3	6	F	Family Therapist
Participant C4	10	M	Family Therapist
Participant C5	6	F	Family Therapist

Table 1. The Participants

The four local mediators were recruited after they responded to a request that the researcher sent to the coordinator of mediators working in the family court. A full register of mediators in Malta is available at the Mediation Centre. However, the researcher did not choose to go there because the main interest was family mediation, which occurs solely through mediators registered with the Family Courts in Malta. Therefore, a letter of

invitation was sent to Family Court to recruit mediators working directly in the field. (Appendix A)

Literature often mentions the importance of family studies' awareness (Cohen 2011) and the mediators' impact on successful mediation. Thus the author deems it important to include therapists in this study to gain their perspectives and actively seek recommendations to better the mediation in Malta. The author sent an invitation of participation to the Association of Family Therapists (AFT) in Malta however only one therapist replied. (Appendix B) Thus, to reach the intended interviews, the author introduced the snowballing method (Goodman, L.A., 1961) by asking the therapist to introduce her to another therapist. Through this method, five therapists in total were recruited for participation in this study.

Five family lawyers were also interviewed. Lawyers are an important factor in Malta's mediation system; thus, the author was interested in listening to their views and recommendations. Lawyers were recruited through the snowballing method, after the author gained the support of the first lawyer who showed a willingness to participate in the study. This lawyer was recruited during the researcher's placement at the Family Courts as he showed interest in the research proposed. Following the first interview, each lawyer referred the author to another lawyer working in family court until all five lawyers for the interviews were recruited.

The author also sought to interview a foreign mediator. Through research, the author encountered several research and literature on how mediation is conducted in Australia. This gave rise to greater curiosity by the author to understand further mediation in this continent and thus sent an email to the International Social Services (ISS) Australia, asking to be introduced to a mediator who works in Australia. The person who came forward works mostly on international mediations, thus couples who live on separate continents or countries.

3.4 Data collection and the interview guide

The interviews were conducted in a semi-structured way, where the questions served as a guideline for the interview itself. The author chose this data collection method because semi-structured interviews are often open-ended, allowing for flexibility which the author needed to gather information about the subject at hand without being leading, to generate common themes. Indeed, semi-structured interview is one of the essential tools in conducting qualitative research. It is a way to discover knowledge through interaction, conversations, with people from different life experiences (Kakilla 2021).

The author carefully formulated the interview to elicit as much information as is needed from the interviewees. Henham & Findlay, (2001) state that theory is a crucial element for the foundation of any research and theoretical grounding is developed to analyse a chosen context and provides a suitable framework. Hence, once knowledge was gained through extensive research of the topic, the author was able to formulate the questions which served as a guideline for all interviews held.

Each interview lasted an average of 30 to 45 minutes, which proved to be an adequate and reasonable time to further explore the concept of co-parenting agreements in mediation. All interviews were recorded with the interviewee's permission and every record was deleted once the interview was transcribed.

After researching the subject, a topic guide with questions for each different profession was created to guide the process of each interview. (Appendix C) The very first interview with each professional served as a pilot study. In the first interview, other questions were included that were deemed relevant, which set the pace for all the following interviews which followed all the questions asked in the first interview.

As a researcher, the author was aware that a neutral stance was required and was aware of this during the interviews. Thus the author was aware not to pass comments on personal opinions or suggestions but reflected on those thoughts and suggestions presented by the interviewees themselves.

3.5 Analysis

Thematic analysis is an important, and highly relevant research method in qualitative research. Braun & Clarke (2006) state that thematic analysis is an important factor in qualitative analysis, and commonly used in psychology research.

Thematic analysis is a technique used to analyse data and identify possible patterns in qualitative research. This method is used by researchers to understand the experiences, perspectives and behaviours of the people (Barkley 2021).

Braun et al., (2006) developed this analysis method for psychology research. However, this method of analysis might be subjective as it relies on the researcher's identification of patterns.

The author used an inductive approach where the data determines the themes collected. This is a different approach than a deductive approach, which involves having pre-conceived themes that one might find in the data and reflect on.

Braun and Clarke (2006) describe six steps when using the thematic analysis method. (Table 2) First the researcher familiarised oneself with the data collected. This was done by transcribing and re-reading the transcribed before going on to the next step, coding. In this phase, phrases or common themes were highlighted, leading to the third step, generating themes. The author then reviewed the themes and as a fifth step, defined the themes that emerged. Nine (9) common themes were generated through this method, namely:

- i. The parties in conflict
- ii. Flexibility
- iii. Mediators Skills
- iv. The role of lawyers in mediation
- v. Shared Parenting
- vi. Sustainability
- vii. Child Participation
- viii. Mediation sessions

ix. Legal recommendations in mediation

Finally, Chapter 3 looked at these themes and analyzed them in depth.

Phase	Examples of procedure for each step
1. Familiarisation	Researcher reads data well
2. Coding	Identifying features of data and collecting data according to each code
3. Generating themes	Identifying patterns and themes
4. Reviewing the themes	Validating themes identified
5. Defining and naming themes	Analysing each theme
6. Writing the report	Interpretation of data and reporting

Table 2. Six-step thematic analysis procedure – Braun & Clarke

3.6 Ethical considerations

Before commencement of this study the author sought the approval of the Faculty of Laws, Research Ethics Committee (FREC). A proposal for the study was formulated, which proposal was accepted and following this, the author proceeded with the research. The participants had no risk of exposure or threat of being harmed during the study and it was made clear that their participation will remain anonymous at all times.

3.7 Conclusion

In the next chapter, the researcher will present the findings as grouped by themes. These themes were identified after all interviews were completed and both common themes and ideas that may be conflictual will be presented and further analysed.

CHAPTER 4: FINDINGS AND DISCUSSION

4.1 Introduction

The semi-structured interviews aimed to identify the views on mediation sessions in the local context and incorporates the views from the outside. These will shed light on parties' needs to reach a co-parenting agreement and any changes in the Maltese legislative system. In this chapter the researcher will present the findings and analyse the responses of the professionals who participated in this study. The researcher will discuss these findings from a critical analysis perspective in depth. This chapter is divided into nine main sections, representing the themes identified from all the interviews. (Table 3) This will serve to gain better understanding of how mediation could help parents reach a co-parenting agreement.

Main Theme	Sub-themes
The parties in conflict	The impact of unprocessed feelings Intense feelings between parties Dealing with conflict
Flexibility	Parental psychological flexibility Sleepovers in schedules Impact of children's ages during mediation
Mediator skills	Helping profession skills Similarity between mediation and social work Control over sessions Systemic training Creativity
Lawyers role in mediation	Litigation vs negotiation Pre-mediation sessions
Shared parenting	Equal parenting Discrepancies in ideas on shared parenting Benefits of shared parenting Shared parenting and maintenance Different households
Sustainability	Changes in parenting plans Consistency in parenting
Child participation	Use of child advocates Court setting Child inclusive practice Parental attunement Mixed loyalties
Mediation sessions	Length of sessions and procedures Similarity in mediation and court procedures Voluntary mediation
Legal system recommendations	Access not regulated by law Pre-mediation sessions Parental alienation

Table 3 Main themes identified

4.2 The parties in conflict

It's easier to forgive an enemy than to forgive a friend. —William Blake

When someone that we loved, hurts us emotionally, that same feeling of love could become greater hate once the relationship breaks down. The reason why a relationship breaks up is also very significant. Relationships which die out naturally and parties mutually agree to separate might experience less conflict and less intense feelings than other relationships where separation occurs due to betrayal. The injured party would need to feel validated in his/her/their feelings and this might impact on the person's ability to negotiate with the very person who hurt him/her.

This theme was common throughout the interviews. The impact that unprocessed feelings have on mediation was mentioned by professionals who recognised the difficulty of parties to negotiate with a clear mind if they are still stuck in unprocessed thoughts and feelings. These feelings could be experienced as quite intense and negotiations might turn to be tense and very difficult for parties. The ability of parties to deal with conflict is another important topic in mediation and mediators discussed about the need for them to gauge where the parties are before starting mediation as this could prove to be valuable information on how each party is ready to face the negotiation process.

4.2.1 *The impact of unprocessed feelings*

All professionals interviewed mentioned that one of the determining factors of reaching an agreement is the state the couple would be in during mediation. Interviewer C1 stated, "*As I just said past grudges, definitely. Maybe there will be betrayal, there will be pain that is unprocessed*". This was mentioned various times during the interviews in different circumstances. Participant C2 referred to this too, "*here is the coming into terms with the loss, the break up.*" Therapists and mediators alike recognised that parties who still have unresolved issues, who have not yet dealt with the separation, will probably be still stuck in their hurts and this makes it difficult for them to move on to the next stage of reaching an agreement. Mediators mentioned possible reasons for parties' hurts such as betrayal and adultery, which would result in a sense of pique from the injured party. Participant A3 stated

that *'So they need to work on themselves first before they work towards an agreement.'* Other interviewees mentioned the possibility of parties mixing the pain they experienced or have just experienced in their relationship with that of being a parent. Participant A2 added, *'he hurt as a husband so I want to feel powerful and hurt my spouse and win child.'*

4.2.2 Intense feelings between parties

Most professionals mentioned that the very reason a couple chooses to separate, would often impact the mediation process. Participant B1 stated, *"When its fresh, you know, you are just coming out of a relationship you will still have a lot of anger, so you would be reluctant to reach an agreement."* Therapists alluded to circumstances where parties might together realise that their relationship is dying down. While some might process this in therapy, others might mutually decide to separate, sometimes after therapy. However, therapists and mediators alike also recognised that very often the parties who would mostly struggle during mediation, would be those whose decision to separate was brought about by issues such as adultery and betrayal. Participant B3 stated, *"The couple will be hurt, there will be pain, there might have been adultery or other issues, so at that point it is difficult for them to sit down and reach an agreement"*. Professionals also mentioned that parties in such circumstances would need validation, needing to be identified as the victim and labelling the other party as the villain. This is presented by Participant C4, *"especially in situations where there is a lot of long term litigation, very often the parents need a lot of validation. That's why they need to even narrate a lot their story and the mediator needs to be mindful about possible triangulation"*. Linehan (1997) describes verbal validation as a way of saying to the client that his or her responses make sense in some way but then moves on to suggest how these thoughts could be changed and how this could be beneficial for them.

All professionals referred to feelings of distrust between parties, hurt, anger and pain. Participant A2 said, *"Because I'm in pain, I want to hurt my spouse"*. Such intense emotions are all factors that might make negotiations harder. This will thus result in at least one party in the room experiencing intense feelings of hurt and anger. Feelings of pain will be very

much present in the room and will influence whether the parties can move forward or not to the next step of reaching an agreement.

This feeling of pain could be understood especially at the end of a romantic relationship. Couch & Olson (2016) state that once that one partner feels or discovers betrayal, a degradation of trust will follow between the parties. Everly, (2018) describes betrayal as the death of a relationship and trust. It is thus understandable that this intense emotion will in one way or another be brought into the room and the mediator has to be well aware of it.

The Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5), (2013), cites traumatic events, such as divorce, to be different from more common stressors and are considered 'adjustment disorders'. Everly, (2018) goes on to say that a factor leading to the loss of a relationship, betrayal, violates the core human needs and assumptions on which all relationships rest.

4.2.3 *Dealing with conflict*

Throughout the interview, emphasis was made by all parties, to the ability, or lack of, the parties to deal with conflict. This resonates with the therapists' suggestions that mediators need to check, through an initial session, where the parties are before starting mediation. This pre-mediation session was also highlighted by Participant A5 who expressed that it is the norm, in her country, to carry out these sessions before starting the actual mediation. Participant A3 stated that she took upon this practice and insists to see the couple preliminarily without their lawyers for the first session, "*So new cases, I talk to them together but without their lawyers*". Mediators insisted that such sessions are important to allow the parties to disclose any abuse or power and control issues that might hinder the mediation process. They will serve to give the parties knowledge of what mediation means and what they can expect to be better prepared for the sessions. It is also an opportunity for the mediator to learn about the significance of events experienced by each party. Thus this will serve as invaluable information when guiding the couple toward a discussion for agreements.

Therapists interviewed also alluded that it is one of life's realities of having families in conflict and what decides whether it could be impactful or not, is how this conflict is dealt with. One particular therapist stated, *"It's not a problem for children to have parents who are separated. It's [...] a reality of life. But what children can develop some emotional issues or behavioural issues or psychological issues over time with, is parents who are in conflict.* Literature shows us that we cannot be in tune all of the time and that it is healthy for children to experience misalignment and learn how to align again.

For example, Tronick et al., (2011) studied how often children and their caregivers are attuned to one another. In healthy, secure relationships, he found that they are in sync only 30% of the time. The rest of the time they are out of sync or trying to come back in sync together. Indeed, Siegel & Bryson, (2003) state that repairing ruptures is indeed one of the essential things in parenting. Thus as conflict is bound to happen, the parties are offered the possibility, through mediation to deal with conflict effectively, and how they will do so, will directly impact on their children.

Studies on the direct impact on children caught in the middle of parental conflict are a common theme in literature. Jekielek (1998) found that after four years of separation, children exposed to parental conflict, still suffer from anxiety and depression. In addition, Gager et al., (2016) found that children could be harmed if exposed to long-term high conflict. They go on to say that these same children may even develop impaired relationships with their friends as they might have a distorted expectation of friendship due to the environment of constant conflict that they are brought up in. Weaver & Schofield (2015) add on to this, stating that high conflict, even after separation, could develop in externalising behaviours such as conduct problems.

4.3 Flexibility

Flexibility was a common theme mentioned by practically all professionals interviewed, irrespective of their area of specialisation. All professionals insisted on the importance of the parties being flexible both whilst reaching an agreement and after. Therapists especially explained that a plan could never be holistic enough as the needs of the children change

according to their development. Thus it is inevitable that the plans will need to change. This is why all professionals insisted on the importance of flexibility and not trying to make the plan too watertight.

4.3.1 *Parental psychological flexibility*

The literature cites various types of flexibility in parenting. A particular kind of flexibility described is parental psychological flexibility (PPF) which is defined as an occurrence when parents accept that they are still harbouring negative thoughts and yet are aware of their actions and still manage to achieve effective parenting (Burke & Moore, 2015). This PPF can be measured using a questionnaire developed by the same authors and looks into three factors, mainly cognitive diffusion, committed action and acceptance.

A study by Yu Y & Xiao Y (2021) found that when parents are in distress, especially if they are still experiencing anxiety, this has a direct and significant impact on parental flexibility. The authors further emphasised the importance of further studies and support to parents from a low education background and described this group as vulnerable. This is also consistent with the findings of this study, where in the interviews conducted, mediators mentioned that people with low education background might suffer more to understand the importance of co-parenting and reach an agreement for the best interest of the children. Participant A4 stated, *“The level of education of the parties also play an important role, might be able to understand more the needs of the children”*.

A modern recent famous separation was that of Bradley Cooper, an actor/director and his wife. The couple committed to co-parenting and wanted to avoid disrupting their daughter’s life. In this case both parents have long working hours and travel all around the world and thus they decided on a flexible plan based on their schedules. However, this type of plan can only work when the parents function well together because they need to remain in communication. As part of their agreement, both parents agreed to keep their home base, their main residence in the same city and also planned to allow time in their schedule to have both time on their own and time together as a family.

This is a point that Participant C4 highlighted. This therapist said that sometimes families keep on going for outings together as a family to prevent disrupting the children. *“I’ve encountered some parents who in order not to be disrupting as possible they act as though separation is not happening like for example they continue to go out together and this is a bit confusing for children”*. However, this therapist explained that children would inevitably know what is going on, and instead, such plans may confuse them. This therapist advised that children need to be spoken to, explain what is happening. This does not mean that the family might not eventually come together for certain occasions. However constant communication is key for any scenario.

4.3.2 *Sleepovers in schedules*

Flexibility will also help when a couple is debating on sleepovers. Recent studies on child attachment show that sleepovers may provide opportunities such as bathing, soothing, bedtime rituals and comforting in the middle of the night (Scher, 2002). All these will help the child create and sustain trust in his/her parents whilst strengthening the bond between parent and child. Thus having one parent losing these opportunities will be lost opportunities to further work on the parent-child attachment and a mediator should use his knowledge to encourage such access.

4.3.3 *Impact of children’s ages during mediation*

The mediators also explained that mothers might be more difficult to mediate with when the children involved are very young. Mediator A3 stated, *“Some work out well between them but for the majority, the mother becomes possessive, maybe because children are still very young, babies and toddlers”* Mediator A5 went further and stated, *“Where very young infants or babies are involved, so they’re so reliant on their mothers, you know, in the first however long you want to call it their life, you know, with breastfeeding and being, in need for their mother very early on in life.* Thus flexibility also needs to be used here, where access might need to revolve around breastfeeding schedules without this being a reason to limit the father’s access.

Infants of a very young age might not tolerate lengthy separation from their attachment figures. Lamb & Kelly (2008) state that the more secure a parent-child relationship, the easier the child will adjust to family transitions, irrespective of whether the parents live together. Thus in separation or divorce, frequent access is important to sustain this relationship. Lamb & Kelly (2008) highlight an important aspect mentioned by few of the therapists interviewed. The co-parenting plan will also depend on the history of each parent with the child. So if there is strong involvement between father and child, a co-parenting plan has consider that and ensure that this strong involvement remains through the co-parenting agreement. This was also highlighted by mediators who used the term 'in tune'. Participant A1 referred to this by explaining that, "*How much they are in tune with the minors, because you might have absent parents who are not realizing certain things*". They explained that a co-parenting agreement would also very much depend on how 'in tune' the parents are with their children, as they will be able to represent their wishes and keep a healthy relationship, post-separation.

4.4 Mediator skills

Undoubtedly the success of a mediation session will also depend in some way or another on the skills and attitude taken by the mediator. Thus it was important to investigate what kind of skills a mediator should have to enhance the probability of an agreement when faced with parties in conflict.

A common theme encountered in the interviews was the need for mediators to possess helping profession skills such as empathy, processing, paraphrasing and adopting a non-judgemental attitude. The similarity between mediation and social work was noted, and mediators with a social background showed that they are more at ease in dealing with conflict and working with families.

Another important aspect tackled was the need of the mediator exerting control over the session. Differences in the way lawyers and mediators perceive the sessions was noted, but primarily all professionals unanimously agreed that mediators need to show a firm yet gentle hand as they guide the couple through the negotiating process.

Another two important elements highlighted were the need of systemic training and creativity. Both elements are crucial in working holistically with families and thinking outside of the box to achieve solutions that are best suited for each particular family.

4.4.1 Helping profession skills

Practically unanimously, all professionals highlighted the importance of skills from the helping profession when dealing with parties in mediation, such as empathy, non-judgmental attitude and listening skills. Mediation is, after all, a conflict resolution method where by use of a neutral third person, parties attempt to reach a peaceful solution. A mediator will undoubtedly attempt to motivate both parties to seek a constructive solution which would be acceptable to both (Havkina 2013).

Mediation is an opportunity for parents who are no longer in a relationship to work out an arrangement which will see them through the child's minor life. They need to agree on how in one way or another, they need to remain in touch with each other to parent their child, and agreeing on such terms, especially when a break up is still raw, can be particularly difficult for parties. This is where empathy, paraphrasing, listening skills and a non-judgmental attitude play an important factor in the success of a mediation session. Mediation interventions, viewed as out-of-court settlements, are highlighted to be particularly important in a study conducted by Kelly (2004), as parties who negotiated such plans reported less animosity towards each other than those who litigated their case in court.

4.4.2 Similarity between mediation and social work

Barsky (2001) highlights the similarities between mediation and social work as both professions apply most of the same skills. Every intervention in both professions ultimately attempts to further the clients' self-sufficiency. This becomes particularly important as several interviewed professionals highlighted that children's needs change. Thus, parties must remain in contact over the years to further enhance the initial agreement. Thus a mediation session should also be an educational one for parents so that ideally, in the

future, they will be able to mediate informally amongst themselves without the need to renegotiate in court again.

4.4.3 Control over sessions

An important element that was brought up frequently by the professionals was the need for mediators to control the session. Participant A4 stated, *“You need to have control of the room, you need to give structure to the session. Sometimes lawyers want to start immediately they don’t even give you a chance to do an introduction. You need to stop them, with empathy but you need to gain control”*. Interestingly, the mediators’ experience is that they feel that lawyers tend to take over the sessions and that it would be better sometimes if the lawyers were not in the room. This contrasts with what the lawyers said, as all of them insisted that mediators need to own the room more, be more active participants and need to mediate more. Participant B1 explained, *“I believe that if mediators have more control on the situation and they are more assertive, it will be more beneficial to the couples”*. Interestingly, almost all lawyers interviewed showed faith in mediation; however, all commented that more intervention is needed from the mediators’ end.

Ultimately both want the same thing, but could it be that because the styles of each vary so much, that one profession does not understand the other? Mediators said that it is often much easier when lawyers are not in the room yet at the same time state that lawyers are so important for parties to ensure they get the knowledge needed for their rights to be protected. This is quite contradictory, especially when one realises that a mediator should be the one who provides knowledge to the parties to help them settle. Mediators and lawyers view the world from very different perspectives. By nature, and training, mediators are bound to be understanding, peaceful and deal with conflict. They may feel overpowered by lawyers, whose training moulds them on the importance to win an argument and litigate. Some mediators reported level of ease in standing up to lawyers and ensuring they had control of the room; others appeared to be struggling with this. Some felt comfortable talking to children whilst others completely rejected the idea. This inconsistency might give rise to the need for constant training for mediators in such subjects. Often parties might

feel helpless with many professionals in the picture, making the situation more complex than it is.

4.4.4 Systemic training

Systemic training is a particular training style that almost all therapists suggested that mediators should have. Reynolds et al (2012) state that systemic thinking offers a holistic perspective of a complex situation. This method of practice involves working collaboratively with a family to understand their issues and the systems impacting them negatively. Literature, however, suggests that more research needs to be done on how systemic practice in mediation could result in better results.

4.4.5 Creativity

Creativity was another skill highlighted by most professionals alike. Participant A5 highlighted this by saying, *“So it's about finding creative ways that they can come together to facilitate the needs of an infant”*. Adrian & Mykland (2014), in a study on creativity used in mediation, found that creative elements were found in two-thirds of the cases studied, with one quarter having more than five creative elements. The study found that creativity is most often present when two parties mediate rather than when businesses were involved. Divorce cases and other cases where large amounts of money was at stake also reported the highest levels of creativity.

4.5 Lawyers' role in mediation

Throughout all interviews carried out, the culture in Malta of needing a lawyer in mediation is very much felt. Several mediators highlighted the need to emphasise more on negotiation rather than litigation, thus the approach in a mediation session has to be different than in court, however most mediators still showed their inclination to rest upon the lawyer's input. This varied in the therapists' views, where they placed much more emphasis on the mediators' skills to manage conflict. Some mediators indicated that they might consider a pre-mediation session to get to know the parties, without their lawyers however only two

of the mediators interviewed, referred to the fact that the whole mediation process can be carried out with intervention of lawyers.

4.5.1 *Litigation vs negotiation*

All of the professionals interviewed, except two mediators, expressed the need for lawyer in a family dispute who will serve to inform the parties of their rights and also ensure that they get the best deal. Parties often chose to get a lawyer as they view separation as a litigation procedure and would want to be represented in the best way possible. The problem with this is that the parties will enter into a mediation session with the same target of litigation when in reality, the aim of mediation differs. Thus, mediators said that it is only when lawyers do not engage in litigation but instead show a willingness to reach an agreement that a mediation session could truly be effective.

Most mediators and therapists mentioned the importance of the right attitude of lawyers towards successful mediation. For example, participant A3 stated, "*Lawyers have first and foremost to understand that the mediation is not theirs but of the parties*" This theme was mentioned various times during the interviews as most highlighted that this is the parties' lives and they have to live with the agreement and not the lawyers. Mediators and therapists, who practice helping skills such as empathy, know how important it is to walk in the client's shoes and to move at the parties' pace. On the other hand, lawyers may be more litigious and whilst they might be right in their legal reasoning, the experts of each situation are undoubtedly the parties themselves. For this reason, therapists also suggested that lawyers should get systemic training as sometimes they prevent parties from giving in, as they may not understand the concept of giving in when a party has a right to something.

4.5.2 *Pre-mediation sessions*

Several mediators mentioned that a session would be much easier without any lawyers. Mediator A5 explained further, "*Sometimes during a mediation session, it is only the lawyers who speak and the parties simply don't speak*". They alluded to this especially for the first pre-mediation session which most suggested. Mediator A4 stated, "*Ideally first session parties are to come without lawyers*". This session would be aimed to assess the parties'

willingness to negotiate and help them understand more what mediation is about. Mediators mentioned that lawyers often come into the room and start negotiating with the other parties' lawyer without even allowing for proper introduction. *"Sometimes lawyer want to start immediately they don't even give you a chance to do an introduction"*

On the other hand, lawyers all mentioned the need for mediators to take more ownership of the mediation sessions. Participant B1 explained this by saying, *"Discussions should be more mediator led"*. So what might be happening here is that mediators may feel intimidated by lawyers and on the other hand lawyers do not have full faith in mediators and try to run the show themselves.

The difference in methods of work will also play an important factor here. Lawyers expect predictability and consistency, whereas mediators might look into each situation differently according to the parties' needs.

4.6 Trends in parenting plans

Studying trends in parenting plans proved to be quite challenging as various ethical dilemmas were presented as part of the information collated. Most professionals noted that the trend in the past two years has been for more fathers to ask for equal parenting, however mixed reactions were noted amongst those interviewed. It was also evident that judges also decide differently, with some resting on the couple's choices whereas others are more firm in their ideas of parenting. Another dilemma discussed was the notion of children constantly moving from one home to the other and whether this arrangement could work or leave the children with a lack of stability.

4.6.1 Equal parenting

Participants stated that normally, contracts involve the children residing with their mother, with a one-day or two-day' access during the week and a sleepover at the weekend. All showed ease with this contract; however most of the mediators were uneasy when faced with new proposals. Some comments such as Participant A2 included, *"For me, co-parenting*

in summer, ok fine but in winter there should be a decision between the parents, who is going to be the main enforcer on education?”

Mediators reported that more proposals are being put forward for equal parenting. However, this was however accompanied by disapproving statements such as *“Children can’t be divided 50/50, they are not a toy,”* Mediators also hinted that some judges do not feel comfortable with these types of proposals. One particular mediator stated that when such proposals are put forward due to the shift work of both parties, it is important to explain why equal hours are being proposed.

Lawyers too hinted at this and indicated that for contracts to pass they have to be written in a way that the judges will normally approve. So in this instance, it is no longer about what makes sense for that particular family, but about adapting the family’s needs according to trends seen by judges. Some lawyers resisted the notion of equal parenting, even those who often represent fathers, and themselves admitted that fathers very often are the underdogs in these agreements. However, lawyers, more than mediators in general showed more openness towards equal parenting; however, they all looked at these possibilities after studying case laws and proposing agreements according to these patterns.

4.6.2 Discrepancies in ideas on shared parenting

This shows that although some judges accept a proposal as long as both parties agree, others have their set thoughts on this and may refuse equal parenting. Statements included, *“The majority of judges will not accept a fifty-fifty plan. Even sleepovers. For example, we have judges who do not allow a sleepover for children under 4 years”*, as stated by participant A1. At the same time, inconsistencies are noted, with one mediator stating that a contract stating that a child should spend her time, one day with one party and one day with another passed, and another stating that a contract for one sleepover for an under 4 did not even pass. This is a huge discrepancy and it seems that parties are at the mercy of which judge the contract is being brought in front of.

Fransson et al. (2016), however refutes these ideas. His study investigated the consequences of various access arrangements and found that children with equally divided

time between parents were most satisfied, compared to those living mostly with one parent. Children in this study group, with equal parenting arrangements, had lower levels of psychosomatic problems. Only 14% suffered from sleep problems which varied from the 22% of those with other arrangements. Headaches, another common symptom, were present in only 14% of the children with equal parenting, which compares to the 12% of children who live in a nuclear family and again contrasts with the 19% of children who reported headaches who live with only one parent.

One cannot ignore a fact that many therapists mentioned, however, that any successful parenting agreement will not depend on equal parenting time but on the healthy communication between parents, their relationship with their children, the absence of pique between parents and allowing children to have a healthy handover from one party to the other. Participant C1 stated that *“Communication is key and that is the recipe”* and Participant C2 further elaborated on this and explained that *“Having communication amongst the both parties, is the most helpful because it can help clarify any misunderstandings or misconceptions”*. The professionals alluded to the fact that whilst equal parenting is indeed becoming more popular, there is still lack of training and knowledge for the same parents to ensure that their attitudes make these agreements successful in the long term.

4.6.3 *Benefits of shared parenting*

More and more literature is supporting the idea of shared parenting. Schoppe-Sullivan et al. (2007), reported that when mother's experience support in co-parenting, they often report less parenting stress and more confidence over self. Similarly, Scrimgeour et al (2013) found that supportive co-parenting may enhance the benefits of positive parenting and lessen the risks of negative parenting on children's pro-social behaviours. Thus as literature is giving us more evidence of the benefits of co-parenting, more input has to be given to training parents in handling such agreements so that the true benefits will surely be reaped. This resonates with another sub-theme found during the interviews, that of stability. Pruett et al. (2014) mention the importance of stability and consistency and the need for

predictability which is another important element in such scenarios. Thus all these factors together will undoubtedly contribute to successful parenting arrangements most of the time.

4.6.4 *Shared parenting and maintenance*

An interesting argument that mediators and therapists brought to light was that equal parenting might be proposed so that parties do not owe maintenance to one another. One mediator even said, *“So this is worrying”*, whilst Participant A2 stated *“So it’s clear that it’s related to money and that is what is scary”*.

The researcher notes that very often some professionals interviewed, did reach conclusions based on perceptions and not necessarily studies and facts. Indeed, during the interviews some alluded to the need for more studies on the effect of these decisions. As did Participant A4, *“I have mixed feelings about this. I really wish to know two years down the line, are these contracts adhered to?”* The need for local evidence based studies in this area is truly felt, to help serve as a guide in the local context, to all professionals involved.

4.6.5 *Different households*

Therapists and mediators referred to the dilemma of having children moving from one home to another. This was especially shared in regards to very young children, particularly given an identified trend throughout the interviews, where professionals noted that parents are separating at a younger age and mediators are being faced with arrangements dealing with younger children. Indeed, one therapist explained that he even had situations where couples separated whilst the mother was still pregnant with their offspring.

One mediator referred to the term *“children living in a suitcase”*. Lawyers and therapists alike shared this term; however, one particular therapist refuted these ideas. Participant C3 stated that this term refers to a concept where the child still has one stable place and needs to carry his belongings from one place to the other. Interestingly, he said, *“no one says that two parents cannot offer two bedrooms, two wardrobes, two sets of clothes, two meal plans... When both parents are able to give permanency... who says that the father cannot*

buy clothes for his own son or for his own daughter? So you might build up a wardrobe here. And the wardrobe there... we are exaggerating things...we need to be more creative..."

Participant B5, however, alluded to a similar situation and stated that her client had a previous agreement where his child spent one week with him and one week with her mother. She said that when he had a second child from another failed relationship, he tried to propose the same, because he viewed his arrangement as ideal. *"However his now grown daughter told him, no don't do it, I felt like I belonged nowhere growing up, I was always with a backpack."*

This statement is to be further studied. Literature shows that even babies can pay attention to two people simultaneously. Corboz-Warnery (1993) found that babies can rapidly shift their gaze from one person to the other as attention and feelings with both adults are experienced. McHale et al. (2000), stated that the young child's ability to do this is related to how well parents get on together, finding a direct relation to cooperative partnership between parents and active engagement of their babies. Participant A5 was not too convinced of this however and stated: *"with breastfeeding...the need for their mother very early on in life [...] it's about finding creative ways that they can come together to facilitate the needs of an infant'.*

As children grow into teens, all professionals mentioned that the teenagers themselves might choose one party over the other. Unfortunately, no study was ever conducted in Malta in this regard; however various studies held in various countries, by Campo et al., (2012), Lodge & Alexander (2010) and Fabricius & Hall (2000), found that adolescents reported that although living in two homes was more inconvenient due to their more hectic social life, however, they reported that it was still worth the trouble because they managed, through this arrangement, to maintain close relationships with both parents.

4.7 Sustainable plans

Professionals who took part in this study agreed that the parties' attitude and approach could make a plan sustainable. Therapists contributed sustainability with two main factors; first, how much parents own the agreement and manage to agree on a plan that makes

sense for their own family needs, and secondly, how flexible the parents are and able to communicate with one another to deal with any changes that will inevitably happen along the years.

4.7.1 *Changes in parenting plans*

Lawyers and mediators agreed with this and explained that children would surely have new commitments over the years, and their parents' work schedules might change: *"What works now will not work in three years' time."* Mediators stated that parents who can reach an agreement, who mediated once, might even learn how to do this informally on their own, over the years. Therapists agreed that this is a possibility however insisted on the importance of communication and having both parents on board which was described as the best way to ensure sustainability.

4.7.2 *Consistency in parenting*

Therapists also emphasised that there should be shared ideas on parenting and discipline so that children can be followed as they move from one home to the other. Participant A2 described a lack of consistency in parenting as *"mayhem"* and agreed on the importance of communication between parties. The same participant also emphasised the need for parents to devise a co-parenting plan with a therapist or a child specialist to work out a routine together: *"Co-parenting without going to a professional [...] I feel they need a family therapist to sit down and seriously work out the routine for your children"*. What was not clear however, was why this could not be done in mediation as this is the very reason that such dispute resolutions exist.

Lawyers also mentioned the importance of the maturity of the parents which will come into play when reaching an agreement. High levels of maturity will help parents juggle the different needs of the children and not resort to endless pique, which will impact negatively on the children.

4.8 Child participation

The theme of child participation is studied extensively in the literature; however different views and perspectives are recommended. Some studies present the children's own views that they wish to be heard and their wishes to be considered. Such studies include an Australian study held by Carson et al. (2018). In this study, 61 children of ages 10-17 stated that they would like their parents to listen to them before proposing parental arrangements and expressed their wish to be an active participant in decisions directly impacting their living arrangements. 46% of those participating children asked family law professionals to take their views in consideration and ensure greater participation of children even in high-risk circumstances.

4.8.1 Use of child advocates

Only one lawyer showed a lack of awareness of the need to consider the children's views. Most of the others suggested involving either child advocates or therapists to gain more perspective on children's views. However, concern was expressed as to the involvement of children's advocates'. Most professionals insist that child advocates may be experts in laws however lack the expertise in talking adequately to children. Seven new child advocates were appointed in Malta in January 2021. This role is not always very clear, in fact, in July 2020, the Maltese Constitutional Court called for changes in legislation that regulates the Child's advocate as presently these advocates are acting as lawyers for the minors and court experts in the same case. In the court sentence of case AB vs CD, First Hall, Civil Court (Constitutional Jurisdiction),(2020), the court observed that this situation should be addressed immediately especially when dealing with parental alienation cases, as the conflicting role of the child's advocate would invariably become irreconcilable in such cases.

4.8.2 Court setting

Another important difficulty that was brought up regarding the court advocates or even mediators talking to children, is that when this happens, this occurs in the court environment which could prove intimidating to children and parties alike. Participant B3

stated that if one aims for an out-of-court settlement, *“it should be an out-of-court settlement in all aspects”*.

4.8.3 *Child-inclusive practice*

Professionals did not all agree on who best should talk to the children, with some suggesting child advocates, others suggesting therapists, school counsellors or even encouraging parents to talk to the children themselves. However, what was almost unanimously agreed upon was that proceedings should be child-inclusive and child-focused, as the protagonists of the agreements are not the parents themselves but the children. Carson et al. (2018), insist on the need to give children more opportunities to sound their thoughts and to be included more often in family processes. Indeed, child-inclusive practices have been practiced in mediation in Australia for the last ten years, and thus researchers have had the opportunity to study this development further.

4.8.4 *Parental attunement*

Interesting to note was the therapist and some mediators' suggestions to encourage parents to take into consideration their children's perspectives. As Participant C3 suggested: *“Listen go and talk to the kids, see what they want and come back”*. This term is referred to in the literature as parental attunement. Slade (2005), refers to this function and attributes the ability of a parent's reflection on the child's perspective as leading to more security experienced by a child in his/her own attachment relationships and sense of self.

This will also include the need to keep ongoing communication with the children even after a parenting arrangement is reached. Indeed, most therapists interviewed acknowledged that most children are involved when parenting arrangements need to be re-discussed. Their participation often ends successfully with all parties' content with the results. Thirty-five (35) young people, whose parents separated, were analysed, and the study concluded that young people sought to be involved whilst their parents were discussing parenting plans (Birnbaum & Saini, 2012). However, children's voices in Malta seem quite absent

when agreements are being discussed for the first time in mediation, a fact agreed upon by most professionals.

4.8.5 *Mixed loyalties*

Several professionals also mentioned that children might become involved in the loyalties struggle and might change their version according to the pressure exerted on them by their parents. Participant A1 explained, *“Sometimes the fear is of the children being involved in the loyalties struggle.”* In such circumstances it would be wise to keep in mind that children should not be offered the opportunity to choose between one parent and the other but simply consulted on their views and schedule to keep everything into context during negotiations.

4.9 Mediation sessions

The professionals interviewed reflected on the way these mediation sessions are being used. The length of each session was mentioned particularly by one mediator. Almost all lawyers showed dissatisfaction with sessions being given months apart, mirroring some difficulties currently faced in court proceedings. Professionals also highlighted the need to start looking at mediation sessions to enhance communication between parties and help them re-align, without necessarily resorting to court.

4.9.1 *Length of sessions and procedures*

One of the themes that lawyers and therapists mostly mentioned was the length of a mediation session needed for successful agreements. Lawyers mostly showed concern with mediation sessions being given with too much time passing between one appointment and another whilst therapists alluded to the fact that discussions need time to develop and can't be rushed. *“It needs to be a process that's governed purely by what works for children and it's not going to help children to have their parents decide about their future in 45 minutes.”*

Some mediators mentioned the length of procedures. Some disagreed with being compelled to close a mediation after eight (8) sessions (as referred to in the Acts of the

Mediation Letter numbered 1240/22) as they stated that couples need time and might reach an agreement if given more time. However, this contrasted with the therapists' views, who insisted that in such instances length will prove to be a hindrance rather than helping the process. Although professionals were divided in their observations, however all expressed the need for flexibility and that should case should be mediated according to the developments of the particular case without particularly being limited to time constraints. Therapists showed that ideally the time frame to conclude mediations should not be lengthy whilst mediators expressed the benefits of having lengthier time frames.

Participant A5 alluded to this and stated: *"sometimes people feel that one session is enough and one session generally goes for three hours."* This type of intervention shows that sessions are long as they go over important elements of the agreement in mediation; they are structured and yet effective as there is no need to call parents over and over again for sessions but rather sit for one or two lengthy sessions, making mediation much more effective.

4.9.2 *Similarity in mediation and court procedures*

Although offered as an alternative to court, the researcher notes that mediation is mirroring the court processes, with some time passing before first appointment, length of time between one session and another and briefer sessions. Participant B5 showed exasperation when saying that: *"In one case a mediator was appointed in May and then I was told she does not work in summer and mediation was first heard in October."* One might note that the very concept of mediation is not being reached with the system as is in Malta and a re-thinking of the process is sorely needed.

Lawyers also criticized that mediation sessions are only held in court and in the morning. Participant B5 stated: *"Why do we need to go into court? Ok it's not the courtroom but it's still court."* They stated that such sessions should continue in the afternoon without the need for parties to being constrained to take leave for such sessions.

4.9.3 *Voluntary mediation*

Professionals also alluded to the need for mediation being not only court-mandated but also an opportunity for parents to re-discuss their arrangements in an out-of-court scenario, sometimes even informally. Professionals stated that mediation might very often be a good way for parents to understand each other and find common ground. This method is used several times in Australia when couples who might be experiencing a breakdown of communication resort to mediation to attune themselves whilst continuing with their co-parenting. What was encouraging to hear was that Participant A5, stated that: *“we’ve not ever had a case where we’ve not been able to mediate something for the parents that leaves them better off and that leaves their children better off.”*

One therapist insisted on the importance of using mediation to tackle the parents’ issues efficiently yet deeply, going over the spokes in the system and suggesting a solid way forward. In her own words: *“if mediation is used as a sort of a Band-Aid solution to a very deep wound, it’s not going to be of much use in the long run.”*

4.10 Legal system recommendations

Lawyers and mediators referred to the fact that Maltese legislation does not specifically seek to regulate access, however most professionals agreed that all cases differ and this would be a particular area that is very much difficult to regulate through legislation. Parenting plans are rather individualistic by nature and mediation could actually preserve this individualization. Mediators and therapists agreed however on the need for pre-mediation sessions, which was mentioned very often in their interviews, as a way to understand more where the couple is coming from and how to further help them negotiate through an effective agreement.

4.10.1 *Access not regulated by law*

Most of the lawyers and mediators mentioned the unfairness on children who are constantly not picked by one party during the assigned access. In reality nothing can be done if parties do not show up for access. As several lawyers explained, if maintenance due

is not given, the aggrieved party could refer to court however nothing could be done if access is not adhered to. The only reference in Maltese legislation is in the Criminal Code, Art. 338 (II) *when ordered by a court or bound by contract to allow access to a child in his or her custody, refuses without just cause to give such access*. However again, legislation is void of any remedies should the estranged parent choose to not pick up the minor and exercise access. This failure from the estranged party, very often results in emotional turmoil for the minor, however legislation does not cover this issue. Participant A1 described this occurrence as emotional abuse, stating that it is heart-wrenching to see children *“crying on the step”*. A recommendation various professionals put forward, was the concept of the mediator being given powers to suggest a minimum amount of access and maintenance after the first sitting, with the judge considering this request immediately until the mediation is concluded so that no access or maintenance is lost.

A therapist interviewed however was wary of such ideas and stated that parenting plans are very individualistic according to the families' realities and *“one should not try and give parameters or options because these will always differ.”* However, this gives rise to negative consequences on the mediation as mediation by its very nature should not be a deciding factor, however it should always be the parties that remain in control of their agreement. Thus it probably makes more sense to ensure that the mediation sessions do not mirror court processing, and are instead assigned immediately, and processed in a few sessions without allowing for lengthy proceedings in the same mediation sessions

Australian legislation requires mediators to issue a certificate of participation in mediation. Although allowing mediation to remain purely voluntary, this method gives parties more incentive to parties to attend mediation as they would not wish to be seen in court to sabotage the system.

4.10.2 *Pre-mediation sessions*

Another possibility agreed upon by most professionals is the need for a pre-mediation session which would gather information for parties and mediators alike. Only Participant A3 stated that she engaged in this practice however the others alluded to it and showed a

willingness to include this in their practice if guided. Unfortunately, these sessions were not mentioned in any way by lawyers, and mediators stated that when they tried to do this, they met with resistance from the lawyers to engage in this practice.

4.10.3 *Parental alienation*

Several professionals referred to the term parental alienation. Although the aim of this research does not specifically deal with this topic, however it was interesting to note that professionals referred to mediation as a possible means in tackling or preventing parental alienation.

Participant A3 showed concern when parties lie to the children about the other parent: *“That’s where alienation surfaces [...] We should never say anything about the other party.”*

Indeed, in litigation, allegations of abuse might be done by the parent who is causing alienation against the other party (Brannon, 2020). However, each case being litigated in court, would have gone through mediation and thus this is a fora where a trained mediator could be in a position to pick up that some manifestations might be already present.

Parental alienation is being regarded as a form of child abuse, and is listed in the Mandatory Reporting Guidelines for professionals in terms of the Minor Protection (Alternative Care) Act, Cap. 602 of the Laws of Malta. In these guidelines, the terms vicarious abuse is used: *“Vicarious abuse is most commonly associated to parental alienation contexts, whereby a custodial parent engages in a steady strategy of derogation towards the non-custodial parent with the express intent of hurting”* (Ministry for Social Justice and Solidarity, the Family and Children’s rights, Mandatory Reporting Guidelines, 2020, pg. 8).

Participant C2 explained that one should consider loyalties and why the breakup occurred. This participant linked the reason for a breakup with parental alienation and stated that if the reason for the end of a relationship is seen as putting one party at fault, then children might be highly impacted by this: *“Because in the majority of cases there might be cases of parental alienation as well. And it’s important to consider different loyalties and why the breakup happened”*.

Delaying decision-making on access might be a contributor to some manifestations of parental alienation. Children who do not have regular access to one party might be easily swayed against that impacted party and thus the need for swift decisions in granting access is felt. These manifestations might not necessarily be caused only by a parent. Participant C1 stated: *I am worried about children who are alienated [...] that is something that is worrying me a lot recently. And alienation not only from parents but it also comes from relatives, grandparents. It's terrible. I really worry.*

4.11 Conclusion

The data gathered from the professionals proved very interesting as almost all professionals emphasised the importance of helping skills to be effectively used in mediation. The differences between professions could be seen especially between lawyers and those hailing from the helping profession. Yet it was positive to note that all the professionals showed faith in mediation and all referred to how mediation, when equipped with cooperation, open communication, and willingness from all parties involved, could be beneficial. Furthermore, all professionals preferred to negotiate a parenting plan in mediation rather than being litigated in court, which shows that there is a valid role for mediation in Malta. In the last chapter, recommendations made by these professionals will be put forward, as it became obvious that mediation plays a vital role in the drawing up of co-parenting plans, which are beneficial for families in separation.

CHAPTER 5: RECOMMENDATIONS AND CONCLUSIONS

Mediation in Malta is mandatory once an application for separation is filed in court. Subsidiary legislation.12.20 provides that (3) *Before granting such leave the Court shall summon the parties to appear before a mediator, either appointed by it or with the mutual consent of the parties.* Mediators explained that the family court judges give direction, through decrees issued in nominating a mediation session that mediation sessions should not be longer than eight sessions. (Acts of the Mediation Letter numbered 1240/22). During this study several professionals observed that these time constraints are not always in the best interest of the parties and whilst recommended that mediators should be given more flexibility to work according to the developments of each particular case. This study aimed to investigate how mediation sessions are being used in relation to co-parenting agreements and evaluate the possibility of recommendations to further enhance mediation in Malta. This chapter will present such recommendations and conclude that most professionals believe mediation could be an appropriate alternative dispute resolution in separation cases. However, all professionals interviewed showed willingness in need for a change in the system in order for parties to reap more benefits from mediation and showed faith in the mediation system that could aid parties to reach an amicable settlement on the issues of mutual concern.

5.1 Limitations of the study

A missing element in this study is the parties' experience of mediation sessions and whether they experienced mediation as beneficial or not. The researcher chose to focus only on professionals however the experience of parties themselves could potentially could be explored in future studies.

The study did not observe live mediation sessions and relied on gathering information from the professionals involved. Although observations could have provided a unique opportunity to study what goes on in these sessions, yet the researcher felt that this could

be an intrusive method to collect data, especially since that is a sensitive moment in the life of a couple, and should be respected as such.

5.2 Recommendations for policy

This study recommends that issuing guidelines on family mediation should be considered by the policy maker. Although legislation might not deal directly with access, however these guidelines should serve as a manual for mediators to aid the same process. This study will, through this sub-section, recommend important ideas that could be included in these guidelines.

- This research recommends that mediators should be encouraged to start holding a pre-mediation session with the aim of parties having the opportunity to understand the meaning of such sessions and for mediators to assess the willingness of parties to mediate. These pre-mediation sessions should be an opportunity for parties to use it as a venting session before they are able to focus on the negotiation process, that would follow after.
- The length of mediation sessions should be revisited. More emphasis is to be given to lengthier sessions which will result in less sessions. Thus having a very good two-hour session in which a lot of ground is covered, is much better than having short sessions with a two-month gap. This study recommends that mediation sessions are held more frequently, with longer sessions, resulting in a more expedient mediation without further harm or uncertainty to any of the parties.
- It could be concluded that children are still not part of the mediation process in Malta and very often their voice is often unheard unless they are in their adolescent years. It is being recommended that more emphasis is made on mediation becoming a child-inclusive practice, keeping in mind the best interest of the minors involved. Thus mediators should empower parents to listen to their children and keep them in focus during mediation. This study will not recommend that children should be

heard by mediators since it is clear that there are mixed reactions as to whether professionals should involve children, especially young children. However, child-inclusive practice also refers to empowering parents to be more attuned to their children's wishes and keeping them in focus during the negotiation process.

- Literature shows the importance of children having both quality and quantity time with both parents, in scenarios where it is a healthy environment on both fronts. No evidence was found that younger children should not benefit from sleepovers; rather these were described as an opportunity for bonding with the parent. Thus it is worrying that this lack of awareness results in hesitation in certain instances from the court to allow such access. In order to tackle this, the policy maker should also include such recommendations for co-parenting in the issued guidelines. These could serve as guideline not only for mediators and lawyers but could also be referred to by court, avoiding as much as possible extreme differences in contracts which may not be healthy for the well-being of the impacted children.
- One of the themes discussed in this research was the role of lawyers in mediation. After considering the various professionals interviewed and their discussions, the researcher concludes that lawyers are an important aspect in mediation in Malta, especially as the present culture clearly portrays that couples seek lawyers to accompany them for mediation. Thus mediators need to work with lawyers; however, they also need to own the room and not be fearsome to lay down their rules. The researcher believes that knowledge and assertiveness will help mediators gain respect of both parties and other professionals however mediators need to know the law, have psychological and child development training, to show that they can offer a holistic approach towards a family solution.
- To further emphasis this, mediators should be encouraged to attend ongoing training. This research sheds light on the fact that mediators all have different

experiences however most are relying on practice wisdom rather than on evidence-based practice. Ongoing training should include systemic training and more in depth knowledge of child development. Mediators should also be given training in dealing with children in order to be equipped to speak with children when the situation deems fitting. Training on motivational interviewing, is also recommended.

- A recurrent observation throughout this study, was the similarity between mediation and courtroom sessions. This study concludes by recommending that mediation sessions should be happening out of court, in an alternative environment that is not within the same building as the family court, and thus in a more family-friendly environment. Should mediation occur in a different setting than court, then sessions could keep running in the afternoons and not have solely morning sessions. This would also help tackle the backlog especially by having mediators clocking in more hours and offering a much more efficient and expedient mediation.

5.3 Recommendations for research

As already referred to in the limitations of this study, this research sheds light on the importance of a longitudinal study, within the local context on families who are co-parenting. At present most agreements are being negotiated without following evidence based practices and methods. There was a common uneasiness among professionals when discussing equal parenting and the majority showed hesitance in accepting such contracts. This seems to resonate too in court and thus the importance of a local study to further explore this is recommended.

Thus further studies are suggested in this area, where a researcher could study the characteristics of the agreements being mediated and how such plans are being maintained over the years. The experience of children impacted by such plans is also interesting to study and the results could serve as a guide toward mediation agreements in the future.

5.4 Conclusion

When mediation was introduced in Malta, it was presented as an opportunity to implement a successful reform in the civil justice system. Nowadays, it is clear that the majority of professionals have faith in the mediation process and this augurs well for the future of mediation in Malta. It is clear that mediation is not a remedy for all separation cases, and there will always remain situations that have to be litigated in courts.

However, this study concludes that with more structure, mediation could be used more effectively and expediently, to the benefit of the families who will gain stability and structure in the shortest time possible. Parents have to remain in contact with one another as they both contribute to the rearing of their children. Mediation is an alternative dispute resolution process that could be a vital tool in combating family dynamics and parental alienation as it provides the necessary tools for parties to mediate along the years as they need to remain in contact to maintain the parental agreements.

References

- Abela, A.M. (2001). Who Wants Divorce? Marriage Values and Divorce in Malta and Western Europe. *International Review of Sociology*, 11, 75 - 87.
- Adrian, L., & Mykland, S. (2014). Creativity in Court-Connected Mediation: Myth or Reality? *Negotiation Journal*, 30, 421-439.
- Amato, P. R. (2010). Research on divorce: Continuing trends and new developments. *Journal of marriage and family*, 72(3), 650-666.
- Amato, P., & Gilbreth, J. (1999). Nonresident father and children's well-being: A meta-analysis. *Journal of Marriage and the Family*, 61, 557-573
- Arbuthnot, J. and Kramer, K. (1998) 'Effects of divorce education on mediation process and outcome', *Mediation Quarterly*, 15, pp. 199 – 213
- Australian and New Zealand Journal of Family Therapy, (2014), 35, 479–492 Family Mediation: A Guide for Family Therapists, University of Queensland, Brisbane, Australia
- Australian Law Reform Commission. (2019). Family Law for the Future: Inquiry into the family Law System (ALRC Report 135). Brisbane: ALRC. www.alrc.gov.au/inquiry/review-of-the-family-law-system
- Amato, P.R. (2010). Research on divorce: Continuing trends and new developments. *Journal of Marriage and Family*, 72(3), 650–666.
- Bagshaw, D., Brown, T., Wendt, S., Campbell, A., McInnes, E., Tinning, B. et al. (2010). Family violence and family law In Australia: The experiences and views of children and adults in families who separated post 1995 and post 2006. Canberra: Commonwealth of Australia.
- Barkley, A. (2021) What is Thematic Analysis? Advantages and Disadvantages. www.theacademicpapers.co.uk, Retrieved 24 May 2022.
- Bay, C. R. and Braver, S. L. (1990) 'Perceived control of divorce settlement process and inter parental conflict', *Family Relation*, 39, pp. 382 – 7.
- Brannon, S. (2020) A review of legal interventions in severe parental alienation cases. *ELSA Malta Law Review*, 7, 128-139
- Beck, C. J. and Sales, B. D. (2001) *Family Mediation: Facts, Myths and Future Prospects*, Washington, DC, American Psychological Association.
- Beck, C. J., Sales, B. D. and Emery, R. E. (2004) 'Research on the impact of family mediation', in J. Folberg, A. L. Millne and P. Salem (eds), *Divorce and Family Mediation: Models, Techniques and Applications*, New York, Guilford, pp. 447 – 82
- Beck, C.J., Walsh, M.E., Ballard, R.H., Holtzworth-Munroe, A., Applegate, A.G., & Putz, J.W. (2010). Divorce mediation with and without legal representation: A focus on intimate partner violence and abuse. *Family Court Review*, 48(4), 2010.

- Ben-Ami, N., & Baker, A. J. (2012). The long-term correlates of childhood exposure to parental alienation on adult self-sufficiency and well-being. *The American Journal of Family Therapy*, 40(2), 169-183.
- Bickerdike, A., & Littlefield, L. (2000). Divorce adjustment and mediation: Theoretically grounded process. *Mediation Quarterly*, 18(2), 181–201.
- Bloom, K. (2011). Ed Tronick: The Neurobehavioral and Social-Emotional Development of Infants and Children. *American Journal of Dance Therapy*, 33, 214-216.
- Boulle, Colatrella Jr., Picchioni (2008) *Mediation: Skills and Techniques*, Australia, pg1-3
- Braver, S. L., Sandler, I. N., Cohen Hita, L., & Wheeler, L. A. (2016). A randomized comparative effectiveness trial of two court-connected programs for high-conflict families. *Family Court Review*, 54, 349–363.
- Carter Betty, (2005). *The expanded family life cycle individual, family and social perspectives*. Family Institute of Westchester
- Carson, R., Dunstan, E., Dunstan J, & Roopani, D, (2018) *Children and young people in separated families: Family law system experiences and needs FINAL REPORT*, The Australian Institute of Family Studies.
- Cohen, O. (2009). Listening to clients: Facilitating factors, difficulties, impediments, and turning points in divorce mediation. *Family Therapy*, 36(2), 63–66.
- Cohen, O. (2011) *Agreement Reached through Court Mediation Conducted by Social Workers: Impact on the Co-Parenting Relationship*, *British Journal of Social Work* (2012) 42, 227–244 Advance Access publication
- Daniel J. Siegel, & Tina Payne Bryson, 2003 *Healing Trauma, Attachment, Mind, Body, and Brain*
- Dunne, J. E., & Hedrick, M. (1994). The parental alienation syndrome: An analysis of sixteen selected cases. *Journal of Divorce & Remarriage*, 21(3-4), 21-38.
- Fabricius, W. V. (2020). *Equal parenting time: The case for a legal presumption*. Oxford University Press, <https://www.researchgate.net/publication/331530133>, retrieved 24th May 2022.
- Fackrell, T. A., Hawkins, A. J., & Kay, N. M. (2011). How effective are court-affiliated divorcing parents education programs? A meta-analytic study. *Family Court Review*, 49, 107–119.
- Fransson, E., Sarkadi, A., Hjern, A., & Bergström, M. (2016). Why should they live more with one of us when they are children to us both? Parents' motives for practicing equal joint physical custody for children aged 0–4. *Children and Youth Services Review*, 66, 154–160.
- Fuller, L. (1971) *Mediation: Its forms and functions*. *S Cal L Rev.*, 44, 305-339.

Gager, C. T., Yabiku, S. T., & Linver, M. R. (2016). Conflict or divorce? Does parental conflict and/or divorce increase the likelihood of adult children's cohabiting and marital dissolution? *Marriage & Family Review*, 52(3), 243–261.

Gale, J., Mowery, R. L., Herman, M. S. and Hollett, N. L. (2002) 'Considering effective divorce mediation: Three potential factors', *Conflict Resolution Quarterly*, 19, pp. 389– 420.

Goldberg, S.B., & Shaw, M.L. (2007). The secrets of successful (and unsuccessful) mediators continued: Studies two and three. *Negotiation Journal*, 23(4), 393–418.

Grech, Diane. *The Experience of Professionals' Working with Families Who Are Co-parenting an Adolescent Post-separation in Malta* (2018). <https://www.um.edu.mt/library/oar//handle/123456789/42514>

Halford, W.K. (2011). *Marriage and Relationship Education: What Works and How to Provide It*. New York: Guilford Press

Horwitz, Steven, *The Functions of the Family in the Great Society* (September 2005). *Cambridge Journal of Economics*, Vol. 29, Issue 5, pp. 669-684

Jekielek, S.M. (1998). Parental Conflict, Marital Disruption and Children's Emotional Well-Being. *Social Forces*, 76(3), p.905.

Kakilla, C. (2021) Strengths and Weaknesses of Semi-Structured Interviews in Qualitative Research: A Critical Essay. Preprints 2021, 2021060491, <https://www.researchgate.net/publication/352565661>, retrieved 24th May 2022

Kaspiew, R., Carson, R., Dunstan, J., De Maio, J., Moore, S., Moloney, L. et al. (2015a). *Experiences of Separated Parents Study (Evaluation of the 2012 Family Violence Amendments)*. Melbourne: Australian Institute of Family Studies. aifs.gov.au/publications/experiences-separated-parents-study

Kaspiew, R., Carson, R., Dunstan, J., Qu, L., Horsfall, B., De Maio, J. et al. (2015b). *Evaluation of the 2012 family violence amendments: Synthesis report*. Melbourne: Australian Institute of Family Studies. aifs.gov.au/publications/evaluation-2012-family-violence-amendments

Kaspiew, R., Carson, R., Qu, L., Horsfall, B., Tayton, S., Moore, S. et al. (2015c). *Court Outcomes Project (Evaluation of the 2012 Family Violence Amendments)*. Melbourne: Australian Institute of Family Studies. aifs.gov.au/publications/court-outcomes-project

Kaspiew, R., Gray M., Weston R., Moloney, L., Qu. L (2009). *Evaluation of the 2006 family law reforms*. Melbourne: Australian Institute of Family Studies. aifs.gov.au/publications/evaluation-2006-family-law-reform

Kelly, J.B. (2004). Family mediation research: Is there empirical support for the field? *Conflict Resolution Quarterly*, 22, 3–35.

Kruk, E. (1993). Promoting cooperative parenting after separation: A therapeutic interventionist model. *Journal of Family Therapy*, 5(1), 235–261.

- Lamb, Michael. (2012). *Critical Analysis of Research on Parenting Plans and Children's Well-Being: Applied Research for the Family Court*.
- Lamb, Michael, & Kelly, J.B, (2008) *Improving the quality of parent-child contact in separating families with infants and young children: Empirical Research foundations*
- Linehan, M. M, (1997), *Validation and psychotherapy*, in A. Bohart & L. Greenberg (Eds) *Empathy reconsidered: New Directions in Psychotherapy*. Washington DC: American Psychological Association.
- Maccoby, E. E., & Mnookin, R. H. (1992) *Dividing the child: Social and legal dilemmas of custody*. Cambridge, MA: Harvard University Press
- McIntosh, J. E., Pruett, M. K., & Kelly, J. B. (2014). *Parental separation and overnight care of young children, Part II: Putting theory into practice*. *Family Court Review*, 52, 256–262
- McIntosh, J. and Tan, E (2017) *Young children in divorce and separation: pilot study of a mediation-based co-parenting intervention*. *Family court review*, Vol. 55 No. 3, July 2017 329–344 VC 2017 Association of Family and Conciliation Court.
- Miller, W.R., & Rose, G.S. (2009). *Towards a theory of motivational interviewing*. *American Psychologist*, 64(6), 527–537.
- Moloney, L., Qu, L., Weston, R., & Hand, K. (2013). *Evaluating the work of Australia's Family Relationship Centers: Evidence from the first 5 years*. *Family Court Review*, 51(2), 234–249.
- Murdock, G.P. (1949) *Social Structure*. The MacMillan Company, New York.
- Pearson, J. and Thoennes, N. (1986) 'Mediation in custody disputes', *Behavioral Sciences and the Law*, 4, pp. 203 – 16.
- Pruett, M. K., McIntosh, J. E., & Kelly, J. B. (2014). *Parental separation and overnight care of young children, Part I: Consensus through theoretical and empirical integration*. *Family Court Review*, 52, 240–255
- Rubin, A., & Babbie, E.R. (2005). *Research Methods for Social Work (5th ed.)*, Thomson Learning: U.S.A.
- Scher, A. (2002). *Mother-infant relationship as a modulator of night waking*. In P. Salzarulo & G. Ficca (Eds.), *Awakening and Sleep-Wake Cycle Across Development* (pp. 187-198). Amsterdam/Philadelphia: John Benjamins Publishing
- Shaw, L.A. (2010). *Divorce mediation outcome research: A meta-analysis*. *Conflict Resolution Quarterly*, 27(4), 447–467.
- Swales, M. A. (2009). *Dialectical Behaviour Therapy: Description, research and future directions*. *International Journal of Behavioral Consultation and Therapy*, 5(2), 164–177.

Whitehurst, D.H., O'Keefe, S.L., & Wilson, R.A. (2008). Divorced and separated parents in conflict: Results from a true experiment effect of a court mandated education program. *Journal of Divorce and Remarriage*, 48, 127–144.

Weaver, J. M., & Schofield, T. J. (2015). Mediation and moderation of divorce effects on children's behavior problems. *Journal of family psychology*, 29(1), 39.

Wolchick, S.A., Sandler, I.N., Millsap, R.E., Plummer, B.A., Greene, S.M., Anderson, E.R.... Haine, R.A. (2002). Six-year follow-up of preventative interventions for children of divorce. *The Journal of the American Medical Association*, 288(15), 1874–1881.

Young, S. (2017). The missing heart of parenting disputes in the Australian family law system: a case for a child-inclusive approach to judicial decision-making. *Family Law Review*, 7(2), 116–134

Zhou, Q., Sandler, I.N., Millsap, R.E., Wolchik, S.A., & Dawson-McClure, S.R. (2008). Mother-child relationship quality and effective discipline as mediators of the 6-year effect of the 'New Beginnings Program' for children from divorced families. *Journal of Consulting and Clinical Psychology*, 76(4), 579–594.

Appendix A

Invitation for participation sent to Court Mediators

30th April 2022

Invitation for Mediators to Participate in Research Study

My name is Remenda Grech, a student at the University of Malta, presently reading for a master's in Mediation at the Faculty of Law, Malta. I am conducting a research study for my dissertation titled Connected Lives: How mediation aids co-parenting.

This is being supervised by Profs Gordon Sammut and Dr. Austin Sammut. As part of my research, I would like to invite court mediators, to participate in this study. Below you will find information about the study and I would be grateful if you could distribute this letter to the mediators who work with the Court Agency.

My study aims to investigate successful cases of parallel parenting, tramite professionals that prioritized children's needs and averted conflict, to identify ways for how couples not only reach an agreement but develop a successful co-parenting relationship that is nurturing for children. I also aim to identify ways how mediation could be used, not only during the separation process itself but will ask whether, on a long-term basis, co-parenting mediation could support parents themselves in their life journey as parents.

The mediator's participation in this study would help contribute to a better understanding of how to use the current practices for the best interest of the minors as well as possibly recommend possible changes in legislation to better enhance this delicate process. Any data collected from this research will be used solely for this study.

Should you choose to participate, you will be asked to participate in a semi-structured interview which should not take longer than thirty minutes. Data collected will be transposed into a transcript and used anonymously to come up with recommendations in this area.

Participation in this study is entirely voluntary; in other words, you are free to accept or refuse to participate, without needing to give a reason. You are also free to withdraw from the study at any time, without needing to provide any explanation and without any negative repercussions for you. Should you choose to withdraw, any data collected from your interview will be erased as long as this is technically possible (for example, before it is anonymised or published), unless the erasure of data would render it impossible or

seriously impair the achievement of the research objectives, in which case it shall be retained in an anonymised form.

If you choose to participate, please note that there are no direct benefits to you. Your participation does not entail any known or anticipated risks. If you are interested to participate kindly contact me on remenda.grech.01@um.edu.mt and we could set up an appointment at your convenience.

Please note also that, as a participant, you have the right under the General Data Protection Regulation (GDPR) and national legislation to access, rectify, and where applicable ask for the data concerning you to be erased. All data collected will be handled anonymously and recording will be destroyed immediately after transcripts are processed.

Thank you for your time and consideration. Should you have any questions or concerns, please do not hesitate to contact me by e-mail at remenda.grech.01@um.edu.mt.

Sincerely,

Remenda Grech

Appendix B

Invitation for participation sent to Family Therapists

30th April 2022

Invitation for Therapists to Participate in Research Study

My name is Remenda Grech, a student at the University of Malta, presently reading for a master's in Mediation at the Faculty of Law, Malta. I am conducting a research study for my dissertation titled Connected Lives: How mediation aids co-parenting.

This is being supervised by Profs Gordon Sammut and Dr. Austin Sammut. As part of my research, I would like to invite family therapists, to participate in this study. Below you will find information about the study and I would be grateful if you could distribute this letter to the family therapists registered with your association.

My study aims to investigate successful cases of co-parenting, tramite professionals that prioritized children's needs and averted conflict, to identify ways for how couples not only reach an agreement but develop a successful co-parenting relationship that is nurturing for children. I also aim to identify ways how mediation could be used, not only during the separation process itself but will ask whether, on a long-term basis, co-parenting mediation could support parents themselves in their life journey as parents.

The mediator's participation in this study would help contribute to a better understanding of how to use the current practices for the best interest of the minors as well as possibly recommend possible changes in legislation to better enhance this delicate process. Any data collected from this research will be used solely for this study.

Should you choose to participate, you will be asked to participate in a semi-structured interview which should not take longer than thirty minutes. Data collected will be transposed into a transcript and used anonymously to come up with recommendations in this area.

Participation in this study is entirely voluntary; in other words, you are free to accept or refuse to participate, without needing to give a reason. You are also free to withdraw from the study at any time, without needing to provide any explanation and without any negative repercussions for you. Should you choose to withdraw, any data collected from your

interview will be erased as long as this is technically possible (for example, before it is anonymised or published), unless the erasure of data would render it impossible or seriously impair the achievement of the research objectives, in which case it shall be retained in an anonymised form.

If you choose to participate, please note that there are no direct benefits to you. Your participation does not entail any known or anticipated risks. If you are interested to participate kindly contact me on remenda.grech.01@um.edu.mt and we could set up an appointment at your convenience.

Please note also that, as a participant, you have the right under the General Data Protection Regulation (GDPR) and national legislation to access, rectify, and where applicable ask for the data concerning you to be erased. All data collected will be handled anonymously and recording will be destroyed immediately after transcripts are processed.

Thank you for your time and consideration. Should you have any questions or concerns, please do not hesitate to contact me by e-mail at remenda.grech.01@um.edu.mt.

Sincerely,

Remenda Grech

Appendix C

Interview Guides

Interview Guide 1

Mediators

Questions:

How long have you been working as a mediator?

Through your experience, what are the main factors that may contribute for a couple to reach a parenting agreement?

What skills do you feel a mediator uses most to aid couples reach a parenting plan?

How do lawyers contribute in the formulation of a parenting plan?

Could you identify any trends or patterns in proposed parenting plans?

What type of plans do you consider to be most sustainable or others who will have to be revisited eventually?

What do you feel are the key elements in legislation in your country which enable the effectiveness of mediation and parallel parenting?

What recommendations would you give on the mediation process, which could help facilitate more agreements on mediation plans?

Are children in any way consulted in the process?

And what do you think about this?

Interview Guide 2

Lawyers

Questions:

How many years have you been practicing as a lawyer?

Could you identify a pattern in couples who manage to come to a parenting plan in mediation?

In what way do you think that mediation may contribute to help a couple to reach an agreement and what may hinder?

What type of parenting plans are being proposed at present and which contracts are passing through court successfully?

Could you identify any trends or patterns in proposed parenting plans?

What type of plans do you consider to be most sustainable?

What amendments would you propose in law to help couples in the process of parallel parenting?

What recommendations would you give on the mediation process, which could help facilitate more agreements on mediation plans?

As a lawyer how do you prepare a client before the mediation session?

In your experience, is the child's voice heard in this procedure.

Interview Guide 3

Therapists

Questions:

How long have you been working as a therapist?

What models of practice work best with these couples who are or have separated?

Why could parallel parenting be beneficial for the family?

What do you think might hinder an agreement on a parallel parenting plan?

How can the parenting plans agreed upon be more sustainable in the long run?

What skills do you consider a mediator should have in order to aid a couple reach a sustainable parallel parenting plan?

eight sessions only: What kind of policies do you think should be in place to help parallel parenting?

What are children experiences of different kinds of parenting arrangements, relationships with fathers, mothers, siblings and step-families (parents and children)?

How do children and young people experience change in parenting arrangements?

In your experience are children consulted when parents are discussing a co-parenting plan prior to separation agreement?

What recommendations would you give to aid more couples reach effective plans? What are the important issues from the perspective of children and young people? What should a mediator do first?

Appendix D

Transcripts

Interview 1 Mediator

How long have you been working as a mediator?

13 years. I graduated before but have been practicing for 13 years.

Through your experience what are the main factors that may contribute for a couple to reach a parenting agreement?

One of the main factors is the emotions between the couple. One of things that hinder a lot is the sense of pique between parties. And if we are not flexible. If emotionally we are ok, we can rise above the situation, we will be objective and we will see what is practical in the best interest of the minors.

Two, how much they are in tune with the minors because you might have absent parents who are not realizing certain things. Example homework demands, extra curriculum demands, logistics of certain things, and also to a certain extent, how emotionally intelligent the couple is. Because to understand this factor, you need to be emotionally intelligent. Most will claim that they love their children however sometimes there will be other things which supersede that. Sometimes also although there will be a lot of good intent there will be factors beyond their control. Such as shift work, or else something that I find a lot, they will have in the meantime, both if they are married or not, because we have a lot of agreements of people outside of marriage, how much they will already have established another life. Sometimes I meet couples saying that they already have other children, have a partner and these are all factors that can help or hinder a parenting agreement.

What skills do you feel a mediator uses most to aid couples reach a parenting plan?

First and foremost empathy, so showing them they you are understanding their particular circumstance. Two you also need to be creative, and sometimes some lateral thinking let's think outside the box. Sometimes I have to say you have to be a bit confrontative, 'li ggibhom naqa f'sensihom'. Also a sense the skill of being practical and organized yourself, unless you have a clear and organized mind, they might take you at a tangent, they might confuse you and you will be blurred.

Mediator needs to be assertive, you say you either both put your minds together or else you will end up in front of a judge and will have to abide by whatever the judge is saying. So there has to be this shake up. Some of them end up in that circumstance and they don't like it. So they need to be shaken up a bit.

And obviously negotiating skills, and also caucusing I find it helpful when they are resistant, where you show them, listen its better a bit less than losing a lot more. So these skills I think.

How do lawyers contribute in the formulation of a parenting plan?

They can contribute by having same attitude and perspective of the mediator. So if they are also practical, understanding, seeing best interest of parties not to put it crudely, solely aimed at appearing nicely to their own party. They need to have some experience, because otherwise they suggest things that are not on at all. And also the will from their end, that they will truly help them agree. Cause if they have something set in mind before hand, not being flexible then it's not only the client who have to be flexible. If deep down you want to take them to court, to earn some hundreds

of euros, we might encounter these instances, then they will take the session in another direction which could have easily been avoided.

What type of parenting plans are being proposed at present and which contracts are passing through court successfully?

When you have parenting plans where you will have some access during the week and a sleep over during the weekend. So those plans who will be alternating full weeks, or half a week here and half a week there, we have judges who decide that if the parties agreed than its ok but there are other judges who don't accept these plans. This intendere of children living in a suitcase, because on the other hand children that's how they end up. I normally tell them the children have to feel that they have a base, belonging, I live in this house. A lot of times these type of plans where children have no stability, those will fail. It will depend on which judge you find. If we go for an application in court then, with a judge sentence, then normally it will be a two time weekly access and a 24 hour access in weekend. That's why people working with shift work I tell them let's put our heads together. Because then otherwise they are given the standard and the standard does not work for them. Sometimes we would have to renegotiate on the court decree. The decree will show them how much they need to put their heads together.

But the majority of judges will not accept a fifty-fifty plan. Even sleepovers. For example we have judges who do not allow a sleepover for children under 4 years. That is a very big bone of contention. Now we are trying to show, if that is the case, that this would be already happening. To try and get the plan to pass. But yes this judge might not allow a plan if there is a sleepover for a child under 4 years of age.

Could you identify any trends or patterns in proposed parenting plans?

Rather than trends, its realities that vary. Example if a couple work shift, one will take them when he is rest or off. And it also depends on what kind of shift work. Sometimes I have shift work, example nurse's day night rest off. Port workers, the parenting plan might be worked on three different weeks because their shift is one week night, one week afternoon and one week night. So you need to work around this.

Who has a stable job, normally sees the kids two times a week (after school) and then 24 hours sleep over or else they do alternate weekends or else two full weekends and two 24 hrs. Because you have to see that there is a balance as well. Because ok children might be with mother, but if mother who has residence, but then is taking them for extra-curriculum and school etc. then there won't really be time.

What type of plans do you consider to be most sustainable or others who will have to be revisited eventually?

Sustainability, very often it's not the plan that makes it sustainable but the reality of the parties. Example recently I had a couple who came back with an amendment. Because before they used to live in the same locality. Now mother has a partner, she went to live with her partner, so changed locality, so what used to work before now is not sustainable any more. Or else children have new commitments or the parents changes work. I had a parent who told me listen I will be working in a school which means I will be free after 2:30 and free in summer. So I want more access now I want

to vary access now. So it's more their realities I find which make it more sustainable or not. Because if the plan reflects their reality than it somehow works. But if it doesn't then there will be a problem.

In what way do you think the legal system in Malta should change to help couples in the process of parallel parenting?

The only thing that we will have a problem with, in this is that the access is the right of the father and not of the children. Last week I had this issue. I told the mother listen its useless expecting him to come for the children, if he does not come for the children, you can do nothing about it. It's not like maintenance where you report him. Because sometimes first they want residence then they don't realize that with residence that might mean the risk that children will end up a lot of time with you. Having said that you cannot force access down the throat. Because we do have parents unfortunately who do not want their children a lot with them. Having said that, having children crying on the step, its mental abuse. However the fact that there is nothing obligatory, knowing that you should have access and not going for them repeatedly, we should do something. There is another aspect of overtime. Certain professions can't refuse overtime and they end up losing their access continuously. This is what I see. Because the father it's easy for him to get out of it because it's not mandatory. But then should you force it down the throat. There we need to explore a little bit some kind of change that makes the parent who have access a bit more responsible.

What recommendations would you give on the mediation process, which could help facilitate more agreements on mediation plans?

I think that it's a matter of attitude, both from lawyers' and client's end. We tell them at the beginning that this is a negotiation process, sometimes you need to give in a bit, you might not end up with what exactly you have in mind but in a way, I don't know exactly how. Maybe with a marketing campaign, let's work together for the benefit of the child. Sometimes parties mix the reality of being a good father and being a good partner, so there will be pain, because there was betrayal. But very often with the right frame of mind, from all parties, wherever there is bon sense, very often we manage.

Are children consulted in the process?

At court rarely. When we really need to, we either talk to the kids ourselves, if we are comfortable or else an application is filed for a child's advocate. Sometimes we ask the couple, listen go and talk to the kids, see what they want and come back. Especially if are of a certain age. And sometimes they mention them, example listen my daughter told me due to private lessons its better if she goes on that day or the other.

When children are in a way consulted, is there any kind of effect on the plan?

Listen, sometimes the fear is of the children being involved in the loyalties struggle. So it can be a very sensitive issue. Whether it's better or not I don't know. The problem is also that we are separating at a much younger age so we have children involved who are very young. So there is no point in consulting the children. We are doing a lot of contracts on young children. In fact now that I am talking I am realizing that most of the contracts we are doing are either on children under ten or else then you will have the scenario of late teens where they are almost adults. So we won't even go into access. Then you will have the concept of free access. However judges will still want a backup

plan to protect everyone. However from 14 years upwards, because children are older, very often free access is accepted however under 14, the judges will always want a backup plan. And that is very important. Because it protects the father. Because if you have free access and mother does not give him the children, the police will tell the father that they can't help them. And if there is a dispute they already have a plan to go to.

Then sometimes six years down the line the plan could not be followed but that might happen anyway you know.

Interview 2 Mediator

How long have you been working as a mediator?

17 years.

Through your experience what are the main factors that may contribute for a couple to reach a parenting agreement?

Yeah, basically it depends on the outcome, not the outcome, outcome as well, but it depends on the relationship before they come to court before all this happened. Unfortunately, there will be certain issues such as if there was adultery, if one of the couple feels betrayed in some way, angry, upset, the first thing they tend to lash out is at the children, they use them, I mean, I'm not saying that they do this on purpose sometimes they do it without knowing the hurt they are causing to the children. However, because I'm in pain, I want to hurt my spouse and so the only way I know to hurt my spouse is through the children. You know, so it depends on parenting style they had before separation, the importance they place on respect children need to have, so this is even before, the respect on the parents. If you have someone who is dominant in the family, like a father, for example, or a mother, I mean equal. If mother feels that she was the only sphere in the family, the children and the home and this is where she had control over, so it could be that this carries forward into the separation and into access. So you hear language such as 'I'm going to give him the child', this is my domain into his. So yes what happened before, what happened recently, if there was pain, adultery, those play a very important part.

So before you go into access, you need to solve certain problems and to put things straight. And it's not easy. It's not always easy. But the underlying problems, you can't move forward in co-parenting, if there is no relationship at least between them to discuss. Because the hurt party is in a position of power at this point, or he makes himself into a position of power. Example a man who experienced adultery by his wife, so he knows that if he uses the children he will kill her. So what does he do, he tells her literally, even the language "I will take away the children, the children will come and live with me, you will have access only, care and custody... he will do anything to keep the children away from the children, and same thing may be done by the mother. So the children give the parties a position of power.

What skills do you feel a mediator uses most to aid couples reach a parenting plan?

So, empathy for the first person who is hurt. Its futile trying to be rational at this point, you know, you really need to empathize with this person, you need a one to one, someone to one time with her

and her lawyer. Cause sometimes the lawyer would want to tell her certain things or already told her some things in private. And you, as a mediator, reinforce what the lawyer has said. So you are a third party neutral. So sometimes lawyer will tell you yes I told her but please tell her again. So you reinforce what is being said from other people and you have to listen. You have to understand where she's coming from. And you have to, if anything refer her or him to counseling as normally they might not be ready to let go. There would be too much pain, too much hurt for them to do rational separation decisions. They are putting all this anger into a contract. So it's not only the children, but yes, children are more important than property because obviously there is their future and wellbeing. So empathy and you need to counsel this person to seek professional help, and you try and depict... What I tell them is that if you start seeing, if you could see the marks in their mental health, like you would see if someone had to beat them. You would be shocked. But the fact that you could not see what this emotional abuse is doing to the children, you know, you can't see the bruises that, but they're there and you know, I have no doubt that you love your children so why would you go down this path. You know what I mean why would you subject them to something like this. Yeah, you have to find the words, you have to, every case is different you know. But you can't be judgmental. That is important. Because the first instance is, how nasty this mother is. You have to swallow that down and figure out what is causing her or him to do this. It doesn't mean that they will change but at least you try, you know.

How do lawyers contribute in the formulation of a parenting plan?

You can't make a full decision until you are fully informed. If you're not fully informed, on everything, laws, whatever, you can't make a good decision. You can't sign on the dotted line. Yes, some hinder it's true. I mean but the majority of the lawyers they help a lot. Especially if you talk to them one-to-one. Most lawyers are reasonable. You know what I mean? And more than anything, they're subjective. That is important. Because they are not directly involved. However, on the other hand, if there is a lawyer that you trust that you know that normally she's the rational lawyer and she puts the children 1st and she tells you listen, this isn't working. This will not work because the children are in danger. So in that case, as a mediator you have to listen as well. You can't promote something that might be... so the lawyers can help as well by saying, you might suggest that children's advocates are involved, psychologists, social workers you know. So you work in tandem with a lawyer.

Ideally with the client, but if the client then is in a place where he has so much pain that he could not be rational, then it's not the first time that I speak to the lawyer and I tell him ok so what do you think about this solution and he says yes do it, tell her, because it's useless that I tell her myself because she won't listen. And as a mediator, if you think that children, they would benefit from a child psychologist or a social worker or a child's advocate, not the child's advocate on his own, they're good. But they have to work in tandem with their decision otherwise you will have nothing. So then yes, you could do an application and say that a psychologist need to be involved. And more often than not lawyers, they will agree with you. So yes, they could be an ally, you know, to help you.

With this, so even in the sense, cause your aim is the co-parenting. So if one party is against at all costs to agree, and you honestly believe that it's in the best interest of the child. Then you can speak to the lawyers and get to the underneath of it, if you know what I mean. You ask, why, what is happening.

What type of parenting plans are being proposed at present and which contracts are passing through court successfully?

Yes, yes. Normally it's two twice during the week, for a few hours, then a sleepover during the weekend. Normally that's it. If this is good or not, that's another question however normally, that is what the judges normally allow.

Could you identify any trends or patterns in proposed parenting plans?

I can tell you about Gozo and Malta. Gozo they are allowing equal co-parenting. But I'm a bit worried that this is being asked not because they believe in co-parenting but for one party not to give maintenance. You can't co-parent if you work long hours, if you are self-employed one thing but if not, who is going to look after the kids. Ok they go to their grandparent, but you can't dump them on the grandparent, first and foremost it should be the mother. Even if the grandmother is willing. So that's an issue. But yes, Gozo court is much more lenient than in Malta.

In Malta, it depends on the judge. There are judges who will at all cost say no. so maybe one sleep over during the weekend but that's it. Then you have other judges who might accept according to the case, however it's not the absolute practice. Not as much as is accepted in Gozo.

And at the moment there is a trend happening in Gozo. It's going up because one managed, so now this is something I am seeing a lot of.

So you are telling me that this trend is about equal parenting? But then you are telling me that they are requesting no maintenance?

There will be no maintenance but then they share education, they share extra-curricular, etc., if she is going to buy a laptop, and you know extra-ordinary, otherwise no official monthly maintenance. So this is worrying because I don't think it's legally allowed. But Gozo it is clear that the emphasis is for shared parenting to be related with no maintenance. There was an instance where they calculated that the child will be for a few hours more with the mother, and there was a whole ordeal about it and when he was asked to give a little maintenance, he actually reduced his working hours so they will have equal hours and he will not give maintenance. So it's clear that it's related to money and that is what is scary. It's not because listen I want to be involved in my child's life, no, this is financially motivated, I feel, and that is my opinion.

What type of plans do you consider to be most sustainable or others who will have to be revisited eventually?

Yeah, shared parenting when they're young. When the children then have exams, private lessons, then it's panic. They want to come back. And one of the parents would want to come back.

But would that be because the shared parenting did not take in consideration school age children?

Not school age. When exams start, when private lessons start. Children are busier. It is very rare that both parents are invested equally in their school work, in their studying. Or they have the same methods or for example consequences. Example you did not study, you did not do your homework, so the consequence is you will not watch television. If I gave a punishment, you need the most stable

of relationship for you to have continuation. To follow through. So most will tell you, because I gave my child a punishment and the other party did not see through it. So normally there will be mayhem.

For me, co-parenting in summer, ok fine but in winter there should be a decision between the parents, who is going to be the main enforcer on education? Who is going to take that? If the mother is not capable, then the father should do it. Is he able to do? They have to come to an agreement as parents like you would when you are married. The only thing is they have two residences.

But that's the ideal. So yes, the pattern is this.

We start co-parenting when kids are young, however invariably, I will say that you will have one parent coming back to court because the co-parenting isn't working. Also there will be a trend where one of the parents' work with shift hours. And you will have one type of access. And this causes a lot of hassles normally for the children and then especially if they change job and things become like no more shift are involved, then we have them back again because they don't agree. But that is the main trend for me. Co-parenting without going to a professional. I feel they need a family therapist to sit down and seriously work out the routine for your children. What is best for the children not what is best for you? Because normally they work out the plan according to what is best for them. When then they realize that what is best for them and what is best for the child is in conflict, then they feel guilty and they come back.

In what way do you think the legal system in Malta should change to help couples in the process of parallel parenting?

OK, well, where am I going to start? One is that there should be a certain formula how maintenance is worked out. There should be, when parties don't agree on the children, they should be not forced, but almost, they have to go to a family therapist. You can't just come up with plans with no knowledge of children's wellbeing, or you go to a judge and they decide accordingly, with all due respect to the judges, but you need someone who is an expert in child's development. Judges are professionals, they are experts in law. Or else judges have to be trained in child psychology. Or they should have an expert with them. To refer to. You need, the law must be firmer about referrals to child psychologists and family therapists. Even better if they are family therapists. When normally when the mother, normally it's the mother, does not receive maintenance, she files for mediation, the father does not turn up, its taking months and she has no maintenance for her children, for five months. She has no money. Then on the other if father has no access with children. Again, he opens mediation, it takes three, four months and he still hasn't seen the children. So both for access and maintenance, there should be decisions much much more before, quasi quasi within a week or two, there should be a certain amount of money due, irrespective of how much but she or he has to have money for the maintenance, for the children and the father or the mother must have access. Then if there are concerns give supervised access, but give access immediately. Otherwise the system as it is, they know how to play this system and it doesn't benefit the child at all.

Now how to do it, that needs to be seen, but that needs to be done. That is something that has to be addressed, that is the first thing that has to be addressed. That a court application is filed and you have to wait three months for a reply, now I know that they have a huge case load, the judges, but

how could a mother live with no money. She becomes more vulnerable. More in that person's power, because she depends on him or him in her power, that has to break for sure.

So, ideally having someone else, not necessarily the judge, who would be able to at least take certain decisions on these things, in the immediacy.

Yes, yes exactly. I would say a mediator could be assigned to a judge and in that first mediation, if not before, you listen to this and you say, listen, you have to give a minimum maintenance and have a minimum access, immediately. Obviously it has to be structured I will not invent this, the judge will decide on minimum.

Then if parties say listen he's on drugs or whatever, then you organize a supervised access. You know you err on the side of caution but at least he could see the children. Then if he does not want to see them supervised, it's up to him, but at least he has a right to see them, he has a choice or she has a choice. So yes, those for me are fundamental. We can't wait that long. It takes too long. Too long.

What recommendations would you give on the mediation process, which could help facilitate more agreements on mediation plans?

Get a good lawyer. If they are amicable, ermm, what would I tell them? That's a very good question. I never, I mean, I had people who came to me. I would say if you have children, don't use them as weapons, first thing. That is very important. Try to go into mediation with a clear head, in the sense, if you have any angers, anger issues or whatever, get them sorted out before. As it's very difficult.

A good lawyer, I honestly would say that, get a good lawyer, you need to know what you are entitled to. Then its fine to decide otherwise but at least you take an informed decision. Otherwise without a lawyer you will not be taking an informed decision.

I would also tell them, what you're agreeing on today might not be what you feel in 5-10 years' time. So be very careful. So don't assume that you will get along well forever. Don't be naïve. OK, so make sure you know exactly what you're signing. It's very important.

Are children in any way consulted in the process?

No. Rarely, not no. Very, very rarely.

And what do you think about this?

I feel that children should be consulted by professionals. I never spoke to children. Actually I did but the children were 16 years old. They were older, but I would never assume to know what a 3,4,5 year old whatever, wants. Number one, I don't know what they've been told before. The parties might have tried to manipulate them. You need a professional, so yes they should be consulted by a professional. A lawyer is not that kind of a professional because our lawyer is a professional in law.

So it's fine if the lawyer liaises with the other professional like a therapist, and yes, and they work together. And the social worker, I think that would be fantastic cause you would have a whole picture of the situation. You need a whole picture, so until there is a structure in place earlier, it is useless to talk to children. You need professionals on board. Because with all due respect to those mediators who speak to children, what am I going to do with this information? Honestly, what am I going to do? Let's say, what am I going to do? If he tells me something that is critical, dangerous, maybe I

could ask to speak to the judge and inform him. Or else I tell them before hand and they sign a declaration that whatever the child says, I can say to the judge. Possibly. But what do I do? I mean, what can you do, if they tell you, don't tell mummy, don't tell daddy. So how will I then continue mediation, stepping on egg shells, can't say anything so as not to give up the child, so my hands are tied. So I don't know why mediators speak to children. For me it is dangerous. They can lead you down a path which is absolutely something made-up by another parent and they have groomed these children into..... It might not be. It might be the honest truth, but how am I going to know if this is the honest truth? What the hell am I going to do with this information? So yes, you need professionals on board. That's it. And then children should be consulted. That's exactly what should happened.

Interview 3 Mediator

How long have you been working as a mediator?

15 years

Through your experience what are the main factors that may contribute for a couple to reach a parenting agreement?

I think that the importance is that they understand that the decision should be theirs, not their parents or their partners, they don't have to please anybody else except themselves. Important that they understand that their primary aim is the well-being of their kids. They have to agree on this. They might have problems together but both their best interest is the children. Both love their children so their main interest should be the children.

You will have couples where some of them will still be in denial. In this state it is difficult for them to reach an agreement. So they need to work on themselves first before they work towards an agreement. Otherwise they are hostile towards one another and will not manage to agree. Even if they need professional help, they should get professional help to come to terms with what happened to them.

What skills do you feel a mediator uses most to aid couples reach a parenting plan?

Empathy is very important, and not being judgemental. Mediator should not judge, if one is filled with tattoos, it's important not to judge. Listening skills are very important, because these skills allow you to pick up something, a point, that they would have mentioned, and you could reflect this back to them. I love telling them, it's not about what you say but how you say it. Mediator also needs to keep contained and control her own emotions. Because sometimes you might experience projection and it's important you are aware of these feelings and remain in control of this.

How do lawyers contribute in the formulation of a parenting plan?

I studied that in mediation lawyers do not need to be present. They should not have a lawyer and in a way I agree. I had a particular case where I managed to work, reach an agreement, finally they decided to reconcile, but they could reach an agreement independently, with no lawyer.

Lawyers have first and foremost to understand that the mediation is not theirs but of the parties. Now if one of the parties said something that he should not have done and the lawyer feels he should draw his attention, he could take him out of the room and talk to him alone.

He also should not be offensive towards the other parties. These happen. Or use information against the other party during mediation. And its important that lawyers do not fight amongst them. I just ended a mediation now, the lawyers ended up fighting. Some lawyers think that the more they fight the more the party will be pleased with them. That is false. Lawyers might have personal grudges towards one another. Some might be loud per nature but genuinely helping clients. There are others who calmly help clients, whilst others are not prepared at all. But the majority co-operate.

Could you identify any trends or patterns in proposed parenting plans?

Yes yes I am observing. 10 years ago, it was more of a practice that children reside with the mother and father sees the children twice a week. Normally Tuesday and Thursday. If you go to McDonalds on those days you find a lot of fathers with their kids. Sleepovers were not always present but then this was introduced. Nowadays all this is very different. I am now seeing, first of all we did not have young children or babies. Nowadays we are having more young children, even babies. Few months or toddlers and their parents are separating. Yes before parents used to take longer to separate, now we also have babies. This is evident. I also see difference in an unmarried couple. Here I see a difference. When you have an unmarried couple, ever since the baby was born, he still lived exclusively with the mother. The father, even if they still went out together, but the pattern was always with the mother. When these fight there are huge problems. The mother becomes more possessive. Some work out well between them but the majority the mother becomes possessive, maybe because children are still very young, babies and toddlers.

In regards to patterns, some are trying to get a day with one party and day with another party. This I really don't agree with, but unfortunately a contract was approved. Then there are others who ask for one week with one party and one week with the other party. Then others divide the week, Sunday till Wednesday with one party and Thursday till Sunday with the other. These kind of patterns and all year round not only in summer. But I think that the majority of them is because their interest is not to give maintenance. Because they say since we have equal time then no maintenance is due to either party. And there were some contracts who passed in this way. I believe they are asking for shared parenting to avoid maintenance. The priority is financial. But then there are genuine parties. I also believe it's because mothers are working more so they do need the children to spend more time with the father. But in all this, whatever the reason the reason is always in the best interest of the parents, not of the children.

What type of plans do you consider to be most sustainable or others who will have to be revisited eventually?

When kids are young, its normally fine. Joint care and custody, three times access and alternate sleep overs, that is standard, we work. But when boys reach the age of 14 or 15, they want their father more. Mother will resist this. First of all she would be afraid that she will lose the relationship with her son, and secondly she would need to give maintenance to the father, something that she would not obviously want.

I personally like to speak to teenagers myself. I get permission and speak to talk to them alone. I am worried about children who are alienated however that is something that is worrying me a lot recently. And alienation not only from parents but it also comes from relatives, grandparents. It's terrible. I really worry. When they have 14/15 years, several times boys want to go to father and girls too! Mothers say that fathers allow girls to do whatever they want. But it's not always the case. There are fathers who discipline. However yes I do think that fathers are more lenient with girls. However yes when children grow older, some agreements would not work out and need revisiting.

When teenagers are in front of me, normally I recommend that we have free access because it should not be an agreement between parents but taking in consideration the needs of the children. I had a particular case a boy in Junior College, telling me when I am going to study, I remember about my parents arguing and I can't even concentrate. 17 year old boy, another example, just because he overheard his mother talking to a friend of hers, his father treated him as a hero for exposing his mother and then all hell broke loose. Children knowing exactly what is happening in court, what was said in court, what mediator said, why are you telling these things to the children? Treat kids as kids.

In what way do you think the legal system in Malta should change to help couples in the process of parallel parenting?

I think that the system should start including a session before mediation. Be it anger management, whatever, with professional people, not lawyers, it should be obligatory, a place where they can process their feelings before coming into mediation. Because otherwise they come in the room and you only see daggers and arrows. It is important I am always insisting on this.

I also talk to the parties alone, as a first session. So new cases, I talk to them together but without their lawyers. Some lawyers do not like that, one of them reported me but he was not right. I see the case first then I talk to them together, I introduce myself, I always ask them whether they worked on what went wrong in their marriage. I always say this, do you want to pause and want counselling. We are ready to help you. I did refer sometimes, but if one of you still wants to go along I will respect that party and we will move forward. I think I had around 15 cases who reconciled and that is a great satisfaction. It is still a small number in 15 years but I am still satisfied I managed. One cases, the wife came back happy and she forgave her husband and they will reconcile. One lawyer told her what no of course not you should not forgive him. The other lawyer luckily was so understanding and he encouraged them a lot. And after several years, they are still together now.

So this kind of pre-assessment session, even some time, not more than one session, but it should be enough.

What recommendations would you give on the mediation process, which could help facilitate more agreements on mediation plans?

I don't agree with all instructions given. Example being rigid, just 8 sessions in mediation. Why? If they are now calmer, allow them to take more time so they reach an agreement. You can't close when they arrived at the peak of the possibility of agreement. But then you have to be careful that you won't have delaying tactics but then it's the mediator's experience who will come into play. You have to be clear sometimes, you tell them either you agree till next time or I close, however you still have to be flexible. Even the fact that they can only open 2 mediation sessions. What happens after? They can't even file an application in court?

Are children in any way consulted in the process? And what do you think about this?

Yes I do. But then when they are very young, then I will not speak to the children. If they are young, they should be spoken by a professional, by a therapist or a person who knows how to speak with children, but not lawyers and not mediators. I would also suggest the school counsellor as they know the children well. They can see the children's behaviour, at school and with their peers, children already have a trust in the counsellor. Now I know it's a big pressure on the school but it's important. They know the kids. It's difficult for someone from the family to be independent and talk to the kids. It has to be a professional. But children have to be consulted. If I really need I ask for a child's advocate but if they are teenagers I will speak to them myself. I get permission whether I can speak about what they told me. But having children telling you I hate my mother then I realize that the mother is sick. That's not fair the father is obliged to say that the mother is sick. That's where alienation surfaces. And I tell the parents I tell them that when children grow older they will understand what it means to be a mother. We should never say anything about the other party. Never.

Interview 4 Mediator

How long have you been working as a mediator?

I have been working as a mediator for eight years

Through your experience what are the main factors that may contribute for a couple to reach a parenting agreement?

Sometimes when they come with no lawyers its easier. People don't know about this system, of going to a notary and it's the notary who writes the contract. Most people don't know this is a possibility. It depends on lawyer then. Most of them try to help but some make it even harder for everyone. The level of education of the parties also play an important role, might be able to understand more the needs of the children. And finally the level of maturity of the couples and if they manage to keep the best interest of the children first and foremost, normally they manage to agree.

What skills do you feel a mediator uses most to aid couples reach a parenting plan?

I am coming from a helping profession. I mostly use empathy, I really try to understand and rationalize with parties. Sometimes I could not connect with the party, but I remain calm and ask

parties how do you think the child will feel seeing you reason like this? How will you help the child with your thinking. You also need the capacity to get on well with the lawyers because it's not only the parties in the room but the lawyers.

How do lawyers contribute in the formulation of a parenting plan?

You need to have control of the room, you need to give structure to the session. Sometimes lawyers want to start immediately they don't even give you a chance to do an introduction. You need to stop them, with empathy but you need to gain control, without being arrogant but firm. After all how you act with the lawyers will reflect on parties so you need to be very careful.

Could you identify any trends or patterns in proposed parenting plans?

I can't say that in the past 8 years things has changed much. The trend has always been that the mother is primary carer and father has twice weekly access and a sleep over in weekend. However the last two years I am seeing a movement that male figures want to be more involved and are introducing the idea of equal parenting.

I always tell them children can't be divided 50/50 they are not a toy. We need to see the best interest of the children. Sometimes they propose Monday to Friday with one party then weekend with the other and then they swab week after. I have mixed feelings about this.

I had a couple, they mediated for two years, they were not married and both professionals. Both young and when still in a relationship they lived two days with one family (maternal) and two days with the other family (paternal) when they were not together again they wanted to keep same arrangement, two days, two days. I did not agree. I mean one week one week maybe but two days two days. They said because we are used to this and I told them yeah well your relationship did not work out. They presented the contract and judge did not accept this obviously. However one party did not want to give in. then I suggested one week one week but they did not agree either. No two days two days is definitely too much for the children.

The most popular is either one week with one party and another week with the other. Or else three days and 4 days and then they swab. I really wish there is a study about this because I want to know how long term the children will be effected. I had two cases where parties did not reach an agreement they were at a deadlock due to this.

I had a couple who proposed one week with one party and one week with another party however the children after a few months, they were teenagers, they could not cope. Finally they ended with one teenager with a party and the other teenager with the other and the five year old ended up coming and going. Then I had to involve school, the counsellor I involved them. The party were agreeing but both myself and the lawyers were not agreeing. Then the counsellors said that the children are coping but I don't know, a five year old how could he cope. Anyway the contract passed but I really wish to know two years down the line, are these contracts adhered to? I don't know.

What type of plans do you consider to be most sustainable or others who will have to be revisited eventually?

It depends on maturity of parents. How capable are they of being flexible? Without filing a report for every scratch, without opposing for every birthday party, you know, their maturity is first and foremost and their flexibility.

What do you feel are the key elements in legislation in your country which enable the effectiveness of mediation and parallel parenting?

I always say that access is the right of children and not of parents. However there are parents, both women and men, who absolutely have no interest in children and you can't enforce access. This month I had two cases in Gozo, no maintenance and no access. It's unbelievable. In Malta this contract would not have passed for sure.

What recommendations would you give on the mediation process, which could help facilitate more agreements on mediation plans?

Yes ideally first session parties are to come without lawyers. I think it's difficult to convince lawyers but a kind of pre-assessment session. Obviously in cases of domestic violence lawyers can file a court application. In such cases the role of the lawyers is so important because otherwise the victim's interest are not protected.

I like contacting psychologist or family therapy, I make contact with these professionals, for me it's important. Some mediators are wary of this but I feel it is important because I am here to help them reach an agreement. I ask parents for permission to talk to professionals and most allow this.

Are children in any way consulted in the process?

Yes I talk to children. Yes it is important for me. I inform parties and tell them that legally it has no weight, I can't report to court like a child advocate. However it's better if they talk to me than with the child advocate. I am less intimidating, I can explain, and with permission of children. And not young children not 5 years, but teenagers why not. This contract effects children directly, obviously they need to be listened to.

Then I tell the children listen tell me what I can tell the parties. What can I tell mother and father? And we agree and I talk to the parents and tell them the suggestions and we try to find an agreement. This helps parents. Even before going to court, if a child tells me listen I don't want to go with my mother because she is always drunk. Then the parents realize that it's better to reach an agreement in mediation because the children will say the same thing in front of the judge so it's better if they tell me.

I think it's important. I am used talking to children even due to my background. Obviously I know parents might brief children what to say. I hear parents here briefing children what to say before going in to talk to a child's advocate. So this can happen with me. So I am aware of this. But maybe also involve professionals, teachers, counsellors who can help too. But yes it is important.

Interview 5 Mediator

How long have you been practicing as a mediator?

I have been practicing for the past 7 years.

First and foremost, maybe we can use some time to discuss the Australian situation in mediation

So, the part of the family law requirement is that in order for parents to go through the family law process, they must first engage in a mediation setting of any kind. So our involvement at International Social Service Australia is generally with parents, one who is in Australia and the other who is overseas, but on the local front, parents who are about to engage in the family law process do initiate mediation through local services that are available to them here. And it's very much based on a very strenuous and very vigorous actually intake and assessment phase whereby the suitability of mediation against a number of factors is assessed and determined prior to mediation of any form is attempted or initiated started.

So typically speaking, what would happen is you would have one parent contact us as a result of being referred to us to inquire about the mediation process, how the process works, how the process will apply to them, and what they can expect from the mediation. Persistent in itself, so once they have made contact with us, we would share the requirements of us as per the family law regulations, we provide them with information about the confidentiality of mediation. We inform them about that inadmissibility of documentation in courts. We also inform them about our limits to confidentiality, which being mandatory reporters, you know, if we were to come across any sort of information that suggested a person, child, that the person themselves or pick property was to be at risk of harm of any kind, we would then report it to the authorities.

We, in this process, try to get an understanding of whether that person has the capacity to negotiate or is or whether they're willing to negotiate or come to some sort of an agreement and basically get an understanding of what it is that's led them to mediation.

So we gather as much information as we can about the history and the background, looking into all sorts of things like whether there was any domestic violence or any form or there any mental health issues, whether there's any drug and alcohol issues, whether there's any sort of emotional, physical abuse of any kind, we would look into that. And as I said, we would also look into the capacity and willingness to engage in the process based on the conversation that we have with the parents. We would then assess whether it was suitable to proceed.

The family law requirements in Australia ask that we, upon receiving a request for mediation, we outreach to the second party. So if the mother has come to us for mediation with the father, we would obviously accept and welcome her request and then we would outreach to the father and we would then, if we were to hear from him, fantastic, we would then go and have an intake session with the both of them separately. But in the event that he were not to respond to our first outreach to him, we would do so again and again because the family law requirements are that we do this. Because of failure to participate in the mediation process can lead to mediators issuing them with a what's called a section 60 I certificate, which basically apparent can take to court to show or demonstrate that they've engaged in the process or haven't so. It has a bit of a, well, it's a very voluntary process and we let people know about this. The notion of a certificate being issued to

stipulate that they haven't attended can sometimes result in people agreeing to take part in that part in mediation because they're not wanting to do anything wrong with the courts.

And upon having that conversation with the both of them, as I said earlier, we would, you know, the intake sessions, we would conduct them both and determining the suitability, it's very, it's very rare that we would say that a case is unsuitable, but there are occasions where we do and generally, and this is very general, because of course they're all confidential, but generally speaking, in order for it to be deemed unsuitable, there would need to be some significant history of abuse or a significant sort of inability to engage in the process meaningfully. Or, you know, their ideals, or their views are so far apart that it would deem it would be unrealistic to expect that they be resolved. So as I said, it's very rare that that happens, but it can. And when it does, you issue the certificates to reflect that. There are a number of certificates that we can issue. One of those is that both parties have attempted mediation, but that it's not being suitable. The other is that mediation has begun and after having begun, it's become unsuitable for whatever reason. And a number of others so once we have had that intake session with the both of them, we would then bring them together in a zoom setting mainly and invite them to formulate what we call an agenda and based on what it is they'd like to discuss, we help them formulate an agenda with language that is neutral, that doesn't, you know, that is mainly focused on the needs of the children and is not looking at the past, but is very much future focused, to ensure that these parents can have a discussion around what they think needs to happen.

Every mediation that we have involvement in, results in meaningful outcomes for the parents. A lot of the time parents come to mediation irrespective of whether the court requires them to or not, because communication has broken down at some point and they're not having as much contact as they'd like with their children or they're not receiving as much information about their children as they would like. So mediation is often a very good way of parents to get an understanding of what each are going through without having this assumption that they know what the parent is doing and it's, you know, they're out there to punish them or they're out there to not include them in their child's lives. It's often we find that when parents get together to have that opportunity to talk about what their common ground of their children is they get a better understanding of what of what each are thinking.

Our role as family dispute resolution practitioner in Australia being governed by the family Law regulations is that we operate very much with the best interest of children at the fore and at the very core of what we do. So if we were to express or view any express or put forward any views or opinions about anything, it's not about the parents, it's always about what our experience is in the children and what works best for them. So if we were to be made aware of an unrealistic living arrangement, for example, where it would be sort of destabilizing a child's routine and life we would put our opinion forward and enable the parents to then talk about what they've heard from us.

In some cases, where it's appropriate where the children are old enough and where we think it would help the parents to understand what their children are thinking, we would also offer what we call a child consultation session, which is basically separate to the mediation process. One of our child consultants has meetings with the children involved as well and talks to them in a child appropriate manner about what they would like about what their views are, what their needs are, and based on

what the children consented to being brought back to mediation would then be involved. They would then feed that child consultant back into the mediation process to enable the parents to hear what their children actually think and we find that to be an incredibly beneficial process because often times parents are so concerned and so consumed with the legal battle that they have and what they think their rights are, that the hearing of the children's voice in that process helps them to think more along the lines of what their children should be, what they should be aiming for with their children.

So that's sort of the mediation process in a very brief nutshell. But we've not ever had a case where we've not been able to mediate something for the parents that leaves them better off and that leaves their children better off, which I think is very important because it requires a certain element of commitment to the process, and it also, you know, helps parents to come up with some sort of parenting plan that they make themselves as the experts for their children and, if they come up with agreements based on the agenda that we've formulated, if they actually sign and date the document, both of them, they can lodge it into the court and have it turned into a consent order, which essentially means that they take the court work out of it and put forward what they think their children need moving forward.

So it takes the element of the time consuming, the costly process that court can sometimes be for people and this helps them as the experts of their children's lives to come up with what they think would work. So basically our involvement is very much aimed at helping parents to come up with an agreement that they are agreeable to implementing into their lives, that they think is in the best interest of their children and obviously, topics can vary greatly. You know in more recent times it's become things like whether children should be vaccinated against COVID-19 or what country they should be living in, how frequently they should be visiting the parent that's not in the country that they live in. So there's a whole range of things that we help parents to discuss, but that's in a nutshell how our mediation process works.

And are there any time constraints to the mediation session?

Ok, good question. So sometimes what happens is our Australian Central Authority or the Attorney General's Department will make a request of us to help parents mediate, particularly in cases of Hague 1980 Hague Convention matters, at which case they would have a hearing set, I don't know, in a week or two time or three weeks' time and they ask that we try to complete it before then. Which of course we would priorities that and try to get the process running at, you know, started as quickly as possible. So when there are court dates upcoming or travel dates upcoming in particular, we would aim to get the mediation process started and resolved prior to that. Of course, as I said earlier though, if you have one person who's instigated the mediation and the other person doesn't know about it, we do need to allow for, you know, we generally speaking we have three outreaches to the other parent and we allow a week to elapse between each so.

In the best case scenario, that would respond very quickly and we would then make arrangements for their intake sessions very quickly. It's very much dependent on how quickly they respond. But otherwise, generally speaking, it's as frequent as they need it. So sometimes people feel that one session is enough and one session generally goes for three hours. In some cases, one session is enough, but in some cases parents just like to come back for a second or a third session to go over the things that we may not have been able to get to on their agenda and to report back as to how they feel the previous agreements are working or not because it enables them to sort of put that

agreement into practice, if you like and then come back to us and tell us, OK, so this has worked, but this maybe we can change or once they've seen a willingness to facilitate flexibility or where they can see that the other parent is flexible. They're, sometimes in some cases, saying or maybe we don't need to be as strict about that. Maybe we can be a bit more flexible, so it actually helps to besides what I said earlier in a lot of the time, parents come with preconceived ideas about what they think the other person is doing or what they're trying to do. But when they actually get the other side of the story that they're lacking, it helps them to form a better understanding of what's going on. And with that being the case, they're more likely to amicably come to some sort of agreement with one another so once they can see that the other parent is amicable and is actually wanting to make things work for their children they're not as afraid to discuss things with them in the mediation session anymore, so there are no restrictions on the number of sessions. Perhaps the only thing that may be of restriction restrictive factor is that International Social Service Australia, we do charge fees for our mediation service. There are local services that provide the same sort of service, but my understanding is that a lot of those have very long wait times. So if there is a pressing need for the mediation to be had by a certain time and the waiting list is much longer than that, it's difficult for parents to wait around for alternative mediation. So we don't have any waiting list at the moment. We do have busy periods where we think we might need one, but we ultimately get around to facilitating all of them as quickly as we can.

So to answer your question, if there is an upcoming hearing or travel, we would most definitely priorities getting everything done before the travel, but if there isn't any time restriction or if we don't have a restriction on the number of sessions that people need, we wouldn't restrict it to one or two sessions. It's very much dependent on how frequently and how often the parents would like to come back to talk about things and it's not unusual for us to say after a session or two, of three hours it's not unusual for us to say, OK, well, how about you give this a go? And if you want to reengage in the mediation process to talk about how it's going, call us back in a month or two just to see whether you would like to talk about it again. And some people take us up on that offer, but other people are then able to, as a result of the agreements that they've made, communicate with one another in a much more respectful manner, so they don't need to come back to mediation. They can sort out their differences between them.

We're not restrictive at all in terms of time and duration and how many sessions we asked that parents enable 1 1/2 to 2 hours for their intake session and then every mediation session is booked for three hours and it is very, very unusual that mediation sessions would go for any less than that. So that's how it works in a time sense. But as I said, the only thing that might restrict parents from coming back is the affordability of it. And even though we try to make it affordable, and even though we have concession or discounted rates for welfare benefits, I'm mindful that any expense in the life of somebody who's on very little finances can sort of hinder their willingness to engage or ability to engage in the process in a meaningful way.

What do you deem to be the main factors which would actually aid a couple to reach an agreement?

So as I said earlier as well, often times parents are so, because they've received legal advice and because they've already gone through, generally speaking, a divorce process or a separation or they have re-partnered, they're so focused on the other party and what they think their rights are

themselves that the voice of the children is what is in the best interest of the children is lost amongst that conflict between the two of them. So often times it's about pointing out that children, generally speaking, can live with parents who are separate, you know it's not a problem for children to have parents who are separated. It's, you know, it's a reality of life. But what children can develop some emotional issues or behavioural issues or psychological issues over time with is parents who are in conflict. So oftentimes it's about us coming into the process and saying, while we understand the differences of opinion, and while we understand the change and shift in all of your lives, it's important to focus on what's in the best interest of your children, and that way we're automatically getting them to focus on an area that's a common ground of interest for them.

So factors that prevent them, perhaps from being able to engage in the process initially, maybe you know, as I said, that, you know, she's just trying to punish me or he's just trying to get me back for having the kids or whatever it is getting them to focus on that common ground and other things that I did the process of course obviously is having people who are trained and have experience in working with families in conflict, so that if there were any attempt to manipulate the process or to I guess, control the process to satisfy and suit their needs, you sort of become aware of it and you pull them up on it and you ask that that not be the case.

What kind of skills a mediator should also have in order to be better equipped to work with families?

So all of the mediators that we have at ISS Australia social workers and I'm also a lawyer for example, and I'm one of the mediators here too, so it's good for us to have a general understanding of what the law requires of us. But at the same time to not lose focus on the human element to mediation, it's not just about the legal battle and it's not just about the court outcome. It's about helping people to get to a meaningful resolution with one another. My background in social work really helps me because social work, you know, you talk about communication skills, you talk about how to diffuse situations. You talk about how to help people manage with other stressors going on in their life. You talk about how to support people when there are cases of domestic violence and drug and alcohol, and you have an understanding of what a mental health illness does to somebody and how it can alter their decision making and behaviours, so that to me has been hugely beneficial. And in terms of the child consultation component of the work that we also do, is to have special training on how to, I guess, provide age appropriate child counselling, child discussion, child focused therapy. How to sort of gain trust with children? How to but make it age appropriate.

Unfortunately, mediation sometimes is viewed as an opportunity to get the certificate that they need to go to court with. Mediation is so much more than that. And if it's used and utilized appropriately and what it's intended for, it actually has, in my opinion, a far more beneficial outcome for families than what are called order ever could. So these skills as I said that we find very, very helpful are very much our social work skills. Me having a lawyer qualification, I have a basic understanding of the law, so it's good for that to be in place. But when you're in your mediator role, you're not providing legal advice and you're not able to provide any legal advice. But surely our social work skills come in very, very handy because it's about managing complex human behaviour and social workers get that quite often it's what we do. It's our bread and butter. So I find that to be quite useful and beneficial in the mediation setting for sure.

How can lawyers contribute to such mediation sessions? Are lawyers present in your countries?

It can be both. To give you an understanding, so while initially when the referral or the inquiry for mediation comes through, while it would be one mediator doing the intake sessions with both parties separately, when we come into the mediation session, we use what we call a co-mediation model, which is basically two mediators and the two parties. And if both parties were agreeable and if both parties wanted their lawyers in presence, we wouldn't oppose to that. If that's what they wanted to do, we would welcome that. But we need to be very, very careful about not allowing the lawyers to run the show based on what they think is in the, you know, what they think their client needs so where you from the very outset would let lawyers know that while their presence can be facilitated, it's not a courtroom and it's definitely not, you know, we're no judge. The people who are making the decisions and coming to the agreements are the parents. So while they're legal representation can be in the room if they want to be it's not necessarily about the legal battle in itself. It's about the people and how to best help them come to an agreement. And if they're lawyers are agreeable to that, we'll in fantastic. Because then that's everybody coming together to make it work. And it's, you know a much cheaper and quicker process for the majority, though, like legal, represented mediations, is a very, very small portion of the mediation that we provide. It's more often actually that uh, while it's the two individuals concerned. In some cases, we also allow support people to come in so. For example, if there is a history of domestic violence and there is a domestic violence support worker and one of the parties says I would like my support worker to be in the room with me, we would then extend that invitation to the other party to say, well, party one is having a support worker and you're more than welcome to have a support person of your own, which might be their counselor, for example, or their psychologist or whoever it is they want to bring into the session. And before any other person is able to be present in the mediation session, we would get every party who's going to be in the room to sign an agreement to mediate, which basically binds them to the rules and procedures that we're all bound by.

So they cannot report anything that they hear back to anybody else. It's confidential. It's inadmissible. They can't have any say in the matter. They're just there to be a support to the person. So that would also include lawyers. So irrespective of what the qualification or who the person with them is that we all are bound by the same regulations and they're unable to do anything other than be a support person. So literally they would be, I mean if it's a zoom meeting or a team's meeting like today for example, and I'm engaging in mediation, you wouldn't even be able to see them. They would just be in the same room as the person, but they wouldn't engage in the process in any way, shape or form or they wouldn't be allowed to be in view, because often times its either new partners or parents and sometimes these are areas for contention as well. So we try to minimize anything that's going to make the process uncomfortable for any of the parties involved while ensuring that they're supported at the same time.

What do you think makes an agreement sustainable? And do you identify any trends or patterns in co-parenting plans?

I guess being in Australia and doing international family mediation, it's not like Europe where you know flying from the UK to Spain can only take two or three hours, whereby it would be possible to realistically facilitate travel between the two countries on the weekends for example. When you're

in Australia, generally speaking, you know the nearest country is a six or seven-hour flight away. So in terms of in the Australian context whether it's sustainable to suggest 5050 or to suggest biweekly contact it's not very sustainable because realistically speaking flights from Australia to anywhere are really expensive and be really long. So by the time a child for example reaches Australia to Singapore, they've had a 13-hour flight, there's a time difference, there's jet lag. So if it's a weekend with a parent after a certain 13-hour flight, that child's probably going to need some time to recover and recuperate, after the travel anyway.

So that's where also our experience and what works for children and what we understand to be beneficial for children can come in really helpful because some people do have the unrealistic expectation that children be expected to fly to and fro, you know, between countries. And it's just not feasible because it's not in the child's best interests to disrupt their life routine and to expect them to be exposed to that much travel. It's probably not good for their health in the long run so we generally and parents have a, you know, parents while some do have an unrealistic or very skewed view about what's appropriate and what's not. Generally speaking, our sharing of knowledge and information around that gets parents to shift their thinking to something like for example, we have 4 school holidays in Australia, so, the 1st I think is in April we then have July, then we have September and then we have Christmas holidays. So a lot of the time parents are saying, OK well. How about if I visit them for one school holiday and they come over and their next holiday and then I come for the third holiday and they come for Christmas, for example, that we find to be a much more workable solution to a problem that is otherwise the children don't see their parent overseas at all. And a lot of the time at the cases that come to us are as a result that, you know, have a case of one parent not having seen the children for a very long time. So there is this unrealistic expectation that the children should go there first and the children should spend a month with the parent that they haven't spent any time with for the last two years. And that's where we would come in and say well, hang on a minute. It's actually going to be a lot slower than that because these children need to adjust, there, needs to be a transition period. So maybe the most suitable thing to do is for you to visit them in their environment, to reintroduce yourself to them and to gradually work your way up from a couple of hours a day to the whole day to overnight, to the weekend, and then a week or whatever it is, and then they visit you. Once you've reestablished that connection the children. Then we can look at having them come over to see you and that works.

When parents have an understanding of what they're agreeing to, and if they're able to put down some dates and times, they're far more comfortable with the concept of saying yes ok, alright. Well then maybe they don't need to see me very second week like I would like to see them, but if I'm able to have a meaningful amount of time with them, I'm OK with that as long as in between I have my video calls I have. You know, you send me their school progress report. So you send me their health progress reports. I'm comfortable with that. But as I say, our involvement usually is as a result of the parent overseas generally not having much contact with the child for the last..., however long it's been and they're really desperate for anything that they can have. But because they feel like they're being punished, you know, they're coming with all sorts of unrealistic expectations but once you sort of have that discussion and guide them to think a bit more realistically, we're coming up with, you know, really good solutions to the problem, which wouldn't disrupt life, the life of their children, and is also probably going to work best.

What makes it very difficult to, you know, sustainable outcomes can be very difficult, where very young infants or babies are involved, so they're so reliant on their mothers, you know, in the first however long you want to call it their life, you know, with breastfeeding and being, in need for their mother very early on in life. So it's about finding creative ways that they can come together to facilitate the needs of an infant, so we encourage all sorts of things like visits, supervised visits, if it needs to be, but you know, progress reports, photos, health reports, any sort of child and maternal health nurse and or doctor reports. Oftentimes it's about enabling the parent that feels disconnected from their children to feel connected again. And while of course every parent would love to spend every minute of whatever time they could with their children when they are overseas, it's meaningful enough for them to be given regular progress reports and updates, and be allowed to that video call or be informed about, you know, that fall that resulted in the broken arm and being kept in the loop about what's what they're, you know, math's class is going like. So it's just about ensuring that there's a connection there between the parent overseas and the children or the children overseas and the parent here, it works vice versa. So I think when you sort of set realistic expectations and when you set realistic I ideas, they're far more sustainable, but if it's aimed at sort of making life difficult for each other, we definitely don't sort of promote or encourage that at all. And we, as I said, we then sort of bring in our knowledge and experience and what works for children and what's in their best interest to help them shift that unrealistic view so that it's a bit more manageable for the children.

What do you feel are the key elements in your legislation which enable the effectiveness of such mediation session?

OK, so as I said earlier, while the mediation process in itself is voluntary and it's, you know, whether people want to take part in it or not is completely up to them. I think the fact that a certificate can be issued, I guess, promotes the need to engage in the process because it very much is about keeping as many families out of the court as possible, and where it is suitable and where it is possible to go through the mediation process. So I think in our legislation the ability to provide that certificate that you know accredited mediators or accredited family dispute resolution practitioners can do is one of the most beneficial aspects to it.

The other thing I think as far as part of our legislation that I think works really well is even though it's mandated in family court proceedings, the courts are very open to parents saying, OK, we've done the mediation and this is what we agreed to and we've both signed and dated this document. Can you turn it into the consent order that we need because we don't want to have to go through the whole process of waiting for three months for a hearing, having to pay thousands and thousands of dollars in legal fees. We would much rather spend that to help our children travel, if that's what they need to do. So I think, yeah, I mean, I think the ability to have the certificates issued and the whole notion of having, a goodwill agreements turned into parenting plans and then consent orders is hugely beneficial because it saves time. It saves money. And it's the people themselves as their experts making the decisions for their children. So I, yeah, I can't speak highly enough of the fact that that's how it is in Australia. Actually, I think it helps a lot of families. I mean, there's obviously going to be those families where no amount of mediation can really do anything, in which case the court is the best place for them to go. But where it's possible mediation all the way I would say.

I mean, don't get me wrong, there might be legal firms out there here in Australia as well that provide more rigid mediation sessions, just like, OK, what do we need to resolve? Yep, Yep. Done. Tick, tick, tick. OK, an hour done. But our experience and our work with parents in the work that we do with parents and families and children is that it needs to be a process that's realistic. It needs to be a process that's governed purely by what works for children and it's not going to help children to have their parents decide about their future in 45 minutes. That's just unrealistic because do you talk about which country they live in? Do you talk about how often they come to visit the parent, that they're not in the same country with? Do you talk about how the parents need to be communicating with one another in that process? Because when you get started on one topic, while one topic might be a 10-minute discussion and it's over, there are some contentious issues like the. Most, as I said, not what's coming up recently for us. So vaccinations and COVID-19 now this is a very values driven conversation and you can't shift values very easily so. It needs to be in depth and if it's not in depth, it's not thorough enough, and if it's not thorough enough, it's not going to be sustainable as we've been talking about. So I just feel that if mediation is used as a sort of a Band-Aid solution to a very deep wound, it's not going to be of much use in the long run. It might solve the problem then and there, but when you're talking about children and co-parenting especially, it needs to be as thorough and as detailed as it can be, because essentially, you know, as we know with co-parenting the you know, the romantic relationship will may have ended, that's fine. But the co-parenting relationship will never end. They're always going to be the parents to those children. So it's about ensuring, as I said earlier, when I say meaningful, when I what I mean by meaningful is sustainable. You know, consider it realistic, achievable. All of these things sort of falling under one umbrella because it needs to be. I mean, it's not deciding which tea you're going to drink today? Or which coffee you're going to drink today? There's ultimately the decisions that are going to be enforced or in place for a very long time.

So we hope that our involvement in it, as I said while aimed at sort of keeping people outside of court is sustainable so that they don't have to do the whole thing over and over and over again. As children get older and their needs change, the need to sort of chop and change the agreements that they've made, may arise. But if they're able to mediate at the get go at the very beginning it's likely that they're going to be able to do it again, even if it's not in a, you know, in a formal setting, they might be able to informally mediate with one another if they've already had that opportunity to have that discussion with one another.

It's very important that your involvement with these families is meaningful and essentially what happens is if you're involvement with these families is meaningful, everybody wins. But most importantly, the children benefit from that. Hopefully the conflictual relationship that their parents have come to an end and they're well-adjusted children in our society.

Yeah, I know it's a resources thing in some countries. I know it's not always easy to facilitate 3-hour long mediation sessions when there are so few resources to make that happen. But you know, I mean, where and on government organization and we've got very little resources. But sometimes even though it sorts of challenges us to have to charge a fee for our service, we find that even that charging of a fee helps because they would otherwise be paying thousands and thousands of dollars for lawyers and legal fees. So I don't know whether that's, you know, something that can be incorporated into the, you know, the process and procedure in Malta. Not sure. But I would hope that with time and practice things get to a stage where you're comfortable with them, because don't

get me wrong you know when this first started in Australia, it wasn't smooth sailing. We had a very, you know, we had a transition process in Australia as well. We needed to have trained mediators. We needed to ensure that the accreditation and the qualification was right up to standard and we've been doing it for a while now, so it's natural for us for us to be able to think of creative ways of making it worthwhile for people. I mean, it's with practice and with experience that you get better at things so.

Interview Lawyer 1

For how many years have you been working as a lawyer?

Three years

Could you identify a pattern in couples who manage to come to a parenting plan in mediation?

Something I noticed is that mostly when they do manage to agree, they would be couples who would really be trying to reach a compromise. So there would be this kind of someone agreeing on something and giving up on something else. And most of the cases I had, where they agreed, care and custody would be joint. So more or less they would be haggling about the same amount of time in access, give or take. Example if children would be residing with mother, they would still have ample time with the other party, thus they would probably be agreeing because they would have more or less the same amount of time spent with their children.

In what way do you think that mediation may contribute to help a couple to reach an agreement and what may hinder?

When couples are going through separation, it normally is very difficult for couples, on their own, to sit down together and find an agreement. Such as access and other sensitive subjects. I believe mediation offers a kind of a safe space where couples could sit down with an impartial person, and most of the time they would also have their lawyer with them, and they would have their mind more at rest that their personal interest are being taken care of and safe guarded.

I believe that the biggest hinderence to mediation is actually when the couple themselves are not ready for it. Kind of their attitude, such as if they are reluctant to go for mediation, that will hinder the process. Even if it's just one party who is reluctant, it is difficult to reach an agreement with someone who is not ready to discuss.

What type of parenting plans are being proposed at present and which contracts are passing through court successfully?

Something that one always has to take care of when presenting a contract to court, is that contract, not necessarily 50/50 but one needs to have ample access, you know? You need an element of fairness. So if care and custody is joint, both parties have to have ample access and not having one party with barely any access. You need to have a balance. I'm not saying that children have to divide their time exactly in half with both parties but balance is important. Example if living with mother, there is still a whole day with father and holidays should be shared, feasts, you know, these kind of arrangements.

What type of contract are failing to pass, that you deem might have worked out for the best interest of the children?

Never had an experience where a contract did not pass so I can't say.

Could you identify any trends or patterns in proposed parenting plans?

I see more now that where there are no particular problems, children enjoy time with parents in an equal manner. Sometimes you see instances however when one party does not ask for a certain amount of access.

What type of plans do you consider to be most sustainable?

I believe they (the children) should spend ample time with both parents. However on the other hand you have to take in consideration the children's own activities. Example school, one has to see how to adapt to the schools' schedule, extra curriculum events, cause in reality children have their own life you know, so they have their own things. Its not fair children not being able to go to their own activities because they have access. Sometimes problems arise when example children have access with father but they also have ballet in the same time, cause activities change you know from one year to the other and then a lot of hassle. I believe that when these contract are agreed upon, when they agree on access, they should take in consideration commitments and maybe hobbies of their children.

What ammendments would you propose in law to help couples in the process of parallel parenting?

I believe that when its fresh, you know, you are just coming out of a relationship you will still have a lot of anger, so you would be reluctant to reach an agreement. Even pique you know, I think when things calm down a little bit, parties might be more willing to give up on something to win something else. They definetly need to spend time discussing in mediation you know, even if you see just a little improvement, they should spend more time in mediation because they would be able to agree eventually so it is worth investing more time in mediation. Surely they should not go to court and potentially spend several years in court. And it's much more stress on children cause at the end of the day it's the children you know who are suffering. So there should not be capping on mediation and if they are at least turning up and talking then mediation should go on.

I believe that one does not need any ammendments because a parenting plan is and should be on a case by case basis so one should not try and give parameters or options because these will always differ. Example one can't always give ten hours access because one parent's reality will vary from the next. Sometimes a parent may not want that much access or even the child might not want it. Sometimes limited amount of access is enough, they enjoy each other company and that's it because after some time they experience anxiety so limited amount of access might be enough. So I think our law is enough as it is and then it's at the judge discretion according to the plan presented. After all these are children involved and not all children have same needs and not all parents have the same amount of available time. Sometimes parents work on shift basis so parenting plans have to be flexible.

What reccomendations would you give on the mediation process, which could help faciliate more agreements on mediation plans?

I believe discussions should be more mediator led. Sometimes it's more the lawyers who are leading the discussion rather than the mediator. I believe that if mediators have more control on the situation and they are more assertive, it will be more beneficial to the couples. Obviously the lawyers are taking control because they have the best interest of their client at heart but they are not neutral. It is the mediator who is impartial so it should be them (mediator) who lead the sessions and the mediator would have more control on the discussion. Even the parties, sometimes during a mediation session, it is only the lawyers who speak and the parties simply don't speak. In reality this is their life so they should be the one's to speak and to feel like having control. I'm not saying that a lawyer should not speak but there should be more participation of mediator and clients themselves.

As a lawyer how do you prepare a client before the mediation session.

I like talking to the client beforehand and explain to them the procedure because a lot of people have no idea what the procedure is. Normally it would be the first time for them going into court so they need to understand. Yes I discuss with them what their wants are out of mediation and in one way or another we try to understand what the other party will ask and then agree with my client to what extend we will accept or not. So I will know on what client is willing to haggle on. Example wife wants 300 Euros maintenance and husband want to give Eur 200. So we discuss this beforehand and I would know that she would be fine with a 250 so I will go to the mediation session knowing how far she is willing to trade.

In your experience, is the child's voice heard in this procedure.

No, it is very rare that a child's advocate is involved in mediation proceedings. I believe this should happen, not in every case, but where there is this lack of agreement on child's access I believe a child's advocate should be involved, rather than sending the case in court. Children should have a right to be listened to, I'm not talking about a baby but older children should be involved. Sometimes we have an 8 year old child, is that child not able of saying what she wants? Of course she is. And we should listen. I'm not saying that we decide solely on what the child says but at least they are consulted, listened to. And their wants should be considered. Normally it's the parties who are arguing you know and the children are never listened to at all. I believe children's advocates should be used more often in such cases.

Interview Lawyer 2

How many years have you been working as a lawyer?

I've been working as a lawyer for almost 4 1/2 years. I graduated in 2017 and been admitted to the bar in 2018.

Could you identify a pattern in couples who manage to come to a parenting plan in mediation?

That is a very good question. I've noticed that, for example, couples who break up or separate or choose to go different parts, unless there are serious concerns, or unless there are petty issues on which the couple try to hurt each other about such issues, they normally agree on care and custody, that it should be joint. And when I say they agree for the reason that some people think that just because the child lives with the mother she has full custody. It doesn't work that way. So basically when you explain what joint custody really means, they agree that care and custody shall be joined

vested in both parents. They also agree on access that it shall be minimum of once during the week and once during the weekend, followed by a sleepover.

I notice that such agreement tends to be possible for the reason that, as a for mentioned, if there aren't any serious concerns, if I'm in the party, for example, the father decides to submit a quote application before the court asking for access, the court, unless it has any reports showing that the father is not reliable or trustworthy to have his child with him for a considerable amount of time with him, the court shall grant access.

Another thing about access, I noticed as well that parents tend to agree that for example, access in public holidays shall be alternated and also during Christmas and New Year. However, I recently, for like the past two years, I introduced a new mechanism whereby during Christmas and the New Year, but especially Christmas, the child spends equal time with both parents. Most parents agreed with this, for the reason that the child has the opportunity to open presents with both parties, they are surrounded by family, cousins, aunts, uncles, grandparents and it turns out to be quite successful.

So those were mainly the two things that that usually agree on as regards and custody and also access, that at least twice a week and one of those days the child has to spend a whole day and a sleepover with the other party there seems to be an agreement.

In what way do you think that mediation may contribute to help a couple to reach an agreement and what may hinder?

I believe that during mediation, the mediator plays a very important role for the fact that he or she has two induce the parties to reach an amicable settlement. For example, I had a case in 2020, if I'm not mistaken, there was this issue about this girl, she was about three years. She was born in 2017 and basically both parents were obsessed about this girl and I recall, I represented the mother, I recall the mediator, she tried to induce the idea to my client, "Let's say that every Wednesday it's Daddy day." I mean the fact that the child knows that this coming Wednesday it's Daddy day, it sets also a routine. This mediator she told my client, "Listen, I can understand that you are concerned, you love your child, you are protective however the child deserves to be both with her mother and with her father and it is the child's interest that there is some sort of routine." And the routine is that on this particular day, in this case, it was Wednesday, it's Daddy Day and then during the weekend, we have alternating days.

"So the fact that we have Wednesday known as that day you as a mother, you have the opportunity to work overtime, you have the opportunity to set plans, make plans, you can meet your friend, you can go to the doctor, you can go and have a drink because you know, your mind is at rest, that on that day, after school, your child is with his father.

Another thing in relation to access is in relation to sleepovers. I use this argument that I'm going to mention which children with parents who have young children and they are still young. I have a client who is 34 years old. She has two children and she's in the process of marital separation and she was very overprotective of her children and I have told her, listen during the weekend, think about it long term, not now, right now you are overprotective on your child, you're scared of the father of your children. You're scared. You're terrified because he's being nasty. It's true he's being nasty. However, in the long run you need to move on. And by moving on, it means eventually you're still young, you're going to meet someone else, you can't keep on spending 24/7, unless they're in school, with your

children, because it's going to be draining and you will eventually have a burnout, so why not allow your kids to go and have a sleepover at the fathers? I mean, in the end of the day, you deserve to have a break after all. And it usually works, I believe that, uh, it's it is useful to induce, yes.

What type of parenting plans are being proposed at present and which contracts are passing through court successfully? Any trends and patterns?

What I have noticed is that during these five years, there's also the possibility that parents tend to agree on two types of access. During school days and also in the summer holidays. I've noticed that for example, during the summer holidays, fathers may also have two sleepovers, one during the week and also another one during the weekend, or else for example, during the week in summer during the summer holidays, access is longer. There are instances where parties tend to agree. For example, OK, we have this access and we're going to stick to it. However, during summer holidays, I intend to have one week, for example, OK, where my kids are with their father. During summer they tend to spend one week with their father. The father chooses a particular week or the kids, and they spend one week with their father. I've also noticed as well, recently I had a case where the parties had agreed that during the feast of their hometown, which happens usually in August, the children tend to spend the whole weekend with their mother. The parties agreed that the children shall be with their mother during the Feast of each and every year. Therefore we also have this sort of flexibility that if, for example, the mother is keen on a particular feast or the father, I mean even now holidays are coming up, the children have the opportunity to spend that particular weekend with one particular parent. There will be the whole family together. So over here there is some sort of flexibility. Which I believe that it is also working, because there is some sort of leeway between the parties and it can also help in future occasions that might happen.

What type of plans do you consider to be most sustainable?

I believe that a contract is sustainable by allowing the parties to write down their wishes. This is how I try to explain the whole concept of using mediation as an alternative, other than going to court for the reason that the contract will be a reflection of your wishes, both of you other than having a judge who will decide and you might not be satisfied with the judge's decision. We shall also include spending more money in order to try and vary the Court decree. A sustainable contract shall be composed of these ingredients, I'm not going to call them elements but ingredients; Being understanding. You have to be understanding and it's also a give and take situation.

If, for example, the father of my kids tells me I want to pick up my son after school. And bring them home at 8:00 PM. And I say no. You picked them up at 4 from my house and you bring them back at 7. I mean, we need to also use reasonableness. So understanding each other, being reasonable, being fair. And also being flexible towards the needs of the children. We all know that children eventually will have extracurricular activities, and it is in their own interest to participate in such extracurricular activities. What if I can't take my son to football. Is he going to miss his session? Or if I have a good relationship in relation to my son with the father of my son, I would ask him. Can you please help me? Will you take him to football? You can come for him before he can stay with you afterwards. Parents tend to love their children. They love their children and I've noticed such when, for example, I have clients who are males who tell me I can't be away from my children. She can't take away my son. I have to be with my children. I've never been separated from them since the day they were born, and now I have to deal with a new reality. So there is also a give and take situation and on a

final note, I believe I also sell this idea to my clients. Let's try and introduce the concept of free access. However in case of disagreement, the days that we are going to establish in the contract shall be binding. Free access also creates a good climate between the parents and also a give and take situation. I might be going abroad, I might for example move on, find a new partner and have another baby. It would be very difficult for me to judge, to juggle a newborn with a four year old or 7 year old. So I believe that the element of also introducing free access. But in the case of disagreement, you will have a timetable, a schedule that would also constitute as a good ground, so it's having a good solid contract.

What amendments would you propose in law to help couples in the process of parallel parenting?

I believe that the law needs to be updated. In all sorts of aspects, however, in this scenario, I believe that at least the legislator outlines, establishes that the receiving end, the one who no longer resides with his children, has to see his children at least twice a week. At least twice a week shall have access towards his children, towards his descendants at least two days a week. Then it's up to the judge's discretion to allocate the number of hours.

But it's very strange that we outline about maintenance and if, for example, the father of my child fails to give me maintenance and I can send him to prison. Why not? Shall we also highlight that the father of my kids deserves to see his children, our children, at least twice a week. He is not just an ATM machine.

What recommendations would you give on the mediation process, which could help facilitate more agreements on mediation plans?

I believe that mediation shouldn't be seen as a concept towards opening a court case. I believe that mediation in Malta needs to be taken more seriously to the extent that the concept of mediation in itself is to reach an out of court settlement. Therefore, it shouldn't be held in the family court. That is number 1. Number two, I believe that there needs to be an amount of time of having mediation, meaning that it's not just a couple of minutes, 10, 20 minutes and it's over, then we'll have an appointment in two months' time. I mean, for example, yesterday I received an appointment for the 4th of October. It's way beyond ridiculous.

Unfortunately, mediators only hold sessions in the morning at the moment. For instance, we have the court Services Agency with employees on half days until half one. The last mediation session is at noon. They start at 9. And they finish off maximum by half 12, which is way beyond ridiculous. Mediation should also be introduced during the afternoons. Why are we having situations that clients have to take one day leave to attend to mediation, why can't we be open to have mediation online? What is the problem? And there is also another thing that in Malta we don't have full time mediators, they are self-employed, they work in other spheres. Being lawyers, being psychotherapist. I'm sorry this is not a part time job. This should be taken more seriously. We are talking about people's lives, children. And it's very sad to have such situation. For example in my case when I have a client, the first thing that I do is I file for mediation and I file a court application in order to get the ball rolling and have maintenance established. It's beyond ridiculous to file a court application and in order for you to file a court application, you need to open a mediation.

But you're saying I open up a court application at least to settle down the maintenance and the access. But shouldn't these things be discussed in mediation in the 1st place? Isn't that's why mediation is there?

But what if I have my first appointment in 2-3 months' time? I also had the particular mediator who unfortunately, she doesn't deliver. I filed for mediation in April until July I didn't even have a date, which wasn't in July then, it was in September and the client ill instill this idea that you're not doing anything and they leave you. They will ask for your release

And also if for example, I need to file a quote application even for example a warrant in order to prohibit a minor from leaving Malta. Believe it or not, I need to file for a mediation. I don't want to mediate. I am trying to prohibit the other parent from leaving the country, absconding from the country with my child.

I suggest that mediation shall be used for mediation purposes, that if I want to submit a court application, there's no need for me to open another mediation and if I had a previous mediation opened, I use that reference number for the judge to decide, there is already another file open. Why am I going to increase the volume of work if I need something very urgent, for example, now we are approaching the holidays as soon as the holidays are over, mothers start calling. I'm having a problem, Doc. The father of my child doesn't want to sign school papers, I want to send my son to a government school and he doesn't want to sign. I need to proceed. I'm going to get fired from work. In this circumstance, I have to file a letter requesting mediation then I have to submit a court application. It doesn't make sense. He doesn't want to mediate. And if it's in August, this situation, if I know that I will have an appointment in October, what is the use of filing for mediation? It's ridiculous. I believe that mediation there needs to be a revision of the whole process and mediation should be specifically opened in relation to care and custody issues, in relation to separation, marital breakdown. However, if the couples already went through mediation, if they need to change a contract, they are facing a crisis whatsoever. They do not need to open a new mediation.

As a lawyer how do you prepare a client before the mediation session?

Usually we do a preparatory session, where I will ask my clients what do they actually want and how it works. For example, the care and custody listen, unless he takes drugs, he gets home drunk or whatever, current custody should be vested in both parties. However, if you're having an issue with school outings, we will request that, for example, issues related to school outings one party shall be the only person who signs. Then we go over maintenance. Usually the court grants 200 to 225 or 250. So we agree, let's push for 275 so that you'll get a 225 or a 250. OK. And same for access. We have to find one day during the week, try to check your child's schedule when he has Museum or hobbies, whatever. And during the weekend he has to stay with his father for one day and sleepover. In order to establish maintenance expenses, especially in circumstances where the child has, for example, difficulties ADHD Autism. That is how I prepare my clients.

In your experience, is the child's voice heard in this procedure. And what are your thoughts?

My experience is that during mediation proceedings, if, I have concerns and I submit a court application, usually during mediation proceedings, if the mediation is open, the court appoints a child advocate I believe that it shouldn't be the case. If we are trying to induce this idea and clients choose an out of court settlement, it should be the mediator who listens to the needs of the child and

introduces these ideas of the child to both parents. It shouldn't be the child advocate who listens to the child, writes a report, reverts to the Judge and the Judge applies what the child advocate decided and issue a decree. I'm sorry, no because it defeats the whole purpose of mediation.

Explain to be able to a little bit more why is the mediator better than the child advocate?

For the reason that if we are at a mediation stage it should be the responsibility of the mediator that he listens to the child, to the child's wishes, to the child's needs, brings them to the attention of the parents and then guides them to reach a compromise to build a bridge, rather than taking the child to court, facing an advocate, the advocate starts asking questions. It's like an interrogation, No, it shouldn't be that way if we are aiming for an out of court, it should be an out of court from all points of view.

Interview Lawyer 3

For how many years have you been working as a lawyer?

12 years

Could you identify a pattern in couples who manage to come to a parenting plan in mediation?

Funnily enough the patterns I see working is when a couple works on shift. I will not say that there will not be turbulences. When there is a separation, there will be some turbulence however once a shift is established, the pattern works. Children always hurt a bit through separation especially through lack of time with one parent. When the children are living with one parent, that parent would have a bit the upper hand, saying that is the only day I am available to give you the children. However when they work on shifts this can't be done because the pattern is fixed and they depend on one another so it works fine when they are on shift due to a scheduled timetable related to work.

In what way do you think that mediation may contribute to help a couple to reach an agreement and what may hinder?

So, it depends on mediators and lawyers. Certain mediators go deep and try to go into issues. But now we have 8 sessions and you close the mediation. However in the beginning, the couple will be hurt, there will be pain, there might have been adultery or other issues, so at that point it is difficult for them to sit down and reach an agreement. But as time goes along, and children start to settle, we normally have a session once every month so the process takes around six to seven months. Until that time the couple would have settled, certain access would have already been taken place, so things would be falling into place. The couple might have accepted the fact that they are separating. So finally enough at the end of these sessions I see that they are more prone to agree. And obviously the lawyer has to help. The lawyer has to explain to his clients that this is about the children not about them but about their children. The children have to love both parents the same and the lawyer has to help in this. Otherwise if the lawyer instructs the clients to be rigid, then the children will hurt. But the role of mediator is paramount because mediator is there to keep balance between both lawyers. Now if the mediator is silent, and barely intervenes and the lawyer end up fighting and the couple end up fighting, then session and the mediation is stuck. And this happens a lot of times, a lot

of times it happens. So mediator has to be an effective participant to help them reach an agreement. For the benefit of the kids.

What type of parenting plans are being proposed at present and which contracts are passing through court successfully?

First of all I'm really really in favour of shared parenting. A lot. Because children need both parents and the more the children grow the more their needs increase and the more they need both parents. The important thing is that both parties turn to the other parent first to take care of the children. Not refusing to give the child to the other party and then they dump the children to their parents. I understand that the father of the children has to be involved. However court does have reservations on shared parenting, yes true. However court has this reservations when there are pique or resentment, or example during scholastic year the child would forget things at the other parent and goes to school without a tie or without a book and then the other parent would refuse to give them the things, so it gets complicated. But I am still all out in favour of co parenting. Children might speak on certain subjects with one parent and on another subject with another parent. If one parent is not present, they lose the relationship forever. Not just when they are minors but even when adults, the relationship would have been lost. Even trust, trust issues. If I separated and my husband is not involved at all, how will my children ever talk to their father about a problem. Co-parenting is a must, in majority of cases, true not in all cases is possible but it is important. Pique is there in the first years, because someone is more hurt than the other. So the party who is most hurt will use the children as ping pong to get back on the other party.

Could you identify any trends or patterns in proposed parenting plans?

I never had a shared parenting contract per se. I had situations that the parents work on shift and automatically the hours are almost equal. However you need to explain why you are asking for equal parenting. Even the mediators tell you, listen explain why you are proposing such contracts. And I did explain that it was because of shift work, and the contract passed. But this is not fair. It should not be like this. Why are we so against that a child goes for a sleep over during the week? Or has two days with sleepovers during the weekend. Why not? I can't understand why the judges don't accept this. in every day life, before separation, they used to co-parent. Especially if both parties work. So why can't I have this now that I am separated. And unfortunately it's the men who normally get the lesser deal. So the father we know him only for maintenance? That is very unfair.

What type of plans do you consider to be most sustainable?

They need to be fixed, there needs to be routine. And especially when there is shift work, this works to the dot.

What ammendments would you propose in law to help couples in the process of parallel parenting?

Yes I have a proposal. When you have access, example two days during the week and one day in weekend. The father has no repercussion if he decides not to show up. If this access is not taken, there is nothing that can be done, like there is an option in maintenance. If the father does not give maintenance you can take him to court, there is something you can do. If he does not turn up for access, there is nothing you can do. So imagine a woman, is working, and this happened to me in a case. She works 8-5 job. Father accepted that he has 3pm-6pm access and then he decides, after he

signs, not to turn up for access. So all of a sudden the mother has to leave work, to go pick up the children from school, to stay with them, she has to stop working or has to ask for reduced hours, thus she will suffer financially as well. And there is nothing she can do about this. She has no one to help her, let's exclude the grandparents. If the mother has a career, the career has to take a step back. Her social life is put at a stop because access is not used also in weekends. If it were up to me, the party who is not honoring the access should be taken to court, there should be a remedy for the other party. This is very unfair. And on this, this has to change. A client of mine, she was a hairdresser, her boyfriend took certain commitments for access and once they signed, he disappeared. And she had to actually shut down her shop. If you gave commitment for access you have to live up to your obligation or else pay. Pay extra expenses. The other party can't even ask for more maintenance then, because court will tell you, you should have asked for more maintenance in the first place.

And the more the parents are young, the more there is pain and pique. You will have people saying the other party is out partying and I'm here stuck with the children. I know it sounds crude but it's the truth. So this has to change.

What recommendations would you give on the mediation process, which could help facilitate more agreements on mediation plans?

Again I will once more insist on the mediator being more involved in the mediation session. Taking more ownership of the session. For the absolute majority of the cases the mediation is very important. The mediator has to help calm both parties. But the mediator has to give much more input. When mediator sees that they can't agree, they say ok if you don't agree, then I will close the mediation. That is not on. You need to give more time. You give them a session for two months time. In this time, a routine will be established in one way or another. Both parties agreed.

If mediation is closed, and we go to court, we will go back to squared one. So if you give them some time, they will adapt to a routine. If you act with rigidity, one every month for eight sessions, then you will not manage. This is why there are a lot of social problems. These things take time. Even for children this could be a shock, that the parents are not together any more. So all parties need time to settle. So give them time.

Then if there are problems, if father is not seeing the child, then you can file a court application. Then it depends on who you find. A decision can be taken in two days or sometimes it might take up to three months.

I believe that the mediator should do a meeting with the judge and explain what happened. The mediator should be more of a consultant to the judge. The judge is a backbencher, he will read what the mediator wrote. But judge does not know what happened in the room. The mediator has to explain, it is always different doing it in the meeting than in just a nota. Or at least one session in front of the judge, to hear all parties and decide.

As a lawyer how do you prepare a client before the mediation session.

I always ask to hear the story. How their life was before separation. Was the other party involved? Before the difficulties started. So how was family life? What role did the father have in the family life. So if the mother tells me, no ta, he used to go to work, then goes to his parents or to the club and come back home to sleep. He was not present in family life so probably he will not be involved

with the kids so I will not go to mediation with a request of shared parenting. It's useless. But if the father was an active part in the life of the children, then even if the mother is hurt, I make it a point that the father is still involved. And I also make it a point, in all contracts that I was involved in, that I give a sleep over to the father during the week. Why not? That is how I prepare my client's. I need to know the background and whether there is any valid reason why the father should not have the same role as the mother. In separation one party will always depict the other party as bad. So you need to listen to both parties. To know the truth. You should not try and get as much access with children and then dump children at the grandparents.

In your experience, is the child's voice heard in this procedure.

No, never. No. not at all. Unfortunately not. They are only heard when one party asks for a child's lawyer. And I do not agree with this. Because in one session you could not determine what the child wants, or what is best for the child.

And I'm not sure how to answer this. Because a mediator is not specialized to speak to the child, a child's lawyer is not trained to speak to children. In one session it is not enough. You should not ask the child to choose. This is tricky, I don't know.

Children will change their mind according as to who did most pressure. If child is with me and I want them with me, egoistically because I want maintenance, before the session I will press them to speak in my favour. I am against it. However on the other hand, yes who is the voice of the child. The parents, who are fighting? Because you will end up with one parent saying no it's not true the child did not say that, I will ask them.

I think that it should be a therapist or a professional who works with children. Not in all cases, because you have cases who agree. However in difficult situation a professional who works with families should see all parties including the children and do a report. And not just one session but more sessions, the specialists have to determine how many sessions have to be done. But the work of a family therapist or a child specialist, is not to be done by a lawyer.

I had a case of a woman who was judged, she lost the child purely because the child's lawyer judged her and gave a negative report about her. Nowadays she is a very good mother and the child actually chose to go back with her. But during the process she was judged. So it should be therapists, it should be a professional who sees the family holistically.

Interview Lawyer 4

For how many years have you been working as a lawyer?

I have been working as a lawyer for the past five years.

Could you identify a pattern in couples who manage to come to a parenting plan in mediation?

In most instances, couples in the process of separation or rather in the process of regulating the main aspects regulating their minor children, mainly those relating to care and custody, access rights and maintenance.

Regarding care and custody of the minor children, most parents agree that such care and custody shall remain joint, unless there are circumstances on the part of one of the parties that merits exclusive care and custody such as instances where either of the parents does not understand the

obligations and duties of being a parent and does not involve himself or herself in the minor children's life and progress. Also in most instances, couples tend to agree that residence of the minor children shall be with the mother, although exceptions do exist in particular circumstances which merit otherwise.

Regarding access rights, the main pattern is that the spouse or rather the party without whom the minor children reside, get to enjoy access rights twice during midweek from afterschool until about 7pm and a sleepover over the weekend.

Maintenance naturally varies according to the circumstances at hand.

In what way do you think that mediation may contribute to help a couple to reach an agreement and what may hinder?

In circumstances where the parents understand that it's okay that their relationship has irretrievably broken down or rather has not worked well and intend on cooperating for the better of their minor children and also themselves, mediation offers several benefits mostly that it is not as costly as judicial proceedings, it involves less hassle, it is more informal and parties have a bigger say in the discussion and decisions taken. At times, parents have minor differences which with the aid of the Mediator and the respective lawyers, such issues are ironed out and thus judicial proceedings avoided.

In circumstances where both parents have a grudge for each other, mediation may pose a difficulty in that both parties would not be willing to cooperate and would view any kind of settlement reached as a means by which the other party gains some form of advantage. Thus, they would constantly oppose or rather shoot down any proposal brought forward.

What type of parenting plans are being proposed at present and which contracts are passing through court successfully?

As long as maintenance is duly and adequately provided, no clause is disproportionate or rather created an unbalance between the rights of both parents, generally courts tend to approve the agreements proposed by both parties – in that if the parties are happy with that agreement, so would the court.

The court tends to shoot down proposals whereby attempts are made for minor children to alternate week in week out with parents as that would cause instability in the minor children. Also, courts tend to disallow any proposal by virtue of which siblings are separated from each other, in that one stays with one parents and the other child with the other parent.

Could you identify any trends or patterns in proposed parenting plans?

Not really. As I explained once you understand the norm of contracts that are passed then you will not have any difficulties. Anything out of the norm however will face difficulties and it's better if the parties don't risk.

What type of plans do you consider to be most sustainable?

I would believe that the parenting plans that are normally used, so with one stable base and some access weekly, those work quite well and are sustainable because due balance is reached and the minor child get to enjoy quality time with both parents.

The success of any plan and its sustainability ultimately depends on the cooperation and understanding of both parties involved.

What amendments would you propose in law to help couples in the process of parallel parenting?

Parallel parenting may become inevitable in circumstances whereby the relationship between both parents deteriorates up to the point that the parties cannot stand each other and minimal communication or contact would cause disturbance in the minor children's lives. By interacting as little as possible, the parents would avoid undue tensions and quarrels which would ultimately impact negatively the minor children in question.

Notwithstanding this, I would still tend to argue that parallel parenting should be used as a method of last resort, because I firmly believe that the children would be more happy to see their parents cooperating despite differences that they may have or despite their relationship breakdown.

Given the fact that tensions between couple is a normality, the law may encourage a situation whereby parties involved, get to have separate appointments with the respective mediator whereby they sound their opinions separately to avoid contact and undue tension between parties, and in that manner the mediator would be able to propose a sustainable plan without having to let the parties meet each other prior to agreement.

What recommendations would you give on the mediation process, which could help facilitate more agreements on mediation plans?

I firmly believe that mediation is a powerful tool which parents can carefully utilise. It provides a platform which benefits the parents, only if they use it properly.

Despite the mediator's role is crucial in such processes, much depends on the goodwill of the parents themselves and the advices tendered by the respective lawyers.

So, whilst the process may be ameliorated, it is ultimately the attitude adopted by the parties and their respective lawyers which will have the biggest impact on the success or otherwise of mediation.

As a lawyer how do you prepare a client before the mediation session?

First and foremost, I explain the law and the processes involved. Then, I explain the benefits of the mediation process mainly that is cost efficient, less formal and the biggest benefit that I emphasize on is that the parties get to make their own decisions and not be bound by decisions of a third party or a judge.

Thus, by emphasizing on these aspects, I aspire to prepare clients to negotiate in good faith and with a view of reaching an amicable settlement, which would benefit them and mostly the minor children involved.

In your experience, is the child's voice heard in this procedure?

Not really no. It is the parents who take centre stage and unless applications are filed whereby several allegations are made, the minor child do not get to express himself or herself on the way forward or her/his wishes. And I believe it's better this way.

Interview Lawyer 5

How long have you been working as a family lawyer?

Five years

Could you identify a pattern in couples who manage to come to a parenting plan in mediation?

One of the factors is the age. There is a tendency that when couples separate at an older age, still with young children, they are more mature, maybe they would have thought about it longer and it would not be such a volatile situation. They may not agree immediately but they would manage. It's obvious that there would still be difficulties, because if there is something that I learnt it's that love and hate are not opposites, there is a very, very, thin line between love and hate. You could see this in couples. There will be a lot of pain, anger towards each other and unfortunately the children will end up being the party who hurt the most. But I noticed this, when they are older, it may be easier. Or for example they have already been in a routine of separate lives for quite some time. When time has already passed, they already have a routine, then it's easier. When the decision is still fresh, it would be more difficult.

In what way do you think that mediation may contribute to help a couple to reach an agreement and what may hinder?

A good thing in mediation, you are sitting down, however let me make this clear, the mediation room is not a nice room, it's small, you can barely move, it's not a nice atmosphere however you are not in a courtroom and that makes the experience different at least than a courtroom. You don't have the court rules, that you can not talk in court room, in mediation the environment is more relaxed, you could have a conversation. The lawyers also have a responsibility and an important role, because if the lawyer of the other party does not want to reach an agreement, rest assured that an agreement will not be reached. So a lawyer has a responsibility as well towards whether or not an agreement is reached. So lawyer has also to give support even on his own with his client, he has to talk to the client and try and explain that this should not be a one sided process, this is a negotiation, and one party gives in a bit and the other gives in a bit too, that's how you manage to agree. So you have lack of formality, mediator and lawyer helping the conversation, however we are far from being comfortable in the mediation room.

One may say but why are you talking about the room, but yes, the environment affects a lot, and in the mediation rooms, there is barely space for one person to move, so yes it does affect and it does need to be addressed.

The mediator also effects. There are some mediators who try to push, try to help whilst others take a step back and leave the conversation to happen between parties. But parties need a push, they need help to communicate, a third party is needed.

Obviously if mediation sessions occur once every three months, things might only get worse, not better. On the other hand if you have a mediation session every couple of weeks, not to close but not far, that really helps.

What type of parenting plans are being proposed at present and which contracts are passing through court successfully?

From my experience, I had a bit of everything. I saw children whose base is with the mother and the father has access. I had others, where there is a 50/50 contract, one week with mother and one week with the father. And this was working. I recently had a case where the girl wanted to go and live with father because mother got pregnant and girl did not wish to remain with the mother. We also sent the family to family therapy because if the girl does not want to remain living with the mother, then there is a problem and court or myself as a lawyer will not tackle that issue so they needed family therapy and we as their lawyers sent them to family therapy.

So various options. I also had a situation where mother did not even want to see the baby and in fact the father reared the minor. We were taken aback by this and asked the mother to keep at least some access but she was sure that she does not want contact. Even court did not like this, and court said that they will not accept that there is no access. This was a particular case. Court said that at least some minimal access is to be agreed upon, and then it's up to her whether to use that access or not.

In general, I think court still might favor the mother over the father as the base of children. However things have changed, and it's not just the mummy and court accepts that fathers can take care of children sometimes even better than the mummy.

We also had a case where the father was already separated and had a child and the agreement was one week with the father and one week with the mother. The father then had a second child from another relationship which too failed, and in mediation he came prepared to suggest same access he had with his other kid. However his now grown daughter told him, "no don't do it, I felt like I belonged nowhere growing up, I was always with a backpack". And for us this was really interesting, she told him that she was always with a backpack going from one home to the other. Now one may say but during the week the same might happen. But that's what she told him. That she felt she has no home, nowhere.

So this got me thinking that we need to think how the children are affected by these plans in the long run. It's obvious that they have to go to both parents, but how are they being affected. This was very interesting for me. Because a contract is one thing and the reality is another. So we need to be very sensitive of the impact. In this situation in fact he decided to change his plans because he was taken aback by his daughter's comment.

What type of plans do you consider to be most sustainable?

It depends on the arrangement. Example if one party has no other home and goes back to his parents, so he might not have space for his daughter. One also has to look into the extra-curriculum activities of the children. If for example the child's activities are in the south of Malta, then maybe the father who lives in the north might struggle.

Sometimes there might be some hurts that is converted in quarrels and this is dangerous. The plan is there but it should be flexible. The plan should just be there as a backup in case they arrive at a point where they can't speak to one another. But it is fine to change, to give an extra hour, the parties have to agree they can't be too rigid with one another. But then I understand that parties might be angry, hurt and that impacts on how they reason things out. You need to be aware that the person in front of you is hurt, as a lawyer it is important to understand this. Because by being sensitive you might be helping them as well. I had situations where I spoke to the client and all was well, then we

go into mediation, he sees his ex-wife and erupts in an outburst that I did not even see coming. So these things happen and as a lawyer I need to understand this.

What amendments would you propose in law to help couples in the process of parallel parenting?

It is difficult to legislate on access because it is very much on a case by case basis. But I believe that we do need guidelines especially since each judge has his own style and I believe we do need guidelines. Not necessarily for all access to be the same, we can't have that, but we do need guidelines. In some circumstances where there are no difficulties, no drugs etc, then yes we do need guidelines. Sometimes you go in front of a judge, I had one particular situation, the couple are very young, they have two young children, they could not agree in mediation, it was very toxic, we went to court, we told the judge we could not agree. On access. Judge looked at us and told us, agree between you. And we were given no direction and we had to give in then. So yes we do need guidelines.

Let's talk about babies' example. The first couple of week a baby needs to be with his mother. That bond is so important so essential. We can't allow a sleepover for a few weeks baby. Especially if he is breastfed and even if not. So it's not to discriminate with father but sleepovers for very, very, young babies I don't think it is a good idea. I think there should be a couple of years before a toddler sleeps with the father. I'm obviously talking in normal circumstances. If a mother takes drugs, then it's another story. But I believe this has be researched by doctors and psychologists regarding these sleepovers but then once this is done and we have guidelines, it will help everyone in reality.

Even for couples it is draining. Going to court and not knowing what will happen to your children. So having a guideline will help, knowing that we have three options, but at least we know the possibilities not everyone coming up with different options.

As a practice I believe that normally if a couple agrees, normally the judge would agree then if he sees that there was an agreement. Normally that is what happens. But it should not always be the case. Example I have a situation where a contract was signed a couple of years back. In the contract she had written that if she starts a new relationship, her new partner could not sleep in the same house where she is residing in the first year of their relationship. But this person, after a couple of months ended pregnant. So it does not make sense now that he does not reside with her. So technically her daughter could not even stay with her. This does not make sense but the contract was in that way. But it did not make sense. The judge had accepted it at the time. But if a clause does not make sense, why leave it there.

What recommendations would you give on the mediation process, which could help facilitate more agreements on mediation plans?

I can give you a lot here. We have a good thing, we have mediation, let's try and avoid court, but we really need to use it well. I really believe that court is the last stage. We want an agreement, we want to avoid court expenses for parties. So we have a situation in mediation where we can agree, but there are no tools to actually do this.

Number 1, a mediator needs to be passionate. Just sitting calmly while parties are arguing, it's futile, it defeating the purpose. I could have stayed at my office. Let's try and reach an agreement together. Mediator has to intervene.

The rooms have to change. The environment effects a lot. Hearing the security guard outside, its not a serene place. It can be much better. I don't agree with the rooms being in family court, it has to be out of court. Why do we need to go into court? Ok it's not the courtroom but its still court.

Number 3, we need to tackle the length of mediation process. In one case a mediator was appointed in May and then I was told she does not work in summer and mediation was first heard in October. But what about the parties? The situation between couple is not getting better in the meantime. They might not be talking to each other, if they are talking, they are probably fighting, the lawyers might try to help but mediation is taking long, and the situation will only get worse. And what will we do in the meantime.

These are the main things that need to change especially this issue of length. It's getting more serious. If every session we are tackling an issue and there is a change, let's continue, let's not close after 8 sessions. If there is no agreement on anything then obviously let's go to litigation. But if after some sessions we agreed on some issues, then there might be a possibility, let's keep at it, let's keep trying to agree.

As a lawyer how do you prepare a client before the mediation session.

First thing is that you meet your client and get to know them, their pain. You need to tell them that your office is a safe place, the client has to trust you and tell you the truth. I will not say what the client told me but he has to feel safe with me. So it might take some sessions to understand the person. This is something personal, there are people who take it really to heart that they are ending their marriage, so it is difficult for them to open up. So they need time. You might not get the whole story not even after three meetings. And it is understandable because they don't know me.

Then I also prepare them to keep calm. The other party knows exactly what will trigger your client, so they might say things to upset them. And I prepare my clients, that some comments might be said but they should not take heed, they should remain calm and focused. Calm down, breath in. if it's getting too much we can go out a bit, its nothing so formal. But obviously it's a breakdown of a marriage or a relationship, they are grieving. It's easy to get angry, so it's fine its ok, let's take a breather and continue.

In your experience, is the child's voice heard in this procedure.

If they are of a certain age, they should be involved. But children can be influenced so we need to be careful. Example if today I have mediation and today I quarreled with my mummy, I will surely tell you that I want to go with daddy. 100%. So we need to be careful in this. if we have a 14,15,16 year old, they are capable of giving an opinion. Not saying I want to go with mummy. That should not happen. But give an opinion and talk to a child advocate or a therapist who will take in consideration some elements. But not a 6 year old asking him with whom they want to go, that should never happen. Cause children will feel guilty then in the long run. We should speak to older children but with proper care. Because even saying with whom they want to go, they will forever carry the pressure that they chose and in the long run this is not beneficial.

So yes listen to the elements of the child's life but not asking them with whom they want to go.

Example I have a case where the couple quarrel so much, and the father is actually be facing domestic violence and he is recording because no one believes him. We say report but society still does not support men. In the recording his child who is 12, is actually heard saying mummy please leave, you are causing a lot of problems in this family, go away from us, I don't want to speak to you. So a 12 year old telling his mother to leave the house.

Obviously there has to be access but I mean, children still can make their own decisions. Even in this scenario I can't ask this kid with whom he wants to live, because I still believe that he should have a relationship with the other party and he still should not be made to choose between his parents. And this child might after a couple of years be sorry for what he said so you should not pressure a child to choose. So it's a very fine line how to speak with children. Normally we only see the parents, we don't speak to the children. Even there it is sad to hear, let alone them who are living in that scenario. That is what we tell them. Because the hurt, the anger will wear out but the damage being done to the children will not wear out, that will remain with them.

Interview Therapist 1

How long have you been working as a therapist?

I have been working as a therapist since 2016 so for the past 6 years.

What models of practice work best with couples who are or have separated?

In one's practice you will always be meeting with parents who are parallel parenting. Nowadays it's more frequent to meet this reality and very common. Sometimes one parent turns up for therapy with a child and it's important that one asks about the involvement of the other parent in that child's life, even in regards to consent. So when I have a referral, I would immediately know what the scenario is.

Most of the cases I had, both parents were on board that we work together through therapy. That is the ideal way. Sometimes I had absent parents and then I realize that there is sole care and custody. It depends there are a lot of different scenarios.

Something that is very obvious is that one can never assume. That is one of the most important things I learnt. If one party turns up, you need to be always curious and never assume. When you talk to the children, the situation is much clearer. Working systematical also gives you a bigger picture because you also have to ask about the support systems. When a couple lives together, normally the support system is united. One whole. But when a couple goes to separate ways, the support systems divides or changes. Example a lot of parents say that after separation they lost common friends, they lost common support and it's painful for them. They get very emotional and they need to rebuild their new support system. So when you have parallel parenting you have two different support systems, so you have to be curious and ask about them. What is happening there, what kind of support are you receiving?

Even on issues, example children who are being bullied, or children who have an eating disorder. One parent will see it in one way and another parent will see it in another. Obviously in different household, there is a different routine and a different system. So you have to look at it in both ways. So when you are at your mother, how do you deal with this? And how is it different at your dad's? That's why I said you can't assume because it is so vast and so diverse. After all, when you have parallel parenting, you have two different worlds. It's true that couple was united for a time as they have a child or children together but now they live in different settings and you need to rethink this.

Why could co-parenting be beneficial for the family?

Communication is key and that is the recipe. I sometimes work with families who are not separated but father or mother is so distant that there is just one parent. So that does not mean parallel parenting is bad. Sometimes as I said you might have one couple together and one parent is only parenting and other is distant. There is no bad or good. The fact that they are both into it, and they are both included, I think that is very important. In fact that is why in therapy you have to include them both. So that if someone is not that much included you don't reinforce it. Actually you need to go around the system and you change the dynamic a bit. So communication is very very important and even in couples that are living together. Sometimes those living together don't even communicate so there is no good or bad. There is the best thing in both worlds. Our children are very resilient. Sometimes we underestimate the resilience of children. And they can function very well in two different settings. The most important thing is that there are for example a handing over, so if one parent gave a punishment, they tell the other parent about it. So they need to reach this level of maturity. Most of the time we manage but there are instances where we have to work very hard to get there. There will be past grudges etc.

What do you think might hinder an agreement on a co-parenting plan?

As I just said past grudges, definitely. Maybe there will be betrayal, there will be pain that is unprocessed. That could be tackled through therapy if the person is willing. Something that really worries me in Malta is when third parties are involved. Such as families, extended family can make you or break you. That is very harming. Sometimes a couple agree and then their family ruin their arrangement, or sometimes partners but very often it's the biological family, who tell them words such as "Do you know what you are doing, why are you giving in, no don't give in". That type. I always in fact remind couples that they are in this together. The extended family is on the back seat and even in separation it should be the same thing. You need to reach this together, so you need to remind them, you are the parents. In fact when a couple is sitting down to agree, one of the sacred rules is that they should leave all external influences outside. Even when you are doing parallel parenting, it's very important. You already have two different households, two different styles, so if your mother for example will be involved, who might be bossy, even if she is not, this will continue to complicate matters.

Passive aggressiveness is top in Malta. "Ehe ehe hekk trid, heqq ara inti hux!" A subtle message that remains with the party and that is top, sometimes even more than past grudges.

Something else I see is when a separated couple, then one applies for divorce or annulment. You are retouching any undealt with hurts there, the pain. Not always but sometimes I see a bump in the

road when this happens. Sometimes both agree but when one party decides before the other party, there I will see a change in the collaboration.

How can the parenting plans agreed upon be more sustainable in the long run?

I will mention communication again. I know it's a cliché but it is so important. Parents have to find a way how to communicate. Example a particular couple I have who parallel parent, they just text. They found it better, because she thinks that he is manipulative and does not trust him, when they used to speak they used to fight and now they text and its working. But how will they reach here? There has to be a kind of communication for this however still. You have to experiment a bit. And when you find something that works, you should keep it dear. Keep it close. Because everyone has a way. I then have a couple who don't use their mobiles. In the past they used to fight via mobile, now they kind of moved away from that and they just talk handing over. They are able to meet face to face and talk. So both parents need to find a way. Today technology will help us as well.

Also and this is very important, we need to move at the child's pace. If for example one has a fifty-fifty plan, and we are realizing that this is proving to be difficult to sustain in winter, due to scholastic issues, both parents need to put the child's priorities first. That will make it sustainable. If the other parent is seeing that you are collaborating, putting the child's interests first, then there will be more collaboration and children are happier, after all that is the aim. If we end up following the plan, al punto u virgola, there the children will suffer. I understand everyone deserves their time but the child's needs is paramount.

What skills do you consider a mediator should have in order to aid a couple reach a sustainable co-parenting plan?

They definitely will need systemic training because one of the systemic principles is to be neutral. You need to be neutral at all times. One can't read a file in court or anything. We all have our baggages and issues. I can't side with one party or the other. All have their own story. And the parties in front of you will be at their most vulnerable times. Separation is very stressful. The couple, I am looking at them as a couple not as parents. That is the first thing that a mediator has to do. The couple are going through a lot, they are losing what they have always known, one another, their family life, their stability, and they need to start fresh.

They need to change home, their support system is changing so parenting is just one thing. There are other things, you are losing your other half. It's true that your other half may have treated you very badly, but still that is the only thing you knew for so so years. So mediators need to be trained in couple therapeutic skills, not to do therapy but need to have therapeutic skills. Even when you have a perpetrator, he also has his own story. Why is he a perpetrator, I am not excusing his actions, but what about him, how come he resorted to this behaviour, even betrayal, why, what happened, there is always a reason. I think you need to understand that couple first before you go to this parenting thing. They also need to be trained to understand and refer when therapy is needed. Systemic can be done individually as well, because with systemic work you can work with the system even if they are not in the same room. This is important even when there are grudges. Especially when one party might be angry, might think that the other parent has already exposed the child to

the new partner. There will be anger, things that will impact on the sustainability of the plan discussed. How are we going to do now? How will we put the children first?

So systemic training for mediators is important and it has to be ongoing. They need a systemic person who supervises them. One might also have a systemic practitioner as part of the team, who could intervene when parenting is the last thing on the couple's mind, so this person might intervene to untangle their issues before they move to reaching a parenting plan.

Eight sessions only: What kind of policies do you think should be in place to help co-parenting?

I think that the majority of the couples might actually agree as the procedure is as is. So that should be kept. However it depends on what they will not be agreeing on then. Example if there are a lot of nitty gritty and they are barely agreeing on anything, I think if after three sessions they did not agree there should be an assessment. Why did they not agree? Is it purely competitive? If they have three therapeutic sessions, would we be helping them in this way? Maybe they are not agreeing because there is pain, there is manipulation, its useless them going to court in that scenario, they need to go to therapy.

Thus I believe that if after eight mediation sessions they did not agree, mediator has to do an assessment, why did they not agree. If it's purely competitive then they go to court and Judge will decide, because in that circumstance, not even if Freud himself comes along, they won't manage. However in other scenarios, they might benefit from some therapy, if there is pain and therapeutic issues that will hinder the long term, I think we should invest a bit more, not a lot, couples they don't need a lot, but you can give them something else before actually saying they will not manage to agree.

To do this the mediator will need systemic supervision, where the mediator will bring the case along, and the supervisor, not knowing anything about the couple, will discuss with mediator. Supervisor might guide her, let's refer this couple, a family therapist should be part of the team, and the couple might be referred to some therapy. Even if the mediator is stuck, example the mediator is separated and this story is reminding me of my own experience, I will end up stuck for sure. So I will need supervision. I need support. So why should not the team have someone to support to give guidance. So this person will be used in both ways, helping mediator through support and working with couples to help them get unstuck.

What are children experiences of different kinds of parenting arrangements, relationships with fathers, mothers, siblings and step-families (parents and children)?

Children will be confused if no one explains it to them. We have to explain it to them with their own language. Ideally in an ideal world both parents sit down together with the child, and explain that they can't live together but they both love the child and both want time with the child so we are going to make a time table. Children understand what a time table is, so they will understand. So you will have time with mummy and time with daddy. That will be ideal but obviously not all couples can do that.

In mediation, children are normally not consulted and included. In another ideal scenario, whilst a mediator is working with the parents, a second professional is talking to the children, in parallel, only one or two sessions, not more, to explain what is going on. Mum and dad at the moment are in that

room and they are doing their best to find a way how to spend time with you. That's it, just very simple. If we had to dream, I think that a mediation service should also work with children. Not with all children, some parents can explain what is happening to their own children, but there will be others who would benefit from having a professional talking to them. So this happens in parallel. Then if therapy is needed they will be referred but the aim will not be therapy of these sessions, but having someone explaining to the children and gathering their opinion. Sometimes we are afraid of the children's opinions however children know what they want. Most of them, especially when they become older. Example if they got raised up in one locality and they have to move, they will lose their friends, their neighbors. What about the pets for example, they are very important for children. So what do they actually want? So you listen to them as well.

How do children and young people experience change in parenting arrangements?

This will depend. If parents will explain, that is the ideal. Communication is always the key. You have a family and the members are not living together so you need to communicate all the time. Nowadays even for those families living together, we are so busy that it is very easy to fall into this trap that you don't communicate or communicate superficially. This happens to people living together let alone to those living apart. Both having lives and commitments, how are we going to communicate. So if children wish to change something ideally this should be communicated between the three. If the boy told the mother that he wants to change, ideally together mummy and child will talk to the father and discuss with them.

Ideally before the couple goes to their lawyer they need to try and find a way and when children as they grow older they should be asked. For example one parent should tell the other, "listen ask the child, see what he want", so very simple things but they don't actually happen. So my advice would be for couples to try and talk between them. Lawyers do not have training in systemic, they do need basic training. Sometimes I hear things such "as my lawyer told me no of course we will not give in," and they might already have agreed and the lawyer would hinder the agreement. So as I explained earlier about third parties, sometimes even lawyers do this. It's the nature of their work and I understand but sometimes they lose touch with the feelings and with the fact that people might actually talk and resolve things.

In your experience are children consulted when parents are discussing a co-parenting plan prior to separation agreement?

No. Children are not consulted. From my experience, they go to mediation, if they don't agree, they go to court. However I rarely, if ever, did I hear of children being consulted. I did however hear of instances when changes are to be made in the contract, then yes, over there, children are consulted. Example recently I had case where, primarily, the child was not consulted in any way. And he was not small, he was around 10 years. 10 or 11. Child is now 16 and he wants to spend more time with one party instead of the other. And he has his reasons, because he has friends on the other end etc., and the mother was going to the lawyer. And I told the mother to talk to the father and the child together and they did actually find a way together. So in this instance, when the child was consulted, they managed to agree between them. At second stage however the child was consulted, when the parenting plan was revised.

What recommendations would you give to aid more couples reach effective plans? What are the important issues from the perspective of children and young people? What should a mediator do first?

I think that the mediator has to start off what an effective plan is. There will be people who will not understand what an effective plan is. Some might believe that an effective plan is not giving in to the other's demands. So I think you have to start from there. What does it mean for you to have an effective plan? Who is going to be at the center of this plan? The child? No one else. Ok you were a couple, what are you going through? Let's listen a bit at what they are going through. Because if they will be blinded, you will never reach an agreement. That is why I said earlier that when a couple does not agree, it does not mean they do not want to agree. They might be in a place where they can't agree. They are in a place, where there is so much pain, it was so shocking that they might need some time. So shall we send them in front of a judge? It will be more traumatic. So my first recommendation would be to explain to the couple what is an effective plan, even like very, very simple, what does it mean? Then I go for this recommendation, if you did not agree you might need help, not taken to court immediately.

Another recommendation is that there is someone systemic in the team, I believe that is very important because you are working with families so you need someone systemic. And I also think that when there are domestic violence cases we need to be very, very careful. Therapeutically we cannot work with them sometimes, let alone mediation. A perpetrator has power and control. For him control is everything. So a mediation session with a perpetrator, is going to be hell. He will either try and control everything or will be passive aggressive, something will happen. Are they actually trained for such scenarios the mediators? And in Malta we have the expertise in domestic violence. So what about this training. When they realize that there are dv traits how do they proceed so that the victim is supported. Sometimes there is emotional abuse. Example the wife might not feel she could speak in his presence let alone how she could do mediation. I'm using this gender because statistically women are mostly the victims. So what are we doing there, I think that is an important aspect.

And finally we listen to the children. Not all, because sometimes parents themselves speak about what the children want. You will realize when this happens because the feeling will be there. And you will see that the father is saying one thing and the other is saying something similar. So there you will realize that the children are being consulted. However when you see that they are completely out of the picture you need to have someone talking to the children, not in court but in parallel with the mediation session.

Interview Therapist 2

How long have you been working as a therapist?

OK, so I've been working since 2016, so 6 years in total.

When we have couples who are separating and or couples who are not married but they are ending their relationship, what do you think would be the best model of practice to use to work with these couples?

Obviously having the systemic principles, I believe that having communication amongst the both parties is the most helpful because it can help clarify any misunderstandings or misconceptions. And it can also help me make communication clear amongst the different persons. At the same time I abide by this rule, that once there are couple members who are not able to take responsibility for their behaviour and or who are not aware of how they are impacting other people around them, so for example they would be blaming the other person for the problems but not being aware of how they might be contributing to the problem and also when there are safety issues so, for example, the one party might get injured or hurt after the session the joint session because they might be threatened or they might say something which then would be used against them when there's also this lack of safety. In that case, I believe that it's not always helpful to have both parties inside the room unless the awareness, the safety and the responsibility is addressed.

How could you think co-parenting be beneficial for the family.

And I think that it's very beneficial. In fact I've had different families and coming for therapy and they were separated and I talked to the children, I talked to both parents as well because I think that it's fundamental that both parents are involved. And what I observed that when there is lack of communication and the children end up either picking a side or getting mixed messages and getting confused about what is expected of them, so having co-parenting set in place and therefore like agreed upon rules values like limits and having like a vision for the children. What both parents would want for them, for their future. I think that having these things set and having a like a shared sense of purpose for the children is very important.

In your opinion, when you met couples who were separated what kind of agreements do you deem to be beneficial to be included in such co-parenting plans?

There are different layers to it. First and foremost there is the coming into terms with the loss, the break up. It's like understanding how you were heard by the other person and how you heard them and why all of this happened. And apart from that, I think there's also the willingness and it's like the maturity to set feelings aside and to focus on the well-being of the children of what's in common. And so I think that's a start. Apart from that, I think that once the loss is dealt with and they are taking a mature stance towards the situation, I think then there's less room for competition for the power struggle to happen and also for loyalties expecting children to compensate for that lack of fairness and the relationship and there is more open communication and there's like an open friendship between parents. And it's like a community practice towards parenting. It's like these are our children and we have a common goal and despite our differences, then we come together to make sure that their needs are sought too.

When making these kind of parenting plans what could make it sustainable?

And again, I believe that the ground work is very important so, I don't know whether it would make sense or whether it's something feasible but perhaps once you have two parents separating and having children, it's like a given that they go for therapy, for example, you know, in order to process the loss, because if they keep on carrying the sense of feeling hurt and being mistreated, being like the injustice being perpetrated against you, then it's very easy for that person to leave the room or to go inside the room with the sense of justice entitlement. It's like I need to establish fairness by

taking more than the other person, because the other person has already incurred debts with me emotional debts.

So I think that that ground work would be done to ensure that then the agreement once, once the plans and carried out and there's more sustainability and there is less emotion and more logic in that because I think that when they are in process the motions it becomes harder to do that. And perhaps if the parents are not in that position yet I don't know whether it's feasible again, but perhaps having a third party that is more balanced than their perspective and more logical like acting like supervisors for the children and supporting the parents and taking logical decisions, not emotional ones.

Would a lawyer be able to fulfill this role?

Yes, definitely and perhaps also the training and the background, because if we leave this to the personal values of the lawyer, then it's one thing. But if it's part of their ethics and part of their practice, then it would be another thing. And perhaps training, good training to lawyers about, like, the rules of the house and how this is important. A lawyer could like do a reality check with the parents like listen, this is not like it should be.

What about the mediator?

For sure, one of the most important skills is strategy and leadership, and I believe they're very critical because even the position you take, the way you use your voice and the way you intervene in certain situations, I think that's very powerful. And apart from that, I think it would also make sense for the mediator to know the backgrounds of the parents. It's like what's important for the parent here, what's crucial? Because once you get to know what's important for them, what their goals are, then you can appeal more to them, what's important for them and when you have to negotiate and you have to sell an idea which perhaps would be totally different from their's, then that would help to appeal to them.

I think fairness is important and non-judgmental attitude and also awareness because I'm pretty sure that as a mediator it would be easy for example to empathize with a woman who is sounding reasonable and who is being fair and feel angry and feel put off by, for example, another parent who is pushing boundaries and insulting and being very hard to contain. And obviously I think it's very important to be aware of that and what's going on and how it's impacting the mediator and one's position. I think also being goal oriented is important, like, at the end of the day, listen, we're here to reach an agreement like, OK, let's put emotions away and be logical and rational and move forward.

In view of your knowledge about families, do you think there are important elements or principles that might should be introduced in this whole process to better aid families to actually reach sustainable agreements?

Yeah, I think getting to know the individuals is very important and what triggers them. Their story, their hurts, unresolved anger, unfinished business between the couple. Because most probably it will interfere in the process of coming to an agreement. Whether there's a sense of fairness or not, for example, that's also an important principle because again, it will interfere in their way of negotiating.

And so that's one thing and also perhaps what are their goals, what they would like to achieve and what are the things that they're willing to be flexible on and the things they're not willing to be flexible on? And the well-being of their children and their values for their children, their aspirations and whether they have any concerns and safety issues perhaps so, important, the children's voice as well, I think it's very crucial and like what the child wants, their aspirations, their needs, and why they want it. Because in the majority of cases there might be cases of parental alienation as well. And it's important to consider different loyalties and why the breakup happened, whether, for example, there was infidelity, and in that case, whether the children are aware of it, because in the majority of cases they are then highly impacted in the way they see their parents.

And perhaps also if it's very ambiguous as a picture. I would also consider important people in, in the children's lives, like grandparents or relatives. And because in the majority of cases, if there are like there is a gap in the story or there seems to be some ambiguity like two different pictures totally opposite, then sometimes it can help to fill the gaps and any reports from past professionals, perhaps as well, would be important.

Do you think in your experience, do you think children are consulted when their parents are discussing the co-parenting their arrangements no mediation?

I don't think they really are. I think that the parents always have the strongest voice and the majority of cases, I think that there is a fear of the professionals talking to children who are very vulnerable and young. So like would I influence them? And is that opinion valid enough, especially if children are of a young age? So I don't think it's happening enough. And I think that it needs to happen more often and with more trained professionals. Because it's one thing you go for I don't know, a legal course and you never had experience talking to children. It's another thing that you have a background psychology background or like you, for example and you really know, like, kids when they're lying or they're trying to say something which they think, it will look good in your eyes.

I have a particular case which I think that the parents really worked well together and where the access arrangements is very flexible. It's like there is open access and the daughter knows that and it's like she spends most time at her mother's house. But she is free to go to her father, call him whenever she wants the mother and father talk openly between them. There's no sense that she's missing out on something And she has a room in both houses, for example, and there open communication, even between the mother's current partner and the father, there's a very open communication. She's a teenager now and she's about 16.

Alright, so so you're saying this flexibility helps the child to maybe not to have pressures. Am I understanding you well and you take them too?

Yes, yes, she doesn't have to choose one parent. It's OK. And there's no choice. There is no compromise. Kind of then I have, for example, another girl that's coming to mind. She's about 10. There was a history of infidelity from the father's end. And the breakup happened on her birthday and her mother told her everything. And she really hates going to her father. She feels like it's an obligation from her father's end. And it's like it's not important for him to spend time with her and I think this is a very common theme in fact I have a number of cases where there's separation and the children feel like they are an addition for the parents when they visit their fathers. In the majority of

cases it's like, they don't have their room, they don't have a position in the family it's like a social contact kind of, they don't feel that they belong.

What recommendations would you give to families who are about to reach a Co-parenting agreement? What do they have to take in consideration before actually agreeing?

In the majority of cases where I had couples separating, there's this sense of discovering themselves, discovering the needs that were not met by the relationship, discovering freedom. And I understand and empathize with the sense of, I'm getting in touch with taking care of myself. Now it's my time and sometimes I see that blinds them a bit from the loyalty and the love that their children deserve in this process. And it's like they feel so run down by the separation process, the litigation and the conflict going on that they become like, they feel vulnerable and they're not in a position to give to their children. And I think that needs to be resolved and they need to again feel adults, not like neglected teenagers kind of, and get in touch and back again with the meaning parenting has for them, because sometimes I feel that it gets a bit lost. Obviously I'm generalizing here and so that would be one thing to process the loss to, to reclaim themselves kind of and to reclaim what they can give to others.

For mediators its like understanding the two sides of the coin, it's like in the majority of cases, it's easy to listen to one parent and like see the other parent as the villain. But understanding why the villain is a villain and why the victim is a victim and understanding that the relationship is a two way and in reality one day these two persons chose each other for a reason and I think getting to the core of why this relationship happened can also give sense to what's going on now as well.

What do children need, children who are experiencing the parents separated and there is going to be this arrangement? What do they need?

I think children need a voice. They need to be heard and I think that they need someone that follows them again in a process, not one time and to listen to their story, to what they want and how this feels for them. Also space to process because sometimes, as I said today, their perception can get clouded by the parents' stories, what they hear from those around them. So having the safe space to be true to themselves, not reflect what their parents say, kind of, and the children need both parents. In an ideal word they need to feel loved by both parents, but it's not always possible. But for them to make sense of their own identity and who they are, I think that if it is, if it's not when they are children, but at least when they're teenagers, they arrive at a point when they ask themselves or blame themselves for what has happened between the parents, so feeling loved by both, I think it contributes to a sense of self-worth.

Therapist 3

How long have you been working as a therapist?

I've been working as a therapist for over 6 years now.

What models of practice do you think work best with families in conflict?

In relation to couples that still need to parent, a solution focused model is needed. So the question here in a solution focused model is what works. What usually works. So the idea is to try and identify one aspect, one element of the couple that is or might still be functioning. So what works in the matter of parenting needs to continue. So it is very important when working with such couples to make a distinction between you not being more as the couple, but you remaining as the parents. We try to actually see what worked as parents and the parenting sphere and keep that as ongoing as possible.

Now one of the biggest issues comes when the parenting style is actually one of the major hot topics why this couple is not working anymore. So there you might need to enter to intervene in a more kind of strategic manner. So you give a bit more tips when it comes to the parenting roles being taken by the parents, who's doing what and how they communicate about it. However, in couples where things fall apart but the parenting was never really the issue, you actually tried to keep things as smooth as possible. Obviously for the benefit of the child. So one has to look into the source of this separation, see if there is any child related events and that play a part in all of this. If it doesn't seem like, you try to obviously work with this, keeping the parenting as was. When things were damaged due to even parenting, then you have to make up for something totally afresh. Obviously you need to constantly keep the child and the picture and obviously work in a way that where you keep the judgment of the child present. So what would the child think about this? What would the child you know? So the parents will always remember that they are accountable to the child's kind of judgment when they are taking these decisions in the parenting role.

And do you think that co-parenting is actually beneficial for children?

I think it's the best parenting style possible in such a situation. I think it's possibly most often the only parenting style which is possible and obviously it will much will depend on how the parents themselves manage the parenting, so it could be a way of making it more traumatic to the child but more than that, it could be the perfect way forward for the child. Children tend to adjust. That is my experience. Children tend to adjust to the movements between homes. I've had couples, for example, who never really lived together and they were co-parenting like 2 days on my side and two days on your side, not because they were fighting, but they never shared domicile. They still continue living at their own parents.

And the child moves between the two. So even without a separation going on and this had gone for years, you know. It's a bit strange to listen to in the 1st place, you know but I met couples that actually did that and it worked. And for the child it's very natural. You know that that happens. So co-parenting is a way forward and it obviously leaves also the child the ability to one day choose. So if there has to be a one parent and one parent upbringing, then I'd rather have the child choose that at a certain point in time and his life rather than having a judge or a social service employee deciding. Than obviously some cases are more straightforward than others and some parents are more harmful to the children than others. Those cases, stated by law are quite easy to go with, you know, but even there, I mean, the fact that today we also go for open adoptions, figure out if the child doesn't need to have an adoption, and he's living with one of his parents, why not keep contact with the other parent, so I think that co-parenting is the best way forward in cases of separation. Then there are lesser degrees of co-parenting that will need to be managed accordingly.

What do you think of various parental arrangements, how do children experience the different parenting arrangements being nowadays proposed, sometimes equal parenting being proposed?

I would have no problem with that happening. Obviously I do agree with the judges that children should not live out of suitcases, but no one says that two parents cannot offer two bedrooms, two wardrobes, two sets of clothes, two meal plans. This is the idea of permanency, which the judges are hinting at here, you know, to have one address and then maybe you join the other parents. Ok that is beneficial and we know that laws enacted such as Chapter 602 has worked hard towards this permanency, but nothing says that permanency cannot be in two places. Nothing says that a child cannot say this is my room and this is my room. These are my rooms and the parents should help in creating this ownership of the place you know. So I think that there exists the concept which they are not kind of taking on board of two permanency's. And that's when equality then comes into play. And that's when equality makes sense. When both parents are able to give permanency. Now if it's one of the parents who is not ready to have the child sleepover during the week, for example, then yes, I mean the situation there is telling you no go with the parent who's offering permanency and then regulate the conditions by which the other parents will see the child. But if two parents are stable enough, and I think that there are many parents, even if sometimes poverty strikes in when there are separations and stuff like that, and sometimes and sometimes homelessness might come about, but apart from those cases, there are many cases where both parents can go and live on their own and still offer the necessary stability, the necessary permanency, you know. So if you think that equality means living out of a suitcase, then yes, I agree totally. But that is not going to be the case if you have to employed people who have their own money and who can offer their child a safe environment and the bedroom of their own, you know, and stuff like that. They are sure they're not going to live out of suitcases because also a suitcase here means that the child has his all his belongings in one place and that one person is providing for them. So let's take an example. The mother is buying all the clothes and he's carrying things over to his father. But who says that the father cannot buy clothes for his own son or for his own daughter? So you might build up a wardrobe here. And the wardrobe there.

And also living out of suitcases again is an issue that tells me that they're envising that one parent will be giving maintenance money and is going to procure everything. But why even do that if you're doing 2 times on each two days on each side? Both can buy clothes and both can provide for any requirements.

Then I mean maintenance would be for scholastic things, which they agreed as one parent is going to focus on, you know, to be the reference parent for the school, you know so.

So we could be a bit more creative, I think out of some bad experience. Maybe the judges, I don't know, or this one thing, the permanency, you know, which is a valid point in itself, maybe we are exaggeting things and taking a bit away to the extreme that we want everyone to act this way when others might be able to procure themselves solutions for themselves to creatively adjust and different rates so.

How do you think such parenting plans can be sustainable?

They can be sustainable in a sense that having everyone on board is the main focus of sustainability. Obviously, keeping the child in mind for sure but having both parents on board is by far the best way how to ensure sustainability. So most important part of it all, I think is first of all that we talk about

early interventions. It is harder for it to work when you've had parents fighting in court for 10 years, one court application after the other and stuff like that. And then you send them to family, for example, to try to fix things and come up with a decent plan. I think the relationship between the parents would have been far gone at that point in time. However, if at mediation stage we can create space to actually work with these parents and see if they can do parallel parenting, Co-parenting, you know. But as early as possible, keeping in mind the child, then I think you can make it work much better, you know, and making it work much better means having them more easily or more readily available to agree on something and therefore obviously sustain, making it sustainable. Then again, you will always have issues ongoing. Sometimes external individuals come into play, new partners and so stance this might always end up changing a bit. But in order for it to be more sustainable, I think that the earliest you intervene, the better, earlier interventions are a must for common agreement, you know both agreeing to have that way forward. I think that they would be more readily able to move forward in that way.

And what can hinder a plan?

And when you come into play as a mediator, as a judge, way far out into this broken couple relationship, I think I think that it makes it much harder. Sometimes it makes it much harder. Also if you get too much into nitty gritty, if you draft it way too tight, I mean, life happens. So for these parents things will have to adjust. I hope not every week, you know, but sometimes, yes, you're going on a holiday and sometimes you're going on a weekend break and you want the child with you all along. So the tighter you try to make it and the more boxed you try to make people feel, then who's comfortable with the box will have the upper hand. The other person would have a harder time to adjust. So then sustainability will suffer you know because you will always have this kind of continuous animosities, going on so fact remains that I think that the more the parents can agree, the more open it can be, the easier it will become to maintain the agreement on the longer term, when things are happening. When you have a partner who decided that your holidays are going to be abroad, because your partner likes travelling. So you were never into traveling before when you were separating from your wife. But now that you have a new partner and you're setting new practices for yourself. So then the child comes into play again through these adjustments. So the harder you make the contract tight, the harder it will be to change and the more animosity will be created even on the simple things. So then even what normally works starts getting harder, so flexibility is so important even after the contract is signed.

What skills do you think the mediator should have in order to work within this context?

So I think first of all, very good listening skills and I think that when you're going to someone who is between you and another person with whom you have issues, feeling heard, feeling seen is imperative. So I can bend backwards a bit on something I want, if in return I feel heard and I feel fairness, so giving out a sense of fairness, I think is very important, because being listened to, being understood and being treated fairly means obviously that I will not get it always my way, but I will get my fair share and I think that when you're on the opposite side with someone else, if there is a third party, I need to feel that I am treated well by this third party. If I feel that I went to a referee who was unfair with me, who is biased, you know it is going to be hard.

Also keeping a firm reign on what goes on, especially on lawyers is very important. Lawyers are there to defend the clients you know and give them their own space and see that they are respected in

disagreement, but they will not be living the day-to-day of it all, so having one lawyer do a brilliant job for his client, get all she deserves and leaving the other person feel like being robbed in the way things were being done, after mediation and when these people need to live on a daily basis and need to decide who's going to buy a dress and who's going to pay for school, after the mediation service, is going to be something that they would have to negotiate by themselves. So making this mediation experience, a dramatic one and one in which one party feels a disservice, doesn't make it any better for the couple to continue negotiating things at a later stage, so a good mediation should, listen to both parties, a good mediation process should leave everyone feel that he got his fair share. It should be open enough for the couple to discuss between them and go ahead in the future and without having to put in other court applications, so enough flexibility, and see that the parties were both defended well without leaving repercussions on the rest of their parenting relationship, because as we say, the parenting relationship is going to continue. So for me a mediation process that doesn't keep that in mind is going to try to do a fair thing at that point in time, but will leave it very difficult to manage relationship after going out of the mediation room, so it's equally nonproductive for me.

Our children consulted and do you think they should in any way and be consulted? How? How could the children's voices be heard?

I think that consulting at least at a certain age, yes, children should be consulted. Obviously, with children you always have a bit of an issue that they might be both indoctrinated on what they can say and maybe at times also children might follow a bit the whim of the moment, you know? So if my mother is seeing a partner whom I don't like much, or I am seeing my father suffering and my mother returning to her to a good lifestyle, enjoying friends or my father is traveling and my mom is living miserably because of that, all that might influence what the children say. But if we focus a bit on the benefit of the child being in contact with both, so try to in a way, look through their loyalties, you know, which might even shift during, I don't know in 6,7,8, ten years, if they were separated since the child's birth, you know, and I've had cases where the parents actually separated even before a child's birth, both for respect of the child, they had to make adjustments after the child was born. But I think that it is important to hear the child's perspective on it. I think the mediator would get a lot of information, I've had children who decided, through a working agreement, then decided that they want to stop seeing a parent or stop seeing another. I found forcing these children to respect the contract very damaging for these children and very damaging for their relationship with the parent that they wouldn't want to see. Because I think if you end up in so many conflicts with a child who's totally resistant to be with you, that it really and truly doesn't work to force these children and to things.

So when it comes to children, I think it goes a bit beyond that first mediation, when they are setting up the contract. I think that children would need to be heard even along the way, when things change, where their likings shift. Obviously they shouldn't set the pace because if you still believe that both parents are giving something to the child and it's good and healthy for them to keep the contact, you might still decide to keep that kind of arrangement. But I think children need to be heard. Obviously issues may arise. But example a child not wanting anymore to see a parent. Sounds strange. What brings about such a staunch position about not wanting contact with contact with a parent? You know, it's good to hear them and know what's going on. And it's good to adjust according to their experience, one might not to do more sleepovers, you know why keep stamping our feet on the sleepover? If without the sleepover, we could still do very good job, you know, or why

is this sleepover mandatory in the contract of the mediator, and maybe the parents could agree, or not having sleepovers, and they could do it. Then, if it's mandated in the contract, a parent who will change his mind later on would say because she is not giving me the child or he is not giving me the child for sleepover. So I think one could avoid those. One could avoid those even in leaving contracts a bit more open.

Do you have any recommendations on how a mediation process could be enhanced?

Sometimes length is a bit of a hindrance in these things I do believe. Sometimes it happens even in the in the therapy room like you're working with a couple you're trying to work on making something positive for tomorrow for them and the more you lengthen, the more you go beyond a certain stage in the session, things end up turning ugly. So I think the faster the process is, the better. Obviously a mediator might be proposing something that she or he might realize the client needs to settle in, you know, so you might be proposing something and this is not what the client had discussed with the lawyer, or this was not what the lawyer was kind of pushing through. And so if you're proposing something which is different, you might want to give time to let things sink in.

However, I think too much time for ruminations and episodes where disagreement that could ultimately, between the months when you're meeting them, you know, make it harder for them to come to an agreement, you know, might complicate matters. So in mediation, I think the faster the process is done, I think it is always better.

And I think that it is also very important, to split the subjects, what we're talking about, if it's money, it's one thing, if I'm going to dedicate a session to the parenting, it's another thing, because if I mix things, anger on the money issue, may be taken over onto something which is totally unrelated and possibly it had not been one of these issues of contention. Parenting might not have been a method of contention when this couple was together and was deciding to separate. But if you mix up subjects and mix up things then I think the emotions tends to spread out and end up, you know, spilling over into even the parenting sphere, so I think, being quick, being possibly leading and avoid too much contention on every bone on the table, everything has to become a fight, so get rid of the things that we agree on, hopefully parenting would be one of them and leave the bones of contention for the last, the nearer you going to the eighth session, might be even a way how to force a bit the hand on agreeing on something so.

Obviously it doesn't work equally when it comes to parenting because you can't force things through as I said. Otherwise people going out of the room might have said yes, but after they leave there then they have a life of parenting which is going to be difficult to handle. But yes, I think not mixing stuff together is very important. But leaving two months in which a couple, which is going through a hardship, possibly not as yet, living separately, so injuries to the relationship might still be continuing, I don't think is ideal, when there has been already a decision to separate.

If there is therapy and one doesn't know really if there are separating or not, still, you do closer, much closer, two weeks maximum as an appointment, but leaving two months in which injuries might happen in the relationship that could ultimately reflect back into your room like last time, they left agreeing two months after they come and they are totally two different person in relation to each other. So that might actually harm the mediation process in that way.

Therapist 4

How long have you have you been working as a therapist?

I have been working for about 10 years now.

What are the best models of practice that a person has to keep in mind when working with these couples who are potentially in conflict?

We need to understand all the processes that the person, the ex-couple, are going through. So foremost we need to understand that this is these are two people who are going through loss and very often when there is a loss, there is a lot of grief. There are stages of bereavement process like shock, like anger, like pain. There's the bargaining, all the phases until we understand what we are going through. But we need to understand as well that in the process of separation, it comes in many phases.

So separation is not just about the legal process, there is the psychological part, there is then the emotional part, and very often I think that even when it comes to the litigation, one of the most things which is extremely difficult and maybe at times because it's not tangible, it's difficult to understand that there is a difficulty to understand that now we're not going to be involved in each other's life anymore. So at times, with knowing or unconsciously, the legal process ends up being an extension of being involved in each other's life and some form of power and control. So whenever we are going to work with these situations, we need to acknowledge all these things in order to help the people, to understand the people who are being involved and also to help them preempt the difficulties which they might be entangled in. Because at times, if it's when you prepared, it's like taking a preventative role, you help them to foresee the difficulties or the processes that they might be untangled so that they may be aware. So that it's not an unconscious process, so they are aware that what might be and helping them untangle in this process.

Do you think that Co-parenting is beneficial?

Yes, I believe that co-parenting is very needed. We need to understand that even though the couple is not a couple anymore, but children are not separating from the parent. So we need to keep that in mind.

However, obviously, what makes it very difficult or very disrupting for children, is the process of separation. So if the co-parenting issue will put children into a situation when there needs to be the splitting, there are split loyalties, there is a lot of litigation, the concept of co-parenting is going to defeat this purpose.

So even though by concept it's very important, because there are situations where obviously there are children who are being raised by one parent. And I'm not saying that these children are not going to be accomplished or not going to fulfill the milestones that needs to be fulfilled. However, if there is a concept where the two people are being involved, the two parents can be involved in the rearing of the children it is extremely important. However, what is also very important, because at times we might out of good an idea of goodwill, at times we are not very mindful and helping children understand the new arrangements. I've encountered some parents who in order not to be disrupting

as possible they act as though separation is not happening like for example they continue to go out together and this is a bit confusing for children so part of the co-parenting process, which is part of the separation process, we need to help children understand what is going on, what has changed, while reassuring them that even though as a couple, something had changed and there is no couple relationship anymore, but the parents are doing their best to keep on being involved in the children's life. But yes overall, I fully agree that it is extremely important when everything is possible, because at times you know that is not in the best interest of the child. Here I'm talking about extreme cases when there is a possible kind of abuse or a situation when a parent is not functioning well, in that they can take care of children, so I'm excluding those kind of situation but by concept it is extremely important that both parents to be involved also because whenever they are not involved, I had worked with children even in their adulthood who feel that they had something wrong within them for their parents had not been involved with them so they feel rejected. They feel, at times, because children also they tend to be by nature, very egocentric, and if they were not, it was not explained to them in their meaning making process, they feel that the parent abandoned them or they had something to do with the separation process so it is extremely important that it would be involvement is that is the distinction between separating between the partner and parenting.

What can hinder such parenting plans?

I think first and foremost, the purpose. Why we are doing this, the aims and objectives. I always feel that in a context where there are a lot of factors which are contributing in a conversation, we really need to be focused on the aims and objectives of the conversation, why we're here, what are the aims and objectives and because obviously at times there are also hidden agendas which may be contributing. I'm not only referring to the actual parties, but at times there are also third parties like other professionals involved in the litigation process, which may unfortunately, and I'm not saying this to generalize, because I know that there are a lot of professionals like lawyers who are very ethical and I've worked with a lot of lawyers who are very ethical, very diligent and we work hand in hand. But unfortunately, when there are some hidden agendas, at times, the idea of resolution is not possibly what is being privileged unfortunately. Obviously we need to understand that a lot of couples who are going through separation, it is their first time. I think whenever I encountered such situation, one thing that always came to me is the unknown, the fear of the unknown from where I'm going to start, what I'm going to do. The fear of the process of the law. Some people don't understand what mediation is about, they need more information for example. So even for us professionals in different fields, working with these parents, being from the legal, from the social, from the mediation, we need to help people understand the process, because for us at times it is our norm to deal with these situations. But these people, this is a life changing experience. So we need to acknowledge. Obviously since this is a situation where there is a lot of emotions going on at times, there are some situations, some emotional dysregulation, for example, which may not support the process and maybe we may not be focusing on co-parenting. Not because these are parents who don't care about the children, but they end up and caught and struggles which may hinder the process, so someone like a mediator going through this or facilitating this conversation and this process, I think, this is knowledge which needs to be known in order to, I think in order to account for it.

For example, from a therapy point of view, one thing which helps me, especially parents who are going through initiating this process, talking about possible difficulties which these parents might

encounter, for example, I use situations or scenarios where I present challenges so that I put forward the idea, what needs to happen in order to prevent such situation. Because at times, being in it, a lot of parents say we will never be like that. But once you start off the process you and because the legal there are some legal practices which may not help in the sense if for example, there is a recourse. Obviously one cannot ignore court, so there are some legal processes that, if not explained, they are caught in a vortex which it may be very, very, difficult to untangle oneself from. So I think being transparent, giving information, helping them understand can prevent a lot of prolongement of this process, which at the end of the day will cause further damage, or the main I may say, the main damage because even though separation itself, as we said this process, it's a loss, however, we also know that not all loss turns up to be an experience of trauma but how we live through it has the potential to develop a traumatic experience, so we need to be mindful of that.

What do you as a therapist think of various parenting plans and how are they experienced by children? Sometimes mediators face a dilemma with parents wanting parenting plans such as two days with one party and two days with another. What do you think of this?

I can share the same dilemma actually because while I am all in favor of the idea that both parents are involved, however, I worked with children of separated parents. For example, I have one child in mind, nowadays she is 14 years and this arrangement started when she was five, five or six. And she also told me she always told me that It was very destabilizing for her, her arrangement was one week with the mother and one week with the father and it felt that there is never a place where home is home. And you also understand that it is also a need for our children.

One thing which will need to look at is why we are doing this. And very often parents say we're doing this because we feel that it's our right and also we would like to build a relationship with our children. However, we need to be very mindful of the needs of the child. And the needs of the child need to be understood also by life stage. So for example, an arrangement for the toddler is different from an arrangement of a child of 12 year old and then of a 16 year old. So what is OK for a toddler, or what is not OK even on terms of sleepovers, for example, because of their development and what do they need according to their age, it's very different. So I think that each and every contract or arrangement needs to be child focused. Obviously I can understand fathers tends to be the more disadvantaged in this, so I can understand that fathers very often feel that they are the disadvantaged group. I can see the shift nowadays that fathers feel they can give more, we are considering more the importance of fathers. But I understand that the father as the parent or the person who is missing one important milestone and it's very, very painful but at the same time, we need to acknowledge the fact that this is not something which the child had brought on to himself so I believe not that each and every arrangement should be focusing on the need of the child and should not be, even though I understand that in terms of contract at times they need to be also some form of baseline, especially when there is a lot of litigation and then it's to be a starting point, but somehow it's extremely important that every situation is being considered individually. But from my experience so far, obviously I did not speak to every child but my experience so far is that in this situation there has to be stability or structure in the instability or in the change. A lot of changes might not be very helpful for the children. Obviously when we have older children, there will be more possibility to discuss with them. Even though I understand that certain decisions have to be taken by adults, but we need to help them, if they help us understand what do they need as well. So it's important that their voices are also listened to.

But I have to admit that I am also wary about the repercussions, because when I spoke to children with this arrangement, it tends to be very, very disrupting when there is a lot, when there is unstructured. For example, I have another couple in mind, parents in mind who, because of their shifts, they are very co-operative and they're trying their best so the intention is very good. But every morning its different you know so they go and live with Papa, then sometimes its catching the van from here or from there, it's very disrupting. So I think we really need to be mindful of this as well.

Should children be consulted in this process?

My stance is that these parents are the people who know their children mostly so I tend to like the idea to support parents to talk to their children because the parents are known people to the children, known faces to them. And it's also very disruptive and intimidating, being spoken to by third parties, especially if third parties have the label of courts and if they are wearing the hat of court, it can be very intimidating and they may feel that they may be asked to take sides and this is very, very intimidating for children. So from my position as therapist, what I usually do, I put forward scenarios and we speak about tools and possible ways of how to speak to our children in order to help them, speak to them age appropriately in the process when we speak in terms of access for example, and what is happening and changing homes and the implications and make the possible questions. Because very often children, let's start off with the idea that very often children know even though we believe that they don't know what's happening, they pick up. They might not tell us. They might act as though nothing is happening, but they know.

So it's important that we speak to them and they have the permission to speak about it and it's out in the open and it's not the big elephant in the room. And then obviously without giving them the responsibility, because at the end of the day, we should not shift responsibility from me as a parent, to them and tell them you decide. But the idea that, gives me what you want, tell me what you need because our concern is or the main idea is that you are as comfortable as possible while understanding that this is going to be something which may possibly you don't want because this is something which they did not bring upon themselves, of course it's might be for the better, because very often you also know that some separations are very needed. And it's better that the parties are not living together anymore, rather, but really and truly when you are in the situation, change is a very scary even for the child.

So very often from my therapeutic approach, I tend to avoid as much as possible being the person who speaks to the children but when it is possible either supporting the parents with tools of how to speak to their children because it's safe, it's known faces, if it's not possible, at least creating a context where parents are present and speak to children. If not, then obviously specialists would need to speak to the children and asked about what do they want and what they need but it's difficult for them because they may feel that they are being disloyal to either of parents.

And what I also understood, especially in situations where there is a lot of long term litigation, very often the parents need a lot of validation. That's why they need to even narrate a lot their story and the mediator needs to be mindful about possible triangulation. Because parties need someone to tell them you are right or you are wrong, he is the villain and you are victim. I have a situation in mind, which I'm working with, which I am feeling this a lot and they are going to start the process and when I think about it, they continue to narrate their story because they need a third party to validate

their story and tell them who's right and who's wrong. So somehow the entanglement in the legal process is this constant search of validation, which I think that one needs to be mindful of in order to know the purpose and why we are doing this.

I am not doing this to tell you are right or you are wrong. So even me as a mediator or who is working with whatever the hat we are working with, we need to know the purpose because it's easy to get entangled because at times, even when we're trying to understand and we are part of the process, we need to be very, very mindful of how each and every situation is affecting us because we have our context as well. I think that therapists, mediators need to have a context like supervision for us in order to understand the implications of how even my personal experience is impacting the situation as well

Being engaged in highly deregulated situations may be very, very disrupting even for us, and this can cause burnout as well. And that can cause situations where it's very difficult then to be objective, for example or supportive.

What skills do you think I should a mediator should have or should learn in order to manage these situations?

It's about the practicalities and about the process, what is going on individually and in a relationship in order to help them resolve and facilitate the process. So I truly believe that somehow with the knowledge of empathy, positioning in terms of how certain things people need to understand, and all these that we were talking about, about the development of children and skills or knowledge in relation of the process, individual processes like losses, as we're saying.

And how to facilitate the conversation and the process, very assertive boundaries, acknowledging the pain, acknowledging the difficulties, being sensitive and mindful. Every person is experiencing a new reality, for us it's my tenth mediation session, but for the person it's a life changing experience. So this is very difficult and we need to understand that feeling that they experience, of being a limbo, the waiting game is one of the most uncomfortable things because it's pending. The life of people is pending, so the knowledge of all these things is extremely important. So I think if a mediator has to have some legal background but also a social and maybe also therapeutic skills and knowledge to have a good blending of both worlds.

How could a mediator ensure that a plan that is being agreed upon is sustainable?

I believe that children have different life stages and what works now will not work in three years' time. So children change, their needs change and thus the couple, not only when setting up an agreement but after, need to be flexible. If sustainability means rigidity, I think we're getting people to fail. Because it's true that this is a contract, but it's a contract which entails a constant evolution of an individual. In this case a child. So sustainability needs to give space for this evolution. Otherwise I think we are failing the child. The system itself will fail the child. So I think sustainability needs to cater for this gap that the contract is happening in context and time, place and space where the child will develop and evolve. But if we're going to stick to the contract where some extracurricular activities might not be present at some point and then they present themselves, I mean, sustainability has to be coupled with flexibility.

So there needs to be a space and the context and the place where this context may be needs to be devised, especially some clause of it, when it comes to children who are in constant flux changing there has to be this flexibility and some parents can be flexible because they are in that place where they managed to maintain a good enough, like a business like relationship.

However, there are some situations which it is not possible, so these situations may be rediscussed and it may not have to be in open court but in another neutral environment.

What recommendations would you make for the process of mediation to be truly beneficial for the parties?

I think as we have discussed in reality to be mindful of all the processes. A mediator is a person who can guide, they need to create a space where they can facilitate discussion, they can be fair. So it's important they know about family dynamics, about family systems, about child development, and we stay away from myths, help create this flexibility and self reflexivity is very important.

Therapist 5

How long have you been working as a therapist?

So I've been working as a therapist for the past six years now and I work both in the public sector and also in the private sector. And so I see clients and different contexts and coming from different backgrounds as well. And I do not specialize solely on working with couples who go through separation, but it is one of my main areas of work as well.

What models of practice work best with these couples?

So it tends to be a very complex situation to work with, because very often we find that it is a point in the parents lives where they need to shed off their identity as a couple and so their identity as a couple is now something that they have stopped and sometimes it is a choice of the two. Sometimes it is not a choice of the two and sometimes it comes very often after a lot of turbulence in the relationship. Sometimes it comes after abuse as well and so there would be a lot of hurts to address and to tap into and it is not easy to have 2 two people in the session, who have been through so much, so being together in the room tends to be a lot for them to be present, let alone to shift on to focusing on the needs of their children, because at the end of the day, that is what we are discussing at that point in time. And now to make the shift from the injuries and the hurts that the couple would have been through and shifting onto what's their children need and putting that at the foreground and the forefront of our conversations, that tends to be quite a challenge. Maybe I'm generalizing, but I see a tendency that couples, parents, who come to therapy after they would have separated, would be in a position where they can actually focus a bit more on their relationship experience when compared to other persons who potentially come to therapy on their own. So I think for someone to actually face the truth, to come to therapy, they would have already been through a bit of a process where they can now focus on what they need to do as parents.

Could co-parenting be beneficial for families?

I think it can be very beneficial for the children and for the couple to co-parent, but I think it needs to be a bit of a process as well and a lot of couples who need a lot of support with getting to a point where they can open together. I think there needs to be a lot of clarifications at the start, a lot of

boundary settings, a lot of role and definitions as well and so there needs to be a lot of groundwork, I think, for the parents to be in a position where they can move away from their hurts and focus on their children. The dynamics will be very raw and present, they might have been hurt by the other person, pique might be very present. The parents might at that time be investing in injecting the other person or to cause issues to the other person's life, to get back at them. And we also find situations where children are also, given messages that alienate them against their parents.

So I think co-parenting can be very, very helpful but with some support. I think there are situations where couples might understand that this is not working for them anymore, so the process of separation does not always have to be very traumatic, so to speak, but there is also the tendency that it is so. So in these cases, maybe there is more of the need of support for two people to be able to get them together. Something else that I encountered a lot in my work is that after a few years of separation, perhaps they meet someone else, they could potentially meet someone who's already a parent and so this situation would become even more complex and then even more interesting, and it could be very resourceful even for the child to learn from, but it needs to be done with some tact and some support very often.

What skills do you think a mediator should have? How should a mediator handle these sessions from beginning to the end in order to help these couples resolve their conflict amicably?

I think mediator here could be very, very helpful and bringing in her experience of what parents need to think about when they're actually coming up with that co-parenting plan. Potentially these parents would have never been through this process before, and so having someone with experience, someone who has been through supporting other parents with this process before and also knowing what we would need to think about, could give a lot of confidence to these parents. So perhaps at the start, explaining what are the important things and topics and areas that we need to look into and so that ideally not much is missed, and especially since the process is time bound and it's structured. So it's very important to make the best use of the time that they have together. And the more they get lost in conflict and the more things are dragged, the less structural, the less of a concrete plan they will have. So if they are guided to use their time wisely with the mediator and focus as best as they can on their plan, on any questions that they want to ask each other and any areas that they want to clarify, then I think the process would be as effective and efficient as it can be. And then I think also a mediator could very be very helpful in bringing the child in the picture when they're not in the picture and or in the conversation as much as they should be. So perhaps reminding the parents to keep the child at the center of their conversation and to not get lost, but to remember that they're discussing this, so that they give their child the best parenting that they can in their situation. And so I think that the mediator could be a very important role in the very crucial role in bringing the child back into the conversation as well.

What are the factors that might hinder couples from actually reaching an agreement?

The history, potentially. Their history as a couple and what led them to separate and so I think that that could impact how they look at the potential of co-operating together. If there was infidelity in their relationship, if there was abuse, if the needs of one of the two persons was missed, thus the reason for the couple to separate could impact how they look at the possibility of them working as a team and investing in the relationship, that of parents. You know, potentially also the sometimes that there would be conflict in the relationship that they couldn't solve and potentially in their role

as parents, they could very easily use the same tactics and the same strategies that didn't work for them when they were a couple of that as they are trying to co-parent together. So potentially what I'm trying to say is that they could benefit from getting new skills and new resources into how to resolve conflict because what they used before they didn't work for them. So why would it work now, and so some ideas of potentially training and teaching could also be supportive here.

So what recommendations would you give to mediators who are managing such sessions?

I think it depends on the situation, because there might be situations where if you had to tap into what happened you might not manage to reach an agreement because it would need more processing than what the mediation sessions could offer. The couple might open too much and that would mean that the aim of the mediation would be lost. And if there were goals such as coming up with a concrete plan that would benefit the child, that might be lost in processing the trauma of the parents, and so potentially what could help is actually suggesting external support apart from the mediation process, which I'm aware very often happens as well. And I think that is very supportive of the process because even though potentially the parent would not get the opportunity to do that process in mediation, but they are still aware that there are other avenues where they can get that support too. So considering that it's time bound and structured, I understand that there are some limitations to the process. If it was more flexible and it wasn't as time bound than potentially yes. But at the same time I understand that there are the children as well who need this plan and who can benefit from having a bit of structure and knowing what's going to happen and who they're going to meet when and where they're going to be picked up from and so I understand the need to be efficient in mediation because the children need that.

What do you think makes a plan sustainable?

To as much as possible, think of and pre-ampt what the situations could be from the start. So I think that's where the experience of the mediator would be very, very supportive, because the mediator would know what areas need to be thought of from the start. But I think the element of flexibility from the parents could also be very supportive. So the understanding that even if we think of 100 different situations that we might encounter, chances that it will not cover everything. How are we going to deal with situations that we've not covered so far and I think being able to address these situations, ideally I make a little between the two of them and always keeping the needs of the children at the middle of these situations, I think would be very beneficial and because it's potentially the plan could preempt most, but not all situations that could crop up and also an element of flexibility as well between the two could also help. Maybe also the deciding, the means of how they're going to do the communicating could also be very helpful. And so if something comes up that is not related to the plan, how are we going to relay this information to each other? What are the end means that we're going to use to solve this issue and if an issue happens when the child is with you, then you will resolve with her. Discuss all this together and come up with the solution together. So I think clarifying these things and having space where to have these conversations I think would be very helpful.

How do you think children experience different kinds of parenting arrangements?

I think the arrangement that I see supports children the most is an arrangement that has a good balance between flexibility and structure. And I understand that this is not a very easy balance to

strike, especially when parents try to come up with this plan, very often the parents themselves don't know what their lives are going to look like after they adjust from their separation because they themselves are still adjusting from the separation. So there are lots of changes that the parents themselves need to go through but if I had to focus on the children, I think having a bit of a balance between this structure that gives a child a sense of containment, of knowing what's coming, of predictability, which helps children feel safe as well but also flexibility in the sense that this plan could address situations that cannot be pre-empted from the word go. But although potentially it could be seen as diverting backward or as unsuccessful, I see it as very successful when the parents sit back down together and evaluate their plan after sometime, and because that also gives them the opportunity to see if their child is still benefiting from this plan, if there are things that they might have missed, if there is anything that they need to address now that they've tested this plan for some time. And so I think the space of evaluation as well will be very supportive for the child.

However yes it's a very complicated situation. Until now I've met with situations where the process took some time and there was the need to go back to court eventually and to discuss and reopen certain aspects of the plan. I also need that mediators need to you know, we need to update ourselves a bit as well with what research is showing us nowadays and also what our experiences teaching us and I think that the measure where one style fits all and one stereotype fits all might not actually fit all and so maybe bringing the child in in this conversation, actually listening to what they would like to do, where, how they would like this plan to be if they had to propose it and seeing what kind of support there is, on both ends of the parents.

So does it mean that if the child spends just as much time with his dad, he will also get to see his paternal grandmother that is a very important and stable figure for this child and who has been there throughout the process of separation for the child? So I think it we can't really draw one line and say this is what fits everyone. I think we need to go into a bit more depth here and maintaining what actually works for this family, this particular family.

Do children adapt however to this coming and going?

Children adapt yes as long as there is a good, solid foundation for this plan. So with these children who are not spending time with their fathers or with their mothers, worrying about their parent or wondering if the second they go back to their mother or their father, they will be bombarded with 100,000 questions about how they spent their access with the other parent. Then I think these changes not might not impact the child well, but if there is a good ground for it and there is an option if the parent, the mother or the father or whoever welcome their child back and say it's nice to have you back, I hope you had a great time with your other parent. Is there anything that you wanted to share with me about the time you spent away? So that's what really makes a difference and if the transition between one household and the other smooth, if there's no anxiety there, there's a warm, welcoming environment that will take the child back into the system. And so I think all these elements make a difference and what the children were going through. Very often children also go through a grieving process at the start, so I think we need to keep that into consideration that initially the kind of support that the child might need might have to be different than the long term support that they would actually need. So the child goes through this grief, and often children start grieving their stability in their household before parents separates, all this process starts very often very early on, but it might continue once the parents aren't living in the same household, so that that's also

something to take into consideration. Potentially what I'm trying to say is that what the child might need in the first year of the separation might shift in the second, third year.

In your experience, are children consulted?

There are situations, yes, but typically when the children are a bit older, yes there tends to be more of a process of consultation. I'm not so convinced when children are very young, their age and perhaps there's more of a tendency that their parents feel they have to make a choice for the child. So that would be something to tap into, I think a bit more and also giving the space and time to listen to what the child actually needs to say, because a parent might go through a process of thinking what they want to say in in a session or in court from before, but actually having a child and explaining their point of view might need some more prompting, might need some more support. And sometimes I find that is where some of the role of therapy also comes in, when we prepare reports or we go and witness in court as well when it is needed, then we would also voice what the child would have expressed in their session so professionals could also support in this area.

What would your recommendations for mediation sessions be?

I would be very interested in how sessions are concluded and whether the eight sessions are enough and where that comes from and whether it sustains the thought that these eight structured sessions are enough for a couple to reach what they need to reach for the benefit of their child or if there needs to be any flexibility for this process to be more complete. So I think that is one of the things that I would query.

I think sometimes time is enough, but sometimes it isn't as well. We see situations that years later, that there is still conflict and the things are still very difficult for these two people to resolve, and there are other situations where time helps them to adjust, like seeing what your life is like, and as months go by it can help with actually sitting down and focusing on co-parenting. So I think it would depend sometimes I can see the situations where giving it a few months to cool down could be supported, but I think there are other situations where postponing the process might not actually do it.