



DProf thesis

Interpreters in mediation

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Doctorate in Professional Studies

Interpreters in Mediation

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July, 2019

Disclaimer: The views expressed in this document are mine and are not necessarily the views of my supervisory team, examiners or Middlesex University.

Abstract

Mediation is actively promoted throughout the European Union as an alternative to court-based dispute resolution. Contemporary mediation takes place, however, in the context of highly linguistically diverse societies, and with international migration in the 21st century, this diversity can be expected to increase. Cases of mediators working with Non or Limited English Proficiency (NLEP) clients are increasing and, in the UK, this usually means introducing a language interpreter to the mediation encounter.

This professional doctorate project examines the function of language interpreting in mediation. It sets out to examine the dynamics of the interpreted mediation encounter through the collection and thematic analysis of qualitative data from semi-structured face-to-face interviews with mediators and interpreters. My project is the second phase of work that I contributed on interpreting in mediation to the Understanding Justice (hereafter UJ) project between 2014 and 2016, funded by the Directorate General Justice of the European Commission.

Mediators use a range of communication strategies to mitigate conflict and encourage negotiation. The introduction of an interpreter, however, raises the possibility of these strategies being derailed, and it requires insight on the part of mediators and interpreters into the peculiar demands of interpreting in the mediation encounter to successfully implement them across languages. The demands of mediating through an interpreter remain, however, unexamined and insight into how mediation and interpreting interact in practice is limited.

My DProf project seeks to address this topic by posing the following research questions:

- i. How do mediators experience the use of interpreters in mediation?
- ii. What impact does the use of an interpreter have on a mediation's progress and outcomes?
- iii. How do interpreters understand their own role and function in mediation?

My research indicates that the understanding of how to successfully incorporate language interpreting into mediation practice is still in a primitive state, compared to other areas of criminal and civil judicial activity. I therefore complete my research report with recommendations based on the data for how mediators can adapt their practice to the demands of the mediation encounter.

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Chapter One: Introduction

1. Introduction

This DProf report is my account of research into the use of spoken language interpreters in Mediation. It sets out to explore the experience of mediators working in Family Mediation in the UK of using an interpreter when at least one Mediation party is a non-or limited English proficiency (NLEP) speaker.

The research that I report on is the second instalment of research undertaken in the *Understanding Justice Project* (hereafter the UJ Project) between 2014 – 2016. This project was a multi-party project funded by the DG Justice of the European Commission with a total of 14 partners from seven EU member states. I was the initiator and coordinator of the project, designing and securing funding for the project, putting together the project team and coordinating the project to completion. (This project is reported on in detail in my RAL 8 claim). In this DProf project report I build on the work on Mediation carried out in the UJ Project to undertake a more detailed exploration of the personal perspectives of mediators on working with an interpreter

The UJ Project and this DProf report are, therefore, two parts of one research effort. Where the UJ Project made an initial map of the extent of the phenomenon of interpreting in Mediation in the EU, using a questionnaire to collect and collate information, this project undertakes a more detailed interrogation of the experiences of mediators on working with interpreters. I explored these mediators' experience of mediating with a spoken language interpreter through research interviews carried out over three months between January to March 2018.

The UJ project examined aspects of interpreting in civil proceedings in seven EU member states: The UK, Belgium, Holland, Italy, Spain, Poland and Romania. The project had two overarching aims. One was to investigate the legislative basis for the provision of interpreting and translation in Civil Justice; the other was to examine the interaction of spoken language interpreting and a form of Alternative Dispute Resolution called Mediation. Mediation as an alternative to court-based disputing measures has been promoted by the European Commission since the objective of this part of the project was to investigate the approaches taken by mediation professionals to language barriers in multi-lingual mediations and to measure the impact of these on the mediation outcomes.

My DProf project, however, restricts its focus to mediation in the UK. By combining the two pieces of work, I aim to move from the broader quantitative data collection of the UJ project, to an analysis in depth of interpreting in mediation from a phenomenological perspective. In order to do this, I collect data from family mediators on their experience of working through an interpreter. I also supplement these with data collected from interpreters. I then use a thematic analysis to construct a picture of the explicit and latent assumptions of these interviewees about mediation through an interpreter.

Mediation, face-to-face, on-line or over a phone line, requires mediators and clients to be able to communicate. In a Europe whose motto is 'United in Diversity', however, we can no longer assume that communication can always be in the dominant language of the surrounding nation state. Globalisation and mass migration have led to a degree of social, cultural and linguistic diversity in the UK not experienced in any previous era (Vertovec, 2007, 1024-1054). Between 1951 and 2011 inward migration accounted for nearly 45% of total population change¹, while the 2011 National Census found that 1 million households in the UK (that is, 4% of the population) had no adult household member who spoke English as their main language. Linguistic and cultural diversity can only be expected to increase under the pressure of international migration, both forced and voluntary. Today's new arrivals become the settled citizens of tomorrow and the linguistic and cultural diversity they bring with them becomes part of the fabric of civil society.

Nor are traditional notions of simple bilingualism, the 'speaking' or 'not-speaking' of a language sufficient to characterise the linguistic complexity of the super-diverse society. Individuals exhibit degrees of communicative ability and different levels of comfort and competence in a language depending on the context in which they communicate. The Bengali/English speaking tradesman may feel entirely functional in English in day-to-day contexts he is familiar with. Placed in the setting of an official procedure, however, he may feel handicapped by having to speak in his second language. So in mediation; when negotiating on matters of deep personal significance (arrangements for child care following a marriage breakdown, the abduction of a child or matters of property boundaries or commercial agreements) parties may feel significantly disadvantaged by having to speak in a language they do not consider their own.

This linguistic diversity has affected all areas of the UK judicial services. Police and probation officers, lawyers, judges and administrators have had to learn the skills required for working across barriers of language and culture, predominantly through the use of an interpreter. Mediators are facing the same challenge. The UJ project (Townesley, B, *et al* 2016)² found that mediators in the seven EU member states participating in the project were regularly encountering situations where the mediator and one or more of their clients did not share a common language or culture. Mediators were also unclear about how best to manage language difference in their practice. Overall, their responses suggested that mediation as a profession is at an early stage of adaptation to the challenges of linguistic diversity, relative to other branches of the judicial system. Mediators must therefore confront the question of how to mediate successfully when faced with language and cultural difference and of how to accommodate the language needs of disputing parties. In the UK context, this will inevitably mean using language interpreters.

My DProf project sets out to investigate the various ways in which working through a spoken language interpreter impacts on a mediation encounter. It does this by collecting and analysing the verbal accounts of mediators and interpreters as they reflect on their professional experience. It forms the second part of a two-part investigation of interpreting in civil justice.

¹ Office for National Statistics (2013) Immigration Patterns of Non-UK Born Populations in England and Wales in 2011 www.ons.gov.uk/peoplepopulationandcommunity/populationandmigration/internationalmigration/articles/immigrationpatternsofnonukbornpopulationsinenglandandwalesin2011/2013-12-17 (accessed 30/08/2019).

2. Being an insider researcher

I also bring to my DProf project a perspective informed by my 22-year experience of practising as a legal interpreter and translator, in addition to my career as an academic and researcher in the field of Public Service Interpreting (hereafter PSI). Over this period of time, I have reflected on and questioned the dynamics of the triadic communicative encounter between English-speaking judicial office holders, Non or Limited English Proficiency (NLEP) parties and myself as interpreter, as I experienced it in different judicial settings. This allows me to see what features interpreting in mediation shares with other domains in which interpreters practice and also to identify what features are peculiar to the domain of mediation alone. I believe this is a privileged insight, combining my experiential learning from practice with theoretical insight from academia, and one that enables me to have a potential impact on professional practice in this field.

This possibility of achieving an impact on my profession makes this project meaningful to me in a personal sense. Working with languages, and people who have crossed borders and changed cultures to find themselves in the UK has been a constant thread through my working life and being an interpreter has been part of this. I have also observed and participated in the progress (at times progressive, at times regressive) of the profession of PSI in the UK. Through my involvement in the profession, including roles as chair of the National Register of Public Service Interpreters (NRPSI) and as a member of the Council of the Chartered Institute of Linguists, I also lay claim to being an agent of change in my profession. I see my DProf project as an opportunity to achieve change for the better in the particular niche of interpreting that it concerns and as another chapter in my ongoing involvement with my profession.

3. Interpreting and mediation: roles and role boundaries

Data collected by the UJ project suggest that the experience of using interpreters in mediation is rarely straightforward. Using an interpreter inevitably involves some loss of control of the mediation on the part of a mediator, who now has to exercise their mediation skills through the agency of a third party. The ostensible informality of the mediation session and features of structural similarity between the role of Alternative Dispute Resolution (ADR)-mediator and linguistic mediator can also lead to misunderstanding of role boundaries by interpreters. In some cases, mediators report cases of interpreters intervening to offer their own opinions on the resolution of a dispute or to advocate for a client's position. Mediators also voice the suspicion that interpreters provide a significantly edited version in translation of what they or their clients said. Interpreters themselves may have a faulty understanding of their expected role in what is an unfamiliar setting.

This all provides fertile ground for mistrust of interpreters by mediators. Unable to know exactly what is said in the other language and unsure of the reliability of the interpretation of their words, mediators can view the interpreter as an unwelcome addition to the already complex mediation encounter. In the chapters that follow, I address these matters from the perspectives of both mediator and interpreter, before making recommendations on how to improve the interface between the two professional activities.

4. My relationship to the research topic

My interest in interpreting in mediation stems from the work I undertook as coordinator of the UJ project. The promotion of mediation as an alternative to court-based dispute resolution was and continues to be a priority of the European Commission and the UK government³, and one of the conditions of our funding was that the project should include study of the phenomenon of interpreting in mediation. This was not an interpreting domain that I was familiar with, my previous interpreting experience being mainly of criminal judicial proceedings. As I began to investigate the phenomenon of interpreting in mediation, however, I began to perceive its fundamentally different nature. The apparent informality of the mediation context compared to the ritualised formality of other legal settings conceals the use of highly sophisticated communicative strategies by mediators to divert conflict and promote negotiation. I recognised, moreover, that the progress of a mediation undertaken through an interpreter depended on the interpreter's recognition of these strategies and on their being faithfully reflected in the other language. This is a demanding interpreting challenge, and one that requires the exercise of considerable linguistic skill and judgement.

I sensed, however, that the experience of interpreters in other public service settings would not prepare them for the demands of interpreting in mediation, and that the apparent informality of the mediation session might encourage them to breach their professional role boundaries in a way they would not consider in the more formal settings of, for example, the court hearing or police station interview. These reflections raised questions for me about the practice on interpreting in mediation that remained unanswered by the mainly quantitative data collected by the UJ project. On completion of that project I decided therefore on a qualitative research project for my DProf to investigate further the dynamics of interpreting in this setting.

5. Focus on family mediation

Family mediation was identified in the UJ project survey as one of the largest areas of mediation activity in the UK and also the area where language difference was most likely to be encountered. In my DProf project, therefore, I focus on collecting data from practicing family mediators. The impact of an interpreter on the dynamics of a mediation process are, however, not setting-specific. Just as mediation skills and techniques are common across all the different types of ADR methods (mediation, conciliation, facilitation, assisted decision-making) (Boulle and Nesic, 2009, 1) so my findings about interpreting in family mediation are valid for all types of face-to-face mediation where an interpreter is used.

6. Definitions: mediation and interpreting

My DProf research examines the interaction of two professional activities, Mediation (as a form of Alternative Dispute Resolution) and Interpreting (a linguistic activity carried out between languages). Here I clarify the meaning of these two terms as they are used in my report.

³ See the European Commission Green Paper 2003 *Procedural Safeguards for Suspects and Defendants in Criminal Proceedings throughout the European Union*; The Mediation Directive (*directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters*); Lord Woolf, *Access to Justice: Interim Report to the Lord Chancellor on the Civil Justice System in England and Wales* (London, Lord Chancellor's Department, 1995) Lord Woolf, *Access to Justice: Final Report to the Lord Chancellor on the Civil Justice System in England and Wales* (London, Lord Chancellor's Department, 1996); *Solving disputes in the county courts* (London, Ministry of Justice, 2011); *Dispute Resolution Commitment* (UK Government, 2011).

Mediation

Mediation is a form of ADR in which an independent third-party, (a mediator), assists parties to a dispute to negotiate the issues that divide them (Roberts, 2014, 104). Although an ancient practice, it has achieved a high profile in contemporary disputing arrangements because of the possibility it offers of diverting disputes away from the already over-burdened civil courts (in the case of the UK, the County Courts). (Roberts, 2014, 19). Resolutions of a dispute reached through mediation also have potential of limiting the damage caused by the dispute. A mediated resolution is not one imposed by an external authority (a Judge), in which there have to be winners and losers. It is rather a resolution based on a consensual agreement among the parties reached through negotiation.

The defining feature of mediation that distinguishes it from other forms of ADR is the location of the authority to decide. In arbitration and adjudication the parties to the dispute delegate the authority to make a final binding decision on the dispute to a third-party arbitrator/adjudicator. In mediation, however, the mediator has no authority to impose a decision on the parties. Their function is solely to promote a process of negotiation between the parties and to help them to reach a mutually agreed solution. The authority to decide on the resolution of the dispute remains with the parties themselves.

Mediation occurs in a variety of fields, including the mediation of commercial disputes, employer-employee disputes and neighbourhood disputes. A particularly high-profile branch of mediation is, however, family mediation, dealing with the resolution of disputes arising from the break-down of marriages and family relationships, including custody of children and the division of property. It is here that both the potential benefits and the drawbacks of mediation are most clear. A mediated resolution to a family dispute can avoid the damage done to a family group by a decision imposed by a court awarding 'victory' to one side of the dispute.

At the same time, relationships within the family can also be the arena extreme imbalances of power and/or domestic abuse. Mediation in these situations would be inappropriate and a court-imposed solution may be the fairest and safest for the weaker party in the dispute. This further underlines, however, the importance of good interpreting in family mediations involving one or more NLEP clients. Mediators have to be able to identify indicators of possible abuse or coercive control and advise on the suitability of mediation accordingly. Difficult in a common language, this becomes even more complex when faced with a linguistic and cultural barrier.

Interpreting

Like Mediation, Interpreting is an activity with its roots in antiquity and one that 'predates the invention of writing' (Pöchhacker, 2004, 9). Paradigmatically, it is a spoken language activity where a bilingual language intermediary takes an intermediate position (physical or notional) between two parties who want to communicate but are prevented from doing because they do not share a common language. They communicate, therefore, through the intermediary, (an interpreter) who has command of both languages. Unlike written translation, interpreting is characterised by its immediacy (Kade, 1968), taking place live and in real time, and orality (the spoken word). The term 'interpreting' in its linguistic sense is differentiated from the hermeneutic sense of 'interpreting', such as that undertaken by lawyers or judges who interpret the law, or religious scholars who interpret a canonical text.

Interpreting is undertaken using different techniques dependent on the setting where it takes place. The primary distinction in technique is between simultaneous interpreting (where the interpreter delivers a continuous interpretation as the speaker speaks) and consecutive interpreting (where the

speaker pauses at intervals to allow the interpreter to deliver an interpretation). The main distinctions in setting are between remote interpreting (telephone interpreting, video-linked interpreting), conference interpreting (where the interpreter is physically separated from the speaker or audience and delivers a simultaneous interpretation via headsets to the listeners) *and* face-to-face interpreting between speakers.

The activity of interpreting takes place in a range of institutional settings and with a range of constellations of the different parties involved. Perhaps the most well-known among the public at large is the practice of (booth) Conference Interpreting, such as that found in the United Nations, the European Parliament and at the International Criminal Court (ICC). Here, pairs or teams of interpreters work together to deliver simultaneous interpretation of speeches made by delegates via audio-loop and headphones into a variety of target languages.

Less high profile but, by many orders of magnitude more widespread, is the activity of PSI (UK) or Community Interpreting (USA, AUS). Here an individual interpreter participates in a face-to-face encounter between a public service provider and a non- or limited English speaking service user, providing a turn-by-turn interpretation of the interaction between the two. It is characterised by bi-directionality, going back and forth between the two languages in use. Here the interpreter predominantly uses a form of short consecutive interpreting, where each speaker pauses after completion of an idea to allow the interpreter to render this into the other language, supplemented where required by whispered simultaneous interpreting (*Chuchotage*).

This core activity is realised in a range of settings, each with its own peculiar demands; interpreting in Court hearings is one of them, interpreting in doctor-patient interviews or other healthcare encounters is another. At heart, however, lies common features of close interaction between the interpreter and the other parties and the interpretation of turns of speech, whether question-and-answer sequences or longer discourses broken down into shorter pieces. Interpreting in mediation belongs to this second category of interpreting activity, with the interpreter introduced as a further participant in the close interaction of the mediator and the disputing parties.

In this research, I use the term 'interpreting' to refer to face-to-face interpreting where the interpreter is physically located with the parties speaking different languages, and delivers an interpretation of their dialogic interaction using a form of consecutive interpreting (so-called 'short' consecutive mode).

7. Structure of the research report

In this chapter, (Chapter One), I introduce the subject of my research, explain the link between my RAL 8 material and this DProf report and outline my personal and professional relationship to the topic. Chapter Two sets out the terms of reference and the parameters of my project, including my research questions. In this chapter I also review the knowledge and information that underpins my project. In Chapter Three, I discuss my research methodology, providing a justification for my chosen methods and outlining epistemological and ethical considerations. In Chapter Four I give an account of the activities I undertook in my project and in Chapter Five I present my project findings. Here I also present my thematic analysis of the data collected through the activities described in Chapter Four. In Chapter Six I present my conclusions from my research and present a set of practice-orientated recommendations for mediators, designed to optimise their use of interpreters in mediation encounters with NLEP clients. In Chapter Seven, I give a reflexive account of my personal and professional learning journey.

Chapter Two: Terms of Reference, Project Objectives and Review of Knowledge and Information.

1. Aims and Objectives

i. Aims

The aim of my DProf research project is to examine and analyse the dynamics of language interpreting in mediation in a way that can be used by mediators to optimise their practice when using an interpreter. The insight offered by this research can also be used by interpreters to understand the features of interpreting in mediation that differentiate it from other fields of interpreting. This aspect of my research builds on work I contributed to the UJ project, where we designed an online self-assessment and training tool for interpreters (www.understandingjusticeproject.com/assessment). This online tool consisted of a set of online activities for interpreters designed to highlight those features of their existing skills set that need development for the specific demands of working in mediation.

ii. Objectives

In order to achieve my research aim, my primary objective was to collect first-hand accounts from mediators of their experience of working with NLEP clients through interpreters and to supplement this with data from interpreters themselves. My second objective was to analyse these accounts thematically to illuminate the underlying story that the data tells. In this way, I hoped to achieve a fine-grained picture of the underlying dynamics of the interpreted mediation encounter.

2. Personal background

The background for this project is my work as a researcher and practitioner in the field of interpreting in criminal and civil justice, and the work I undertook as part of the UJ project, (as outlined in my RAL 8 claim). Part of the remit of the UJ project was to examine the role of language barriers and the use of interpreters in civil mediation. While working on this project, I saw the extent to which the phenomenon of language difference between mediators and mediation clients and the different methods for addressing this had still not been properly studied. Although aware of a challenge posed by language difference, mediators' understanding of the dynamics of using an interpreter to manage language difference seemed to be limited. Nor did I find evidence of an interdisciplinary exchange of knowledge between mediation and Interpreting Studies to address these complexities. On completion of the UJ project, I decided therefore to address this in my DProf project.

Whereas the UJ project collected data in seven EU member states including the UK, in my DProf project I focus on UK-based mediators. This decision is motivated by considerations of outcomes and impact of the research. I am myself a UK-based interpreting practitioner, with a professional profile in my own field. I hope to use this to disseminate the findings of this project by building links with the mediation profession. The focus on the UK is also influenced by the finding in the UJ project survey that UK mediators were more likely to use interpreters where language difference was an

obstacle to mediation than their main-land European counterparts. Finally, collecting data from UK-based mediators also avoids issues of language difference in my data collection.

As I noted above, this DProf project is also influenced by my 22 years of experience as an interpreting practitioner in legal and social welfare settings. My professional practice as a legal interpreter combined with my research into the domain of legal interpreting gives me an insight into the impact interpreting has on the progress and outcome of any interpreted face-to-face encounter. This impact can be caused by an interpreter's behaviour towards the participants, their choices of how and what to interpret or simply by virtue of their persona, accent, gender or appearance. Given the complexity of the communicative strategies used by mediators and the intensity of interaction in mediation, I hypothesised that the impact of interpreting on the progress of the communicative encounter in this setting will be as great as or even greater than in other interpreting settings. It is important therefore that it should be properly examined and understood.

From a linguistic perspective, I am also interested in the challenge of translating the discourse of mediation from one language to another. In contrast to the formal and ritualised nature of adversarial encounters in traditional court-based dispute resolution, mediators strive to create an appropriate emotional environment for parties in dispute, characterised by neutrality and impartiality and conduciveness to decision-making and problem-solving (Boulle and Nestic, 2010, 12). This environment is less formal and more orientated to a collaborative approach, attempting to move parties away from confrontation and towards negotiation. The mediation encounter might therefore appear to an interpreter used to working in other legal or public service fields as a less demanding interpreting task. The relative informality masks, however, the use of sophisticated communicative strategies on the part of the mediators, and the capture of these strategies in the interpretation is crucial to the progress of the mediation.

3. Context of the research

My DProf research takes place against a backdrop of growing interest in mediation as a form of ADR. The policy of promoting mediation as an alternative to court-based dispute resolution started with the Woolf Civil Justice reforms in the mid-1990. The Woolf report (Woolf, 1996) recommended the promotion of the use of mediation to solve civil disputes as an alternative to court proceedings, a recommendation later enshrined in the 1999 Civil Procedure Rules (Cortes, 2015, 5). The UK Government made its own Dispute Resolution Commitment in 2011 (Ministry of Justice, 2011) committing government departments to use ADR where possible to resolve disputes, while the 2012 UK government paper 'Solving Disputes in the County Courts' aspired to deliver a [justice] system that prevented the unnecessary escalation of disputes before cases reached the court room (Ministry of Justice, 2011, 5). Overall, as Roberts notes, mediation has achieved a high profile in contemporary dispute resolution practice in the UK (Roberts, 2014, 19-20).

Data on the size of the UK mediation market also indicates the growth of mediation as a method of civil dispute resolution. The Centre for Effective Dispute Resolution (CEDR) 8th Mediation Audit estimates the current size of the civil and commercial mediation market in England & Wales as around 12,000 cases per annum, a 20% increase on the size of the market in 2016 (CEDR, 2018, 3), while the Family Mediation Council (FMC) 2017 Family Mediation Audit estimates the total number of family mediations taking place annually in the UK at around 37, 000 (FMC, 2018, 4). The move

towards more mediation has also been driven by the increasing levels of court and legal fees and the dramatic reduction in Legal Aid available for civil and family disputes (Cortes, *ibid*,5). Cortes observes that there is an increasing tendency in the UK (and the US) to consider court based litigation as a last resort, and in future it may be litigation rather than mediation that is considered to be an ‘alternative’ means of dispute resolution. (Cortes, 2015, 2).

In the words of one of the mediators (ALC) interviewed for my DProf data collection, however, mediation remains a predominantly white, middle class profession. Perhaps as a result of this, the matter of language difference and the use of interpreters makes little or no appearance either in the government policy papers or in the mediation audits. The UJ project survey (Townesley, 2016, 95-104) indicated, however, that UK mediators do encounter the phenomenon of language difference in their practice, with parties choosing to use English as second language, reverting to a first language (or ‘mother tongue’) or switching between languages interchangeably during the progress of a mediation. We have, therefore, a profession of mediation achieving ever greater prominence in the Civil Justice landscape but embedded in an increasingly diverse contemporary society. It is in this context that my DProf research takes place.

4. Research questions

In order to address what I identify as a knowledge gap regarding the use of interpreters in mediation and to extend the research reported on in my RAL 8 claim, I pose the following research questions:

1. How do mediators experience the use of interpreters in mediation?
2. What impact does the use of an interpreter have on a mediation’s progress and outcomes where language difference is an obstacle?
3. How do interpreters understand their own role and function in mediation?

My DProf project is an attempt to provide in-depth answers to these questions, based on the first-hand accounts of mediators with experience of mediating through an interpreter, supplemented with data from interpreters.

5. Review of knowledge and information

In this review of knowledge and information, I draw on a range of sources that offer significant insights into the role and impact of interpreting on different interpreted encounters including mediation. Only a relatively small amount of literature on interpreters in mediation encounters exists and the main texts are covered here. However, there is a larger corpus of material examining the impact of interpreters in the fields of medicine, psychiatry and counselling. Many features of these encounters (the close interaction of professional practitioners, the emotive content of the encounters and the importance of carefully calibrated language use) are shared in common with mediation. I believe therefore that examination of the findings in these parallel fields offers valuable insights on the impact of interpreting in mediation. Mediation is a very specific type of communicative encounter. It is defined variously as ‘[an] assisted negotiation’ where ‘the parties, not the third-party neutral, make critical decisions with regard to process and outcome’ (Carter and Watts, 2016: 303); ‘a form of intervention in which a non-aligned third party, the mediator, assists

parties in dispute to negotiate over the issues that divide them' (Roberts, 2014: 104); and as 'a forum in which an impartial person . . . facilitates communication between parties to promote reconciliation, settlement, or understanding among them' (Bernal, 2011: 535). It is also an inherently oral process, where the exchange of both verbal and nonverbal messages is at the core of the process (Kovach, 2004: 51-52). Although the exchange of written texts may have a role to play, (exchange of documents in advance of the mediation proper, agreement writing at a later stage of the process), 'the process is itself a conversation happening in real time between parties]... [with comparatively little emphasis on physical documentation' (Carter and Watts, 2016: 304). Where language difference is present, some form of inter-lingual work will be required. According to findings from the *Understanding Justice Project* (Townesley *et al*: 2016) in the case of mediators in the UK, this will involve the use of an interpreter (ibid: 133-137).

The need for some form of inter-lingual language work in cases where language difference exists is broadly accepted by mediation practitioners (see Dominguez-Urban, 1997; Nguyen, 2006; Bernal, 2011; Carroll, 2014; Carter and Watts, 2014). In recognition of this need, practical guidelines for mediation practitioners and administrators on the deployment of interpreters in mediation have been drawn up, concentrating on the practical issues raised by introducing an interpreter into a mediation (see Bujosa and Rendon, 2014; Carroll, 2014; Townesley *et al*, 2016). Less, however, has been written about the experience, from the point of view of mediators, of using an interpreter or those mediators' perception of the impact of the presence of an interpreter on mediation processes. In this review, therefore, I start with the available literature addressing interpreting in mediation, and then examine reports on interpreting in other professional domains (hospital medicine, psychotherapy and counselling, conflict and dispute resolution) which share core structural features with mediation: the need to promote empathy and mutual understanding/insight between professional and client and the collaborative, rather than adversarial, nature of the professional-client encounter. This reading of the literature across the different professional domains reveals the ways in which professionals in the domains of clinical medicine (reported on by Cambridge, (1999); Aranguri *et al* (2006); Hsieh, (2006); Suurmond *et al*, (2016); Goodman-Delahunty and Howes, (2017); Alison and Harding, (2019); psychotherapy (Miller *et al*,(2005); Tribe and Lane, (2009); Hunt and Swartz, (2016); interpreting in conflict resolution in war zones (Todorova, 2016; Kriesberg, 1991); Elkington and Talbot, (2016); interpreting in social science research (Bujra, 2006; Skjelbaek, 2016); and interpreting in migrant labour disputes (Shindo, R, 2019) report experiences and concerns about working with interpreters similar to those of the mediators reported on in chapter five. Psychiatrists and psycho-therapists, for example, report on the impact of the interpreter on rapport and empathy in the encounter, echoing my respondents' concerns about the impact of interpreters on the atmosphere of the mediation encounter. Hospital medical practitioners note how an interpreter can become as a sort of co-diagnostician (Suurmond *et al* (op cit); Hsieh, (op cit). Kriesberg (op cit) reports on interpreters functioning as quasi-mediators, while Shindo (op cit) describes a similar function for interpreters in labour disputes. These echo concerns reported in my data about the extent to which interpreters can usurp the position of the mediator. Miller *et al* note the impact of the style of interpreting adopted by the interpreter and contrast an instrumental style of interpreting based on close, verbatim renditions (referred to by them as 'black-box' interpreting (Miller *et al*, op cit) with a more transactional model, where the interpreter helps to promote the growth of empathy and connection between therapist and client. Alison and Hardin (op cit) also discuss the impact of an interpreter on the building of rapport between medical practitioner and

patient, while Aranguri, Davidson and Ramirez (op cit) comment on the removal of socially-orientated 'small talk' in interpreted renditions of Hispanic speakers in medical consultations. These features also appear in the data from mediators in my sample, who express similar preferences for a more transactional model of interpreting in the mediation encounter and note the affective impact of the interpreter on the encounter. This cross-disciplinary perspective therefore yields insights into the common ground and underlying common features of interpreting in the different domains and provides a range of perspectives for viewing and interpreting the data collected from mediators.

In what follows, I start with literature addressing directly the subject of interpreting in mediation. I then follow Carroll's signposting (Carroll, op cit) towards psycho-therapy to begin an examination of what reports from other professional domains can tell us about the three-way interaction between professional, client and interpreter.

Dominguez-Urban (1997) and Bernal (2011) are two of the earliest scholars to address directly the use of interpreters in mediation. Writing in 1997, Dominguez-Urban notes the very few extant references to interpreting in mediation in the legal and lay literature (op cit: 5) and asserts that 'most people are unaware of the many challenges to effective communication in dispute resolution, particularly ADR, when all of the participants are not equally fluent in a common language' (ibid: 2). Her article is framed as an introduction to the topic of interpreting in mediation for an audience of mediation professionals.⁴ She draws on her own experience as an advocate and interpreter to describe the complexities that language difference introduces into the mediation process (Dominguez-Urban, 1997: 3) before reviewing the US Federal legislation regarding language assistance in courts (ibid: 5-11), setting out the nature of interpreting processes and addressing specific challenges of using an interpreter in mediation procedures (ibid:29-39). As an early researcher in to the phenomenon of interpreting in mediation, Dominguez-Urban's monograph, perhaps predictably, focusses on introducing and outlining the nature of interpreting in mediation for an audience assumed to be unfamiliar with it. Her analysis builds on her personal experience of providing language mediation between legal professionals and NLEP speakers. It does not, however, offer insight into the experience of those professionals and how this might affect their perception of interpreters or the viability of practicing through an interpreter.

In a similar vein, Bernal (2011) also sets out the broad outlines of the phenomenon of interpreting in mediation including the different modes of interpreting available (consecutive or simultaneous), the ethical boundaries of the professional interpreter and the complexities of inter-lingual communication caused by linguistic and cultural difference. Bernal differs from Dominguez-Urban, however, in his focus on the role of 'bi-lingual mediator'. This is an attempt to resolve the complexities he identifies by combining the functions of both mediator and language interpreter. Here a mediator both mediates between the parties in dispute and interprets for one or other party as required. This avoids the need to engage an interpreter at all, and on the face of it, appears to offer a neat solution to the challenges of language difference. The mediation remains fully under the control of the mediator and the disadvantages of having another party present in the mediation room (e.g. loss of control, impact on rapport building, inappropriate interventions) are avoided.

⁴ Dominguez-Urban states that '[t]he comments in this article are directed at mediators involved in private mediation who make most of their own preliminary arrangements'. (op cit: 51).

Bernal's analysis of the dual-role mediator/interpreter model suggests, however, that the perceived benefits are outweighed by more fundamental problems. As Bernal (op cit: 529) points out, both language interpreting and mediation separately make heavy demands on the cognitive capacity of an individual undertaking either activity, and to perform them well requires sustained close concentration, a point taken up by Kiesewetter and Paul (2014). For a mediator to perform both activities demands split attention between the two, increasing greatly the cognitive burden on the mediator as s/he attempts to keep on top of both tasks. The risk is that the demands of mediating will reduce the attention available for interpreting, and vice versa, to the detriment of both.

Bernal, like Dominguez-Urban, is concerned with setting out for an audience unfamiliar with interpreting in mediation the outlines of the phenomenon and the legal framework surrounding it. He is particularly concerned with the construct of a dual-role mediator/interpreter, and his deconstruction of this role provides a detailed and compelling analysis of the unviability of this approach. He does not, however, undertake to view the interpreted mediation from the view point of the mediator, the approach I take in my research reported on in later chapters.

A more recent discussion of interpreting in mediation is offered by Carroll (2014), who examines the role of the interpreter in the mediation of cross-border child abduction cases. She shares with Bernal She shares with Bernal concern about the viability of the dual-role mediator/interpreter, and her dual perspective as both mediator and interpreter lends weight to her observation that: '[u]ndoubtedly, the dynamics of a mediation do change when an additional person, an interpreter, is present' (ibid: 133). Carroll's main concern, however, is the negative impact of using *ad hoc* untrained interpreters in child abduction mediations. She points out that while the code conduct for professional interpreters, with its focus on neutrality, confidentiality and impartiality emphasises the same professional norms as that of mediators (op cit: 131), the implementation in practice of these professional norms is undermined if 'the weakest link in the chain is the interpreter who has been called in or brought along *ad hoc* with no specialised qualifications for the task in hand?' (op cit: 132) Carroll's concern about the use of *ad hoc* interpreters in mediation also appears in a monograph by Carter and Watts (2016), emphasising the importance of interpretation in upholding the central principles of mediation: self-determination, impartiality and confidentiality. Underlying the complexity of the task of interpreting, they note the assumption so widely complained of by professional interpreters that any bilingual person can function as an interpreter (ibid: 311). For Carter and Watts it is however imperative that the interpreter is fully trained in the skills required to deliver high-quality interpreting (ibid: 301)

Dominguez-Urban, Bernal, Carroll and Carter and Watts all set out the key issues inherent in the phenomenon of interpreting and mediation the main implications for practice on the part of mediators. They identify the importance of clear guidelines, the use of properly trained interpreters and recognition on the part of mediation and legal practitioners of the complexity of the interpreting role. As such, they provide valuable foundations for the study of interpreting in mediation and the two monographs and one chapter represent invaluable early steps in this field of enquiry. A reader seeking to move beyond these foundations, however, and seeking a more fine-grained analysis of

the impact of working through an interpreter in mediation still needs to look elsewhere. Carroll herself signposts the relevance of research on the use of interpreters in Psycho-therapy. Citing research by Haenel (1997), she proposes that 'many of the aspects of interpreted psychotherapy will find their counterpart in interpreted mediation' (Carroll, op cit: 133), in particular the features of heightened emotionality and the possibility of escalation in the encounter. Following Carroll's lead, I turn, therefore, to the experience of psychotherapy practitioners of working through interpreters before examining literature reporting on the use of interpreters in mediation in conflict zones and the mediation of labour disputes. In doing so, I highlight ways in which interpreting in these other domains of professional practice echo concerns found in my data from mediators.

Literature on the use of interpreters in Psychotherapy reports multiple ways that the introduction of an interpreter into the therapeutic encounter has an impact on the progress of the therapy (Haenel, (1997); Miller *et al*, (2005); Tribe and Lane, (2009); Wenk-Ansohn and Gurriss, (2011); Hunt and Swartz, (2016); Elkington and Talbot, (2016). Miller *et al* note how the introduction of an interpreter changes the therapeutic dyad into a triad, with the therapist now faced with the challenge developing relations of trust among all three members of the therapeutic triad, rather than the two members (therapist and patient) in a mono-lingual dyad. (ibid: 31). The scale of complexity introduced by the extension of a communicative dyad into a triad appears, on the face of it, appears to be even greater in mediation. Here, the introduction of an interpreter transforms an already triadic relationship (mediator and two parties) into a quadratic relationship (mediator, two parties and interpreter), or even a five-way (pentadic) relationship in the case of co-mediators. I would argue, however, that an analysis overlooks the likelihood that, in its early phases, despite the presence of three people in the encounter, the interaction between mediator and parties through an interpreter remains essentially dyadic because at these early stages, the parties may not be prepared to engage with each other directly, choosing instead to communicate directly only with the mediator. In this respect, at least at this stage of the mediation, the introduction of interpreter still only extends the communicative relationship into a triad and can be analysed as such. Only as the mediation develops, and the parties begin to negotiate directly might this triadic relationship extend into a four-or-five way interaction.

Whatever the exact dimensions of the communicative encounter, the impact of the use of an interpreter on relationship-building in therapeutic encounters is significant. Therapists in Miller's sample reported issues of developing of relationship of trust between the therapist and the interpreter (op cit: 31) along with the therapist's sense of their direct relationship with a client being compromised by the introduction of an interpreter. They also noted the slowing effect of interpretation on the building of rapport between therapist and client (ibid: 32) and expressed concerns about interpreters intervening inappropriately in the therapy (ibid: 33). These impacts on the ambience of the therapeutic encounter are further discussed by Hunt and Swartz (2016). They examine how the typology of 'qualities and actions of effective therapists' (Wampold, 2018) might be affected by the presence of an interpreter, noting that the affective attributes of the interpreter could negatively impact the therapists' ability to cause clients to feel understood, to inspire trust and belief in the treatment in the therapist (ibid: 3) and to communicate optimism and hope to the client (ibid: 4). Even if the therapist possesses these qualities, they will be 'of little use if the interpreter is, say, disinterested, cold, and speaks in an inexpressive tone' (Hunt and Swartz, op cit: 104). Similar reports of the impact of interpreting on rapport between clinician and patient also appear in

literature on interpreters in other medical encounters. Aranguri *et al* (2006) find from their research into physician-patient interactions through an interpreter a 'near-categorical lack, in interpreted visits, of what is frequently referred to as "small talk," (socially oriented talk designed to build relationships rather than establish facts) (ibid: 626). Alison and Hardin (2019) also find, in a quantitative analysis of occurrences of 'rapport attempts' by English speaking practitioners mediated through an interpreter, that 'the majority of rapport attempts were un-interpreted rather than interpreted' (ibid: 497). A further observation on the impact of untrained interpreters on the development of a constructive relationship between doctor and patient is noted by Cambridge, who concludes that the presence of an *ad hoc*, untrained interpreter negatively affects the doctor's ability to develop a satisfactory relationship with a patient (Cambridge, 1999: 218). These reports underline how the impact of the interpreter on the atmosphere and tone of the encounter is a significant factor as the interpreters performance of information transfer between languages, a feature also reported on in my data from mediators. Miller *et al* (2005), in their discussion of interpreting in Psychotherapy also discuss impact of the style of interpreting adopted by the interpreter. They note that although some participants in their sample expressed a preference for what they term a 'black box' model of interpreting, where interpreters are, as far as possible, a 'translation machine', delivering verbatim renditions while remaining as invisible as possible, others 'understood the interpreter's role in more relational terms' and viewed the interpreter 'as an integral part of a three-person alliance' (ibid: 30). According to Miller *et al*, this second model of interpreting was the most widely preferred. Elkington and Talbot (2016) report a similar preference among therapy practitioners for more interactional interpreting, framing this as a 'bilingual worker' model of interpreting. Here, the interpreter may offer explanations of the socio-cultural background of the patient that can contribute positively to the provision of the therapy (ibid: 366), although Mayte and Phelan (2009) warn against conflation of the roles of interpreter and cultural mediator, arguing for retaining a conscious separation of the two functions. Tribe and Lane also refer to interpreters providing 'important cultural and contextual information which may have a significant bearing on the psychological issue being discussed (Tribe and Lane, 2009:235).

The 'black-box' metaphor introduced by Miller *et al* (op cit: 30) signals the existence of an on-going debate about the preferred role of the interpreter in the mediation, medicine, psychotherapy or social science research. The debate hinges on the fundamental question of what exactly the interpreter is expected to do. Does a purely instrumental role for the interpreter, (where the interpreter is a simple conduit for information passed between speakers), or a more interactional role (where the interpreter recognized as an active participant in the encounter), lead to better outcomes for the interpreted encounter?

The answer to this question on the part of the interpreting profession is set out in their guides to good practice (see below). These provide the normative codes that professional interpreters are expected to operationalize in their interpreting practice. These codes emphasize the need to impartiality on the part of the interpreter, lack of explicit alignment with either of the principal speakers in a dialogue, strict confidentiality and a commitment to full and unedited rendition of all that is said. Any interventions into the dialogue between principle speakers are to be limited to requests for clarification of an utterance to be interpreted, to point out some contextual factor hindering the process of interpretation or where the interpreter believes a miscommunication based on cultural pre-suppositions may be taking place. The codes suggest, therefore, that the

instrumental model of interpreting referred to by Miller *et al.* is the model required by the normative codes of practice.

These normative codes also underpin the guidelines for the use of interpreters in mediation offered both in the source literature addressing interpreting and mediation directly and also in the 'grey literature' of short guidance documents prepared by local mediation projects or court services in response to local demand. Dominguez-Urban, Carroll and Carter and Watts all conclude their discussions with suggestions and instructions for mediators on preparing for using an interpreter: ('Preparing for an interpreter-assisted mediation' (Dominguez-Urban, op cit: 29); 'Suggestions for mediators of bilingual cross-border mediations' (Carroll, op cit: 135-137); 'Normative Recommendations for Interpreting in Mediation' (Carter and Watts op cit: 310). Short practical guidelines the use of interpreters in mediation are also offered by Nguyen (2006), Lee *et al* (2008), Kiddle (2013) and Bujosa and Rendon (2014). Mediators are well-supplied therefore with prescriptive codes on how interpreters should be introduced into a mediation and where the boundaries of their role should be.

All these guidelines are premised on a model of interpretation as a process implicitly based on a close rendition of the precise words used by one or other speaker in an interpreted mediation⁵, as close to 'verbatim' renditions as can be achieved without losing the capacity for meaning in the target language. Thus Dominguez-Urban proposes that the mediation interpreter needs to employ, in her analysis, the Conference interpreter's 'facilitation of communication in as elegant and unobtrusive a manner as possible' and a Court interpreter's attention for the forensic detail of the source message without 'editing, summarizing, deleting, or adding, while conserving the language level, style, tone, and intent of the speaker' (Dominguez-Urban op cit: 14). Bernal also bases his analysis on the role of the interpreter as defined by the NAJIT Codes of Ethics and Professional Responsibility, although he does show some awareness of a misconception this may create among legal professionals who 'incorrectly believe that a court interpreter is expected to provide a literal rendition of the proceedings, when in fact the interpreter's responsibility is to maintain the style and context of the original message' (Bernal op cit: 557). Carter and Watts offer a simple the definition of interpreting as 'the conversion of a spoken message from one language to another' (Carter and Watts op cit: 311).

The apparent simplicity of this model of interpreting is, however, problematic. Studies of the processes of interpretation and the actual behaviour of interpreters across a range of settings (Metzger (1995), Berk-Seligson (1990, 2002), Wadensjö (1992, 1993, 1998, 2017), Roy (1989, 2000, 2002) and Angelelli (2000, 2004, indicate that interpreters in practice are much more than the inter-lingual conduits for transferring close renditions of messages between languages implied by these deontological codes. As Wadensjö suggests in a neat encapsulation of her analysis of the interpreter as an active participant in the interpreted interaction (Wadensjö 1992), interpreters are in fact engaged in a 'communicative *pas de trois*' with the other parties, performing a double role both as a relay (of interpreted messages contained in their renditions) and as a coordinator of dialogic interaction across languages. As such, they engage in a range of coordinating activities including negotiating turn-taking, asking for clarification, resolving misunderstandings and offering cultural

⁵ See for example the NRPSI Code of Professional Conduct articles 3.11 – 3.13, 5.1 and 5.12; AUSIT Code of Ethics article articles 1-6; NAJIT Code of Ethics and Professional Responsibility canons 1-3.

clarifications that go beyond the bare instrumental role prescribed by the deontological codes. However, in the literature cited so far, only Carroll (op cit) indicates a more nuanced awareness of the range of competences required by a mediation interpreter, beyond the 'transfer' competence of the instrumental interpreter. Thus, her 'Interpreting competence for mediation' diagram (Carroll op cit: 132) includes 'Intercultural competence', 'Conflict handling skills', 'Social skills' and 'Self-reflection especially in relation to own biography' as equal parts of the full competence set for a mediation interpreter, in addition to Translation skills, Bilingual skills and Professional ethics. My own data suggests, moreover (see this report, chap 5), that the mediators in my research have sometimes contradictory expectations of interpreters, sometimes calling for a strictly defined model of the interpreter as found in the deontological codes above, and at others calling for a more nuanced awareness from interpreters of their affective impact on the encounter and for the active deployment by interpreters of more subtle inter-personal skills. As Monacelli observes in her examination of ethical issues emerging in mediation using interpreters, 'a major issue arise of what is expected of the interpreter because what mediators ask of interpreters cuts across what professional codes of ethics prescriptively tell interpreters to do' (Monacelli, 2016: 186).

Discussions of the interpreting and the role of the interpreter in other fields suggests, moreover, that the core requirements for interpreter neutrality and impartiality are themselves being questioned by professional end-users of interpreters. Skjelsbæk (2016), writing as a psychologist on conducting interviews through an interpreter (with female survivors of sexual violence in the Bosnian conflict), recounts an interview through an interpreter with a survivor and reports her reliance on the interpreter to help her choose words and to phrase questions in a way that would enable to the interview to continue. Skjelsbæk states that if she had 'insisted on neutrality on the part of my translator and myself and stuck to my interview guide to ensure equality across interview settings, I would have compromised the situation for the interviewee and I would have violated basic ethical standards' (ibid: 505). This leads her to pose the question: '[w]ho is the interpreter in this setting; a mere translator of words; an interpreter of the social setting; or, a research mediator between researcher and interviewee?' (ibid: 503). Bujra (2006), writing on the use of interpreters in development field research, poses similar questions about the role of the interpreter. Should the interpreter improve on clumsy speech, correct grammar and/or sanitise utterances? Is a word-for-word rendition of a definition the best approach or should more use be made of meaning in context? (ibid: 175). She notes that

[b]y now the alarm bells may be ringing for us as social researchers, if we had understood the translator to be merely the transmitter of what others say. We may not have seen them as actively participant intermediaries making judgements which may transform the message received' (ibid: 175).

Todorova (2016), writing on interpreters in international conflict mediation, goes even further in challenging the model of the interpreter as an entirely neutral participant in the encounter as set out in the deontological codes. Drawing on Kriesberg's analysis of 'quasi-mediators' (mediating activities provided by a party linked to one of the adversarial parties in the conflict) (Kriesberg, 1991) she proposes that '[t]he role of interpreters in mediation very closely resembles that of a quasi-mediator' (Todorova, op cit: 232). Todorova observes that

[t]his challenges the long-established “wisdom” about the prescribed neutrality of mediators, but also of interpreters involved in mediation processes. Rather than being an impediment, their perceived closeness to one side in the conflict can actually prove to be a productive and desirable circumstance (ibid: 232).

Shindo, writing on role of interpreters in the mediation of disputes between migrant workers and employers in Japan, also reports that interpreters in practice undertake a much more interventionist role than that foreseen in the codes of conduct. She reports that in this context

the role of migrant volunteers, immigration lawyers, and interpreters is not limited to delivering messages and acting as the migrants’ representatives. They also act as mediators between migrant workers and their counterparts, intervening in the process of solving labour disputes (Shindo, 2019: 106).

Research carried out by Angelelli (2004) among staff interpreters in a state hospital in Los Angeles suggests, moreover, that the interpreters in her sample have reached their own understanding of how to define their role in practice. These interpreters regularly diverge from the prescribed deontological model of interpreting set out in the professional codes to take on a cultural and linguistic mediator role and to make conscious interventions in the communication between medical staff and NLEP patients to help (in their own estimation) the communication process. These interventions ranged from relatively benign attempts to smooth out linguistic/cultural differences, simplifying concepts where necessary for the patient or re-framing utterances to avoid possible conflict, to highly interventionist decisions, for example, refusing to accept a patient’s answer to a question, limiting the talking-time of patients or editing what they say (Angelelli, 2004:105-128). It is clear these interpreters see themselves as much more than neutral conveyors of information back and forth across a language barrier. For them, to further the interests of the parties involved in the communication, they believe that they need to take an active role to facilitate communication. Shindo, writing on role of interpreters in the mediation of disputes between migrant workers and employers in Japan, also reports her finding that interpreters in these disputes undertake a much more interventionist role than that foreseen in the codes of conduct. She reports that in this context

the role of migrant volunteers, immigration lawyers, and interpreters is not limited to delivering messages and acting as the migrants’ representatives. They also act as mediators between migrant workers and their counterparts, intervening in the process of solving labour disputes (Shindo, 2019: 106).

Angelelli’s research in the USA and Shindo’s in Japan show interpreters, in practice, taking on roles and engaging in activities explicitly prohibited by the established codes for interpreters. Suurmond et al (2016), in their sample of interpreted diagnostician-patient interviews, go as far as to identify five ‘strategies’ used by interpreters all of which show an interpreter transgressing the neutral, non-interventionist role set out in the normative codes. These are: assuming the interviewer’s communicative role; editing information; seeking information from the patient; taking control of the interview; taking over the role of the respondent (Suurmond et al: 174). Loss of control of the consultation and a sense of exclusion from interaction with the patient is also noted by participants

in Leanza's study examining the role of community interpreters in paediatrics from the standpoint of paediatricians, (Leanza, 2005: 176).

This raises the question of whether we should unquestioningly view such interpreter behaviour as a transgression of the codes or whether we should consider again the validity of these core tenets regarding strict neutrality and non-intervention. This is the approach taken by Cobb and Rifkin (1991) in their explicit problematisation of the concept of neutrality in mediation. As indicated in research on interpreters in psychotherapy and in other medical settings, practitioners do note perceived benefits to the interpreter adopting a more active role in the interpreted encounter, particularly in aiding the building of rapport between the parties in the encounter and in supporting the medical practitioner with negotiating language and meanings with the client in a culturally sensitive manner.

I confine my discussion at this point to some observations about the problems inherent in a more interventionist approach for the interpreter based on my own experience as an interpreter. Firstly, an interventionist model of interpreting where the interpreter takes a more aligned role in the interaction, with either the English-speaking service provider or the NLEP client, suggests that an interpreter can speak on behalf of either in the interpreted exchange. In this sense, they replace those speakers, rather than reflecting those speakers own communicative choices, however inappropriate or damaging to their cause the interpreter may believe them to be. This disempowers the speakers in the interaction, because it removes from them their autonomy to speak as they wish and their agency in the communicative exchange.

An interventionist model of interpreting also has profound implications for interpreting in mediation. If an interpreter in a mediation believes that s/he has a wide remit to facilitate and manage the communication between mediator and NLEP speaker, then there is a risk that the carefully chosen communicative strategies adopted by the mediator will be compromised by the interpreter. In this sense, the interpreter would then be working against the objectives of that mediator, rather than facilitating their achievement.

The addition of language difference along with the intricate cultural barriers accompanying language can only multiply the already complex communication issues found in mediation. (Bernal op cit, 10). It is therefore surprising that policy papers and research literature on Mediation show such limited awareness of this complexity and its possible impact. There is a striking absence of reference to the implications of language difference for mediation in policy documents regarding the promotion of Mediation in the EU as an alternative to court-based disputing. The Commission Green Paper on ADR (European Commission, 2002) summarises the commitment to the use of ADR made in successive EU treaties and agreements (Vienna, 1998; Tampere, 1999; Lisbon, 2000; Santa Maria da Feira 2000, Brussels (Laeken) 2010), demonstrating a significant move towards the wider use of mediation, while the 2008 Directive emphasises the Commission's view that: "mediation can provide a cost effective and quick extra-judicial resolution of disputes in civil and commercial matters" (European Commission, 2008). The 'Quantifying the cost of not using mediation - a data analysis' report (De

Paolo *et al*, 2011) quantifies the cost of not using Mediation⁶ and notes the increasingly complex communication demands created by globalization. These documents recognise an increase in cross-border civil disputes means that mediation may increasingly involve parties who do not share a common language. They do not, however, consider implications of this for the promotion of mediation that they seek.

If mediation is to replace court-based disputing as the preferred method for civil dispute resolution and achieve the cost and resource savings this would represent, it has to account for language difference in a systematic and informed way. This, in turn, requires an informed understanding of the impact of all using interpreters in mediation. The literature reviewed in this chapter suggests that there is data from numerous domains outside of mediation and ADR itself that can be drawn upon to construct the required understanding of the possible impacts of interpreting. The *Understanding Justice Project* (Townsend *et al*, 2016) made an initial contribution to the construction of this understanding, as reported in my RAL 8 claim. In the chapters that follow, I will add to that corpus of data with data gathered from participants in this research project.

⁶ 'a 75% mediation success rate in Belgium can save approximately 330 days and 5.000 € per dispute; a 75% success rate in Italy can save 860 days --more than two years!--and over 7.000 € per dispute' ((De Paolo *et al*, 2011:4)

Chapter Three: Methodology

In this chapter, I turn to the methodology that I have used in my research, both in the work reported on in the RAL 8 project and also in my DProf project report. .

The work reported on in my RAL 8 claim and my DProf project are two parts of one overall piece of research into the phenomenon of interpreting in mediation. In this chapter I will consider the epistemological perspectives from which I worked in both my RAL 8 claim work and my DProf project and the theoretical frameworks for my research. I also outline the specific theoretical framework that surrounds my considerations of interpreting in mediation I will provide a justification of my choice of research approaches and of the design of my DProf project and a detailed description of my data collection and analysis methods before concluding with a reflective review of my methodological choices and the data collection and analysis process.

1. Theoretical perspectives on research and data-gathering

My DProf project represents the second part of research starting in 2014 and is reported on in my RAL 8 claim. I continued this research in my subsequent DProf project (Interpreters in Mediation) starting in 2016. In what follows, I discuss the theoretical perspectives from which I undertook my research in the UJ project and in my DProf project report. In particular, I report on the two theoretical perspectives present in my DProf report, one on my research methodology and one on language and interpreting. The UJ project (reported on in my RAL 8 claim) and my DProf project belong within different theoretical frameworks and take different methodological approaches. The first part of my research was undertaken as part of an EU-funded project investigating the provision of language interpreting in Civil Justice settings. The project aimed to lay foundations for critical change in that domain by exploring the arrangements for the provision of interpreting in Civil Justice in the EU compared to those in place for Criminal Justice, and by making pragmatic recommendations for changes in practice.

Reflecting on the project from a distance in time of some 5 years, I can see that, when designing the project and through the project's implementation period, neither I nor the project partners were consciously working within an explicit theoretical framework. Overall, I conceived the UJ project as a pragmatic undertaking designed to fulfil a set of practical aims and this lead was followed by the other partners in their contributions to the project. Concerned with pragmatic outcomes rather than theorising, considerations of theoretical frameworks or epistemology made no appearance in the work, nor was an appeal to any particular theoretical position part of the project's claim to external validity. This was to be measured entirely by the strength of the work's outcomes and how far they met the aims and objectives set out in the project bid. In this sense, the research work undertaken in the project was 'guided by practical experience rather than theory' (Robson, 2011, 27). As I have progressed through my DProf final project, however, I have developed my understanding of the role of theoretical frameworks in research and their linkage to practical outcomes, and the importance of recognising my own epistemological position, both as a methodological and ethical concern (see below). I can now apply this understanding retrospectively to research undertaken in the earlier stages of my research trajectory and re-examine that work with a more informed critical eye.

From this I can see that my earlier research in the UJ project was carried out, with a simple Positivist approach to data collection and interpretation. I designed the investigation into interpreting in Civil Justice and mediation with the implicit understanding that there were concrete, measurable realities in the field that could be examined, quantified and reported on by the research project, and the project therefore emphasised the collection and interpretation of quantitative data. This emphasis was also dictated by the requirements of the funding criteria, which called for a set of practical outcomes laying the ground for a change in practice, not a theoretical investigation. This was also the approach taken by all partners in the project; although different researchers undertook different pieces of research, choosing their own research methods to achieve their specific aims, all these discrete pieces of work were undertaken with the same orientation to pragmatic outcomes and within a positivist theoretical framework

2. DProf

My DProf project forms the second part of my research. It builds on the foundations laid down in the UJ project, but here, I was more explicit in my recognition of the methodological framework within which my project is situated, and about the project design and my methods (Cresswell, 2014, 3-21). In this second part of my research into interpreting in mediation my methodological approach is informed by phenomenological perspective on the collection and interpretation of data. A phenomenological approach to research, 'rather than seeking external realities, puts aside existing preconceptions and theories and aims to gain a deep understanding of individuals' perceptions' (Costley *et al*, 2010: 87). This is the methodological approach I take in my DProf project, where I investigate the phenomenon of interpreting in mediation through the perspectives of mediators and interpreters themselves and attempt to construct a picture of that phenomenon by considering those different personal accounts.

I chose a phenomenological approach to my DProf research for two reasons. The research reported on in my RAL 8 claim collected quantitative data to measure the extent of the phenomenon of interpreting in mediation. My intention was to expand in my DProf project on those findings by exploring the impact of interpreters on a mediation through the subjective reports of mediators and interpreters. I chose to use the two different theoretical frame works for the two pieces of research to examine the phenomenon of interpreting in mediation from two different perspectives, giving a richer picture of the subject of research on which to base practical recommendations for practice.

My second reason for choosing a phenomenological approach in my DProf research is that mediation and interpreting are both concerned, therefore, with face-to-face communication, the exchange of messages and the joint construction of meaning from language. These are fluid phenomena, not fixed or measurable objective realities amenable to investigation and measurement by a researcher ontologically independent of those phenomena. For these reasons, therefore, I decided that gathering qualitative data from a phenomenological research perspective would be more generative of the rich data that I sought and enable me to expand on the data reported on in my RAL 8 claim.

For this reason, my DProf project is built around the collection, analysis and interpretation of qualitative data collected from in-depth interviews with participants in the interpreted mediation encounter. This involved the recording and transcription of semi-structured interviews with selected

participants. I also included some data collected from video recorded simulations of interpreted mediations and telephone interviews with mediators and mediation specialists collected during the first phase of research, the UJ project. Drawing on a range of data sources in this way, as part of a flexible research design (Robson, 2011, 130-160), allowed me to gain a rich insight into the internal dynamics of the interpreted mediation encounter.

3. Theoretical perspectives on language use and interpreting

The analysis of the impact of interpreters in mediation that I present in this report is framed by a theoretical perspective on language use that draws on the work of Brown and Yule (1983) and Clarke (1996). This perspective on language use is based on two different understandings of how language functions. The first is a static, 'transmission' model of language, where language is conceived of as primarily a tool for the transmission of propositional information. This perspective on language is described by Reddy (1979), in his 'Conduit Metaphor' of language use and also by Brown and Yule identify a 'primarily transactional' view of language use (Brown and Yule, (1983: 2) in which language is understood to be used primarily a vehicle for the efficient transfer of factual or propositional information (ibid. 2).

Reflecting on my practitioner experience, I can now see that a transactional view of language in the sense used by Brown and Yule is also implied in normative models of the role of a dialogue interpreter set out in the professional codes for interpreter behaviour (as discussed further in the next chapter). With their emphasis on a close reflection of the source utterances, strict impartiality between speakers and avoidance of any additions or omission in the interpretation, these codes see the dialogue interpreter's primary task as enabling the same exchange of information that is seen to take place in a monolingual encounter to take place between speakers of different languages. From this perspective, the dialogue interpreter occupies a supposedly neutral position between the speaking parties and takes on a certain invisibility in the process. The implication is that, if the tenets of neutrality, impartiality and non-intervention in the dialogue except on linguistic grounds are strictly observed and the interpreter confines him or herself to the transmission of information, the presence of an interpreter should have minimal or no impact on the direction of the exchange or on the mutual understanding between parties.

A different understanding of language and discourse, however, is suggested by both Brown and Yule (*ibid*) and Clark, who proposes that language in use should be understood not solely as a transmission of information but as a 'joint activity' between those engaged in speaking (Clarke, 1996: 31). Clarke's model of language in use as a joint activity, and Brown and Yule's interactional view emphasises the social and interactional dimensions of language in use, and the way that it is used for much more than the mere exchange of data. Together they reflect a movement away from the 'transmission' view of language referred to above towards an interactional view of language in use.

This interactional view of language use is a key theoretical lens through which I analyse the impact of interpreters on mediation. If we exchange a 'transmission' model of language use for an 'interactional' view, then it becomes necessary to reconsider the interaction of the interpreter with mediators and the parties in mediation. If language in use is a dynamic social interaction, then interpreters cannot realistically be seen simply as transmitters of information across language barriers. They, too, are language users, and the interactional dynamics indicated by the interactional

view of language use must apply equally to them. Therefore, they must have an active role in the interaction that goes beyond that suggested for them by interpreter codes of conduct.

Wadensjö (1998), in her seminal work on dialogue interpreting and interpreter behaviour, investigates the implications of such an interactional view of language in use for interpreting. She proposes that an interpreter in a dialogic event is neither an invisible conduit of information nor a 'non-participant' as implied by the normative codes for interpreter behaviour. Building on a Bakhtinian⁷ understanding of monologue and dialogue, she models interpreted talk rather as a joint, dialogic activity between speakers, (much as proposed by Clarke, building in turn on Levinson's notion of activity types (Levinson, 1979,1992). Here she shows how the interpreter of this talk is both a renderer of information in another linguistic form and also a coordinator of the talk taking place between the parties (Wadensjö, 1992). As such, far from being a semi-invisible conduit of language hiding in the background of the main communication between parties, the interpreter is visible and actively engaged in the dialogue as it progresses turn by turn of speech.

I believe that mediation is an example *par excellence* of the type of joint activity theorised by Clarke, characterised by 'primarily interpersonal rather than transactional use of language (Brown and Yule, 1983, 1989: 3). As such, this perspective informs my investigation of the impact of the interpreter on mediation and into their explicit and implicit contribution to the joint activity of mediation.

4. Personal epistemology

One of the challenges of using interpretative methods within a phenomenological perspective to analyse qualitative data is recognising the impact of the researcher's own epistemological preferences and pre-suppositions. Interpreting data presupposes an interpreter of that data. It is vital, therefore, that the data interpreter (the researcher) recognises their own epistemological position and preferences. In order to do this, I reviewed my personal epistemological preferences as outlined. Reflection on my experience of research in my DPS4561 Project Planning module, for example, enabled me to recognise revealed my phenomenological perspective on knowledge and understanding and my consequent preference for qualitative research models. This was as much a personal preference as a conscious choice. Data gathered from individuals in the form of personal accounts, transcripts of conversations and observations of practice make more sense to me, while I am not as comfortable with the manipulation of numerical data.

As a researcher, however, the emphasis on an interpretive approach to qualitative data introduces the possibility of unconscious bias in the collection and interpretation of data. The researcher reliant on qualitative data is potentially open to the accusation of only asking questions or seeing patterns in the data that confirm his or her own preconceptions. This possibility is exacerbated by being an 'insider-researcher'. On the one hand, this allows me to form hypotheses and to frame research questions based on experiential knowledge of the phenomenon of interpreter-interaction with interpreter-users. On the other, it also means that I bring to the analysis of my data the cumulative

⁷ Bakhtin (1895-1975) developed the notion of dialogism, an analysis of language and meaning construction where meaning arises from the interaction of speakers in dialogue. His model forms the conceptual framework for Wadensjö's builds on Bakhtin's ideas to conduct her analysis of the interpretation of dialogic talk.

'baggage' of years of practice. This can make it difficult to see a familiar and known field of practice in a different way that allows new to arise.

I try to meet this challenge through reflexivity in my research. As an individual researcher, I can't ignore my past experience nor the fact that it leads me to hypothesise about what I will find in my data and that is helps to frame my research questions and research methodology. Awareness of the impact of my own insider-researcher position and of my epistemological preferences, however, enables me to critically question my own position and my findings throughout the research process. Furthermore, by making this questioning explicit in my methodology, I can try to account for the impact of my position and correct for possible bias.

5. Choice of analytical tools

Research in Interpreting Studies appears to be dominated by two main methodological approaches. The first takes a discourse analytical approach to interpreting phenomena, where detailed transcriptions of turns of speech and the related interpreted renditions are subjected to close analysis to examine the conscious and unconscious communicative strategies of the interpreter and interpreter user (see Berk-Seligson, 1990; Miguelez, 2001; Hale, 2001, 2004; Mason, 2009; Mason and Stewart, 2001; Mason and Ren, 2014; Wadensjo, 1998, 2002, 2017). The other investigates interpreting as a social and historical phenomenon, examining its social and professional status, interpreters roles and the function of interpreters in specific institutional settings (see Angelelli, 2004; Hale, 2007; Hertog et al, 2001, 2003; Hertog, 2015; Bancroft, Bendana, Bruggeman, Fuerle, 2013; Ozolins, 1997; Mikkeson, 1999; Townsley, 2007). A sub-theme in the research focusses on interpreter training pedagogy and testing (see Ortega, Sandrelli, Townsley, 2014; Van Deemter, R., Maxwell-Hyslop, H. & Townsley, B. 2014; Townsley, 2011; Maxwell-Hyslop, 2016).

My approach to the analysis of my data shares features with the above without falling exclusively into any single approach. I wanted to use an analytical tool that would help me to see what my data suggested in a way as unobstructed as possible by my own pre-conceptions and expectations. At the same time, because I was working with drawing on several data sources, (the UJ project and my DProf research and different data collection methods (quantitative survey, simulations of interpreted mediation encounters and interviews) I wanted develop a research approach that would accommodate the relatively fragmented and unpredictable nature of practice-based research. I decided therefore to use Thematic Analysis as my analytical tool for the primary data collected in my DProf project, combined with field notes on the simulations undertaken in the IJ project. This dual methodology fitted well with my aim to 'explore, describe, [and] explain' (Robson, 2011) the subject of my research and to generate practical insights useable to improve practice.

I was particularly attracted to TA as an analytical tool because of Braun and Clarke characterisation of the approach as a 'contextualist' method that 'works both to reflect reality, and to unpick or unravel the surface of 'reality' (Braun and Clarke, 2007, 9). In this respect, its flexibility allows it to be used as a method that sits between the two poles of Realism, (reporting the experiences of participants and the 'facts of the matter'), and Constructionism, where the ways in which participants make sense of their experience and the impact of wider discourses are the focus of the analysis (Braun and Clarke,

2007, 8-10). This aspect of TA as a 'contextualist' approach to data analysis also captures a core feature of the data gathering in my DProf project. My interviews both collect factual information about what goes on in the private encounter of an interpreted mediation (Realism) but are also as a source of narrative data that I can interpret, looking for patterns in the data and drawing conclusions (Constructivism). TA was therefore the analytical approach that best accommodated this dual feature of my research interviews. It allowed me to:

- i. Make sense of what the corpus of data is telling me about the insider perspectives of mediators and interpreters on the phenomenon under investigation
- ii. Identify patterns and themes, both on the surface of and latent within the data
- iii. Relate these patterns and themes to my research question
- iv. Identify a sound basis on which to discuss the findings of the research with a view to making recommendations for changes in professional practice.

My TA process was designed around the six-stage process suggested by Braun and Clarke (Phase 1: Transcription; Phase 2: Initial coding; Phase 3: Searching for themes; Phase 4: Reviewing themes; Phase 5: Defining and naming themes; Phase 6: Producing the report (Braun and Clarke, 2006). I also incorporated into the process Attride-Stirling's Thematic Networks approach, using its classification of basic, organising and global themes (Attride-Stirling, 2001) to further clarify the organisation and analysis of my data. Both Attride-Stirling's and Braun and Clarke's methods are, at core, versions of the same thematic analytical approach. The final 'global themes' step in Attride-Stirling's analytical model encourages the researcher, however, to find overarching metaphors to describe what the analysis reveals. This fitted well with my personal habits of thinking, as I gravitate towards using descriptive metaphors to help me understand the inner workings of a phenomenon that I am interested in. The end result of the process is an inductive analysis of the themes identified across the data set, (where inductive analysis is defined as 'a process of coding the data *without* trying to fit it into a pre-existing coding frame or the researcher's analytic preconceptions' (Braun and Clarke, 2006, 12).

6. Methods

i. Selection of participants, sample frame, sample population

A core challenge for my research was to identify suitable respondents from whom to collect qualitative data. Although the survey undertaken in the UK by the UJ project was disseminated via the websites and membership lists of the main UK mediation providers, it yielded responses from only six mediation providing organisations and 61 individual mediators. From the institutional responses, moreover, only 12 mediations involving more than one language were reported per annum, while 29 of the individual mediator respondents reported mediations conducted in more than one language, with two of those 29 respondents reporting up to 10 such mediations per annum (Hammond, 2016, 133- 135). The survey response suggests, therefore, that the phenomenon of language difference in mediation from the point of view of UK mediation providers and individual mediators is still on a relatively small scale.

Given the specialised nature of the subject of my research and the small numbers of instances of the phenomenon, I decided therefore to use a purposive sampling technique to populate my sample frame. Following this approach, I contacted individual mediators whom I knew from the UJ survey

had expressed a willingness to provide information about their experience of language difference in mediation. I then used a linear 'snowball sampling' technique where each respondent nominated one further possible contact for interview to build up my sample of seven mediator respondents. This process is described in more detail in Chapter Four.

As outlined in my Chapter Four, I also decided during the research project to supplement the data drawn from my research interviews during the period of my DProf project with data from simulations and interviews that took place as part of the UJ project. The data from these data sources is recorded in field-notes rather than transcriptions and was not part of the Thematic Analysis reported on below. Although collected in different ways and at different stages, I would not, however, characterise the relationship between the data from the UJ project simulations and interviews and the DProf project interviews as that of primary and secondary data. Both sets of data are primary and both contribute to the overall research results presented in my DProf report.

I believe that using TA for the interviews undertaken in my DProf project and field notes collected in the first stage of my research in the UJ report is a valid approach that fits well within my flexible research design. The use of varied sources of data and adopting a flexible research approach is also part of responding to the unpredictability of practitioner research, enabling me as a researcher to find enough data on which to base insightful recommendations for changes in practice.

ii. Interviews

Interviews are broadly considered to be 'the method of choice for researchers favouring qualitative approaches (Robson, 2011, 279) and I considered them to be the best tool for collecting the type of data I sought.

Each of my research interviews was built around a core of eight open-ended questions. Questions one to five invited interviewees to consider and report on aspects of their reflexive experience of mediating through interpreters and they fit within in a 'warm' or Romanticist tradition of interviewing (Alvesson, 2011, 13). Based on a close collaborative relationship between the interviewer and the interviewee, they undertake the collection of data 'about authentic subjective experiences which are revealed through unstructured, open-ended interviews' (Silverman, 2006, 109). The interview transcripts for these passages of the interviews also reveal exchanges between myself and the interviewee about our comparative experiences a mediation and interpreting professionals respectively, for example, about our subjective evaluation of the impact of a practitioner's ethnicity, aspects of common practice between mediators and interpreters, or invitations to comment on my interpretation of something they said. These underline my engagement in the interview process as a participant as well as researcher.

Questions six to eight, however, seek information about more technical aspects of the mediators' practice when working with interpreters, focussing on matters of the sourcing of interpreters, their awareness or otherwise of interpreters' backgrounds and the use of different modes of interpreting. These questions belong more to the neo-positivist tradition of interviewing identified by Alvesson (Alvesson, 2011, 11) and seek hard data on empirical fact rather than the subjective experience of

interviewees. They are, in short, attempts to use the interview as 'a pipeline for transmitting knowledge' (Holstein & Gubrium, 1997, 113).

My core interview questions are shown on the interview protocol below.

- i. Please recall a mediation encounter where you were working through a language interpreter? What can you tell me about that experience?
- ii. How would you say the presence of an interpreter impacted on the progress of the mediation?
- iii. How do you think the presence of an interpreter might have impacted on the outcome of the mediation?
- iv. How confident did you feel, as a mediator, about working through an interpreter?
- v. How confident did you feel about the performance of the interpreter?
- vi. Where did you source your interpreters from? Did you have any prior information about the background of the interpreter?
- vii. Did you brief the interpreter in advance or give the interpreter any instructions about how you wanted the interpretation to be carried out? Did you have a de-briefing with the interpreter at the end of the mediation?
- viii. Are you aware of the possibility of an interpreter using simultaneous interpreting in an interview? Do you think this would be beneficial to your practice?

The interview protocol provided a loose structure to each interview but there was no fixed order or wording. I knew that by the end of each interview I wanted to have data about each of these topics, but the exact order in which I put the questions and the wording used was dictated by the progress of the interview. This loose structure allowed me as an interviewer to pose follow-up questions prompted by the responses given and to follow new lines of questioning as indicated by the emerging themes of the interview.

iii. Interview procedures

All of my research interviews were carried out in the same way. In each case, I made an initial approach to the prospective interviewee by e-mail, outlining briefly the nature of the research I was undertaking, my reasons for contacting that person and asking for an initial indication of willingness to be interviewed. Having received a response, I then provided each interviewee with an interview consent form, outlining in more detail the background to the research, my particular aims as a researcher, and the format of the interview, the exact use that would be made of the interview data and how it would be stored. This interview consent form also assured interviewees that all data would be anonymised, that their identities would not be disclosed during or after the completion of the project and that they could withdraw from the research at any time, without offering explanation for their decision (see appendix 3). The interviews themselves were conducted either as audio or video interviews on Skype and recorded inside that programme. Each interview lasted between 45 minutes and 1.5 hours. All interviewees and their respective roles are shown in fig.1 below. In each case, the interviewees are identified only by number and initials.

Fig 1. Interviews, simulations and telephone calls

Interviewee	Professional Role	Mode of Interview
SF	Mediator 1	Semi-structured, recorded Skype interview and transcription
ALC	Mediator 2	Semi-structured, recorded Skype interview and transcription
SW	Mediator 3 (Bilingual, English-German)	Semi-structured, recorded Skype interview and transcription
LB	Mediator 4	Semi-structured, recorded Skype interview and transcription
RAC	Mediator 5	Video recorded simulation Semi-structured telephone interview, field notes
MR	Mediator 6	Semi-structured telephone interview, field notes
OD	Interpreter 1	Simulated interpreted mediation followed by interviews
CO	Interpreter 2	Simulated interpreted mediation followed by interviews
SL	Interpreter 3	Semi-structured, recorded Skype interview and transcription

iv. Simulations and telephone interviews (UJ project)

The simulated interpreted mediations were carried out as part of the UJ project in Wolverhampton, UK, in 2015. In each case, a set of briefing notes setting out the outlines of the situation were developed in collaboration with the mediators, which was then used to guide the simulation. The mediators followed their usual practice when working with interpreters. The two telephone conversations with mediators took place at different stages, one during the early stages of the UJ project and one as part of my DProf research. Field notes were kept for both of these conversations.

v. Transcriptions

Five of the six interviews with mediators and the three interpreter interviews were recorded and stored on a password protected hard drive (mediators 1,2,3,4 and 5). A further two interviews were based on contemporaneous notes taken during telephone interviews. One of these telephone interviews was conducted with mediator 5 during the UJ project. The second was with mediator 6 during my DProf project.

A full transcription was made of the four Skype interviews with mediators undertaken for my DProf project. The transcriptions included indications of pauses, hesitations, repeats and digressions and were not edited to exclude any data or to 'clean-up' the record. The transcription process involved continual revisiting of the original recordings to clarify particular words or usages and to confirm the accuracy of the verbatim record. This was also an opportunity to immerse myself in the detail of the data, developing a clear sense not only of semantic content of what the interviewees said but the

implicit meanings in the data. This was particularly useful when coming to the thematic analysis of the interview transcriptions.

2. Interviewing

My approach to interviewing was consistent across all of the interviews. Each interview started with a 'free-recall' type question, inviting the interviewee to reflect on their experience of working through an interpreter. My role at this point of the interview was to listen and prompt on occasion to keep the flow of narrative from the interviewee going. At the same time, I was identifying and noting particular points of interest in the narrative that I could then follow up with further unscripted questions. Once I sensed that an interviewee was naturally reaching an end point in their free-recall, I then moved on to the next core question indicated on my interview plan, or a new question prompted by the developing narrative of the interview. This mixture of core questions and unscripted questions seemed to work well with my interviewees, who were uniformly happy to expand at length on their experiences and very open in their responses.

I was guided in my use of free-recall followed by follow-up questions by my practitioner experience of both Police evidential interviews and psycho-therapeutic counselling sessions I have been present at in the role of an interpreter. In both cases, the use of free-recall was core element of the interviewer's technique, used as a way of identifying points of interest for follow-up questions and building up a detailed picture of the topic of enquiry. At the same time, a set of core topics still provide a structure and trajectory for the interview overall. It was also interesting to see in my interviews how the questions I posed seemed to trigger off a process of reconsideration of the interviewee's experience of mediation and on the topic of language difference in general. The interviews became therefore an opportunity for reflexive consideration of their practice, creating new questions as the interview progressed.

In this way, with a mix of core questions and follow up questions, I and my interviewees proceeded to the end of our interview. When I felt as interviewer that I had covered the main topics covered in my interview plan and sensed that the interview was reaching a natural end, I drew the interview to a close. Each of the four interviews had lasted between 55 and 90 minutes and provided a rich and varied seam of information on multiple aspects of the both mediators' practices and their perceptions of mediating through an interpreter.

3. Transcriptions

After each recorded interview, I stored the recordings on a password protected hard drive and made full transcriptions of each interview recording. I transcribed the first recording by hand, listening and transcribing as I went. However, for the remaining transcriptions I used an online transcription package, (Trint). This package produces useable raw transcriptions of voice recordings which I then post-edited to clear up failures in the voice-recognition. This post-editing did not however, exclude any data or 'clean-up' the record, which remains a verbatim record. During the transcription process, I also continually revisited the original recordings to clarify particular words or usages and to confirm the accuracy of the transcript.

Although time consuming and laborious, this process was an opportunity to develop a clear sense not only of semantic content of what the interviewees said but the implicit meanings in their manner of discourse and their delivery. This was particularly useful when coming to the thematic analysis stage of my treatment of the data.

4. Thematic analysis of the data

As explained in my Methodology chapter, in my approach to the thematic analysis of my data I chose to integrate Braun and Clarke's method for TA as set out in their 2006 paper, with the Thematic Networks approach proposed by Attride-Stirling (2001). I found that her structure of moving from basic themes, through organising themes to a final set of condensed global themes and the drawing of thematic networks to be a particularly useful way of organising my data and visualising the core ideas. In what follows, I narrate the steps of my thematic analysis and show how it integrates the two approaches, highlighting any further points that arose during this stage of the project.

Step 1. Immersion in data and identification of data items (Braun and Clarke, 2006, 16)

At this first step of my analysis, I immersed myself in the data through reading and re-reading the transcripts of my interviews. Throughout this reading and re-reading, I was continually in dialogue with the interview recordings, returning where necessary to re-listen to the recordings and my own questions as a researcher, to clarify the position being expressed by the speaker and to recognise how my own questioning approach may have impacted on the developing narrative of the interview.

According to Braun and Clarke the process of thematic analysis starts when 'the analyst begins to notice, and look for, patterns of meaning and issues of potential interest in the data' (Braun and Clarke, 2006, 15). For me, noticing of patterns and data items of interest started at this first stage. Through thoroughly immersing myself in the interview transcripts, I was already identifying recurrent ideas appearing in the interviews and beginning to infer broad themes in the data.

Step 2: Allocating initial codes (Braun and Clarke, 2006, 18)

The reading, re-reading and re-listening to the data led more or less seamlessly into the allocation of initial codes to data items identified in the transcripts. Codes are defined by Boyatzis (1998: 63) as "the most basic segment, or element, of the raw data or information that can be assessed in a meaningful way regarding the phenomenon". I broke the interview transcripts for each respondent down into a set of initial data 'chunks'. These were recorded as a mixture of verbatim extracts from the transcript or single words or phrases describing the significance of the data item, or sometimes both. I then coded these data chunks with descriptive labels identifying points of interest in the transcripts. I therefore ended up with a mixture of *in vivo* and descriptive codes for the data items I had selected from my transcripts. At this stage, I was coding as widely and creatively as possible (Löftgren, 2013) to avoid missing any significant information.

Given the relatively small size of my data corpus, I had decided against the investment of time required to learn the use of the NVivo package and decided to rely on more traditional paper-based methods. I therefore started with printed copies of the transcripts and coded by hand. However, I quickly changed over to using Microsoft Excel to record the coding of the data, using a method described by

Bree and Gallagher (2016). This provides a practical and cost-effective way of recording data codes and developing themes, suited for relatively small data sets and was a cost and time effective intermediate step between paper-based thematic coding and the learning and use of NVivo. The method developed by Bree and Gallagher involves allocating a shared colour to codes and the data items they relate to. These coloured codes and data items can then be sorted in to groups using the Sort function in Excel. This made it easier for me to review the groupings of initial codes and data items across the entire data set, aiding the process of revising the initial coding, lumping or splitting codes (Saldana, 2008), or amending codes in favour of new ones. This involved again a process of going back and forth between the interview transcripts, data chunks and initial codes to check their validity. This process was also a key part of identifying themes in the data set; simply sorting the coloured coded extracts and codes was, in itself, an analytical and interpretive process.

An edited sample of my use of this method for allocating initial codes is shown in figure 1 below.

Fig 1. Sample Data Items and Codes

Respondent	Line number	Initial codes and Data chunks
ALC		disbursements for all kinds of expenses but
	44	particularly for interpreters
	56	required to use certain interpreters
		same group as used in police station and
	58	courts
		sourcing of interpreters through defined
	62	central list
		infrequent occurrence of need for
	91	interpreter: not very, certainly not recently
		interpreting and language unknown
		territory: <i>it was sort of unknown territory,</i>
	98	<i>we hadn't thought about it a great deal</i>
		use of family members for interpreting:
		<i>they will say things like ~oh it's okay, my</i>
		<i>husband doesn't speak very good English</i>
	104	<i>but I can explain"</i>
		loss of control: <i>you have no way of</i>
		<i>knowing what that person is saying to their</i>
		<i>partner if you do not speak that particular</i>
	106	<i>language</i>
		Management of process: you do not have
	110	management of that process.
	115	use of family members
		process time: <i>you are necessarily spending</i>
	117	<i>more time in the first instance.</i>
	120	<i>I want to spend time getting to know them</i>

Language barrier= difficult: *If you're doing that with one person or even both who's English is poor or non-existent, then it's*

129 *really difficult*

133 Who can be an interpreter?

Learning: *that didn't occur to me*

134 *immediately*

My description of the coding process outlined above might suggest a straightforward, linear progression from transcripts to initial codes. In reality, it was a complex and messy process of trial and error. I revisited my initial codes on three separate occasions, each time reconsidering and revising my codes and questioning my coding process. In my first revision I revised all the initial codes, revising or changing the wording of descriptive codes, eliminating some and adding others. On my second pass over the data set, I experimented with using exclusively *in vivo* codes, capturing only phrases and chunks of discourse from the transcripts. On my third revision of the data set I reverted to a mixture of *in vivo* and descriptive codes, as I felt on balance that this gave me the best set of codes for my analysis after all. Although time consuming and at times chaotic, this recursive process helped me towards a close understanding of the raw data and supported the naming of basic themes at the next stage.

Step 3: Identifying basic themes (Braun and Clarke, 2006: 19; Attride-Stirling, 2001: 392)

The next step in my analysis was to decide on basic themes (Attride-Stirling, 2001) in the data. Here I began to incorporate the method for TA set out by Attride-Stirling into my own analysis. Basic themes are defined by Attride-Stirling as 'the most basic or lowest-order theme that is derived from the textual data' (Attride-Stirling, 2001, 388). Identifying basic themes involved seeking patterns in the data set and allocating them descriptive labels. Again, the progress from codes to basic themes was far from a straightforward linear process and was also repeated several times. Each time, I was returning to the previous stages, (basic themes to codes, codes to data items) and questioning my interpretive choices, before returning back and amending or confirming my choices. At the end of this process, I arrived at a set of 17 basic themes appearing across all the interviews with mediators. These basic themes are shown below:

- Ambience and atmosphere
- Cognitive load
- Culture and lingua-culture
- Difficulty of language barrier
- Emotions
- Ethics
- Faith and trust: precision in interpreting
- Impact of Interpreter
- Interpreter-mediator relationship
- Learning through doing
- Loss of management of process
- Mediation discourse/language
- Mediation discourse/mediation frame
- Simultaneous mode
- Sourcing of interpreters/use of family members, students
- Time/preparation for interpreting
- Time/process time

The identification of these basic themes was the first output of my thematic analysis and an exciting step in the research. Up until this point, TA had been for me largely a theoretical construct, a sort of

research recipe that I was following in the hope of a palatable outcome. With allocating these basic themes in the corpus of qualitative data the process of TA began to make sense in an intuitive way, because the basic themes corresponded well with my own experience and my own theorising about the interaction between interpreters and professional clients.

Step 4: Identifying organising themes (Braun and Clarke, Phase 5, Attride-Stirling, Step 3).

Having allocated the basic themes I discerned in the data corpus, I started to abstract from them a further, smaller set of organising themes. Attride-Stirling defines an organising theme as a 'middle-order theme that organises the basic themes into clusters of similar issues' (Attride-Stirling, 2001, 389). They represent the second stage of abstraction from the raw data and are the intermediate step on the way to formulating the final set of global themes (Attride-Stirling, 2001, 389) and drawing up the thematic network that provides a map of the whole data set.

Identifying organising themes involved reflection on and interpretation of the basic themes inferred from the initial codes and trying to consolidate these into a new set of intermediate themes. Once again, this was a recursive process, involving re-immersion in the original transcripts and codes. It also required stepping back from the details of the data and considering my own sense of the themes arising from the interviews. In the consolidation of basic themes into organising themes, there was therefore a continual interplay between the transcripts, the coding and my impressions of the interviews as a whole.

From this interaction of basic themes and overall impressions of the data set, I abstracted the following ten organising themes:

- Accessing competent interpreting
- Atmosphere
- Control and management
- Coping with emotions and conflict
- Inclusion and exclusion through language
- Mediator-interpreter interaction
- Time
- Understanding of the interpreting context by mediators
- Understanding of the mediation context by interpreters
- Unfamiliarity (mutual)

Step 5: Identifying global themes (Attride -Stirling, Step 3)

The last stage of my thematic analysis was the abstraction from my organising themes of three global themes, defined as 'super-ordinate themes that encompass the principal metaphors in the data as a whole' (Attride-Stirling, 2001, 389). In my research, these global themes represent my overarching understanding of what the data as a whole tells me about my interviewees' experience of the phenomenon of interpreting in mediation. They are intended to encapsulate all the different understandings, responses and reflections of the participants in my research project, both mediators and interpreters. They also provide the 'meta-ideas' about my subject of research around which I then structure my analysis and discussion.

These global themes are:

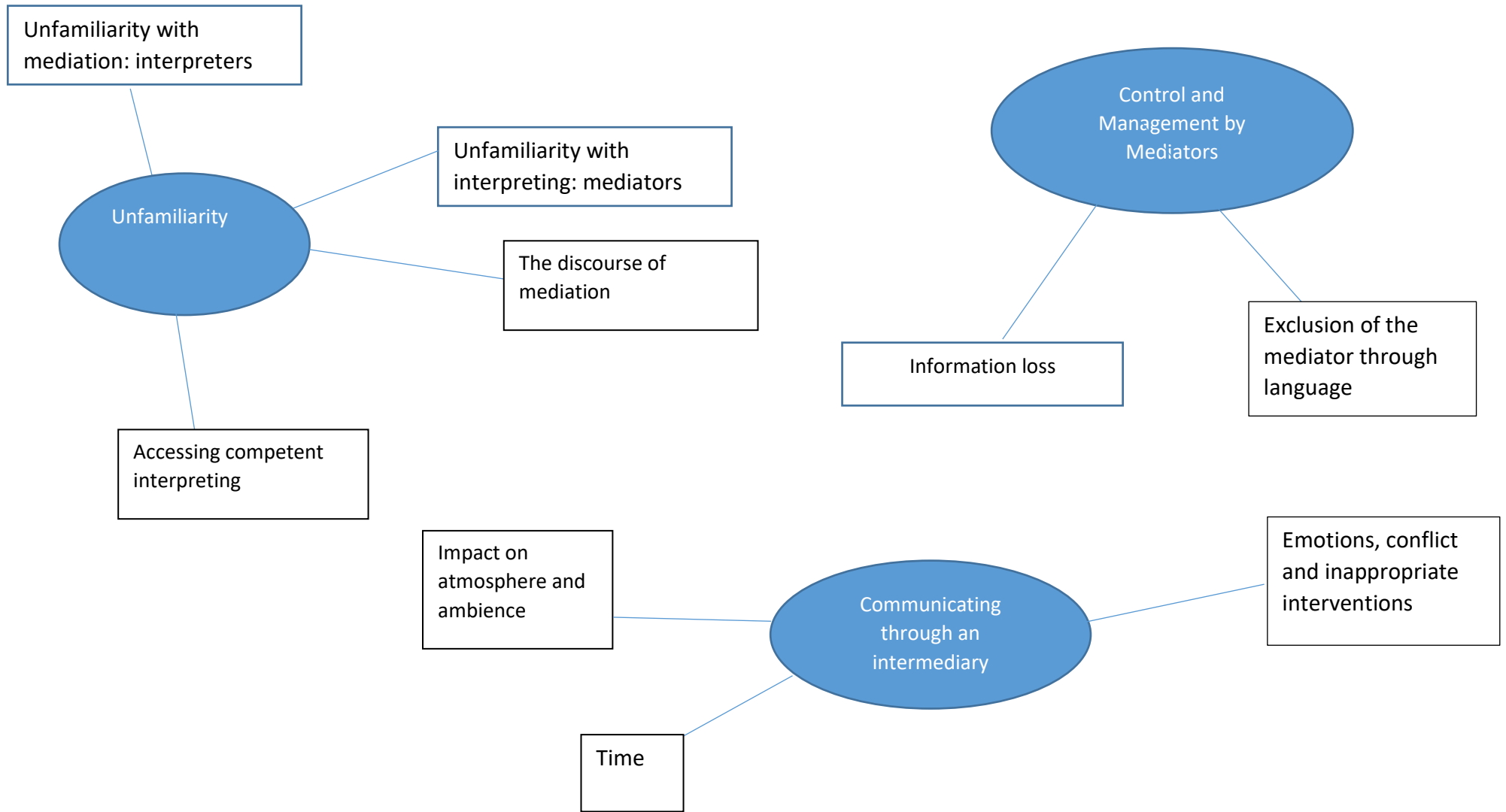
- Control and management
- Being an intermediary
- Unfamiliarity

Step 6: Drawing up thematic networks

The final stage of the process was to draw up a thematic network showing the relationship between the global themes and their intermediate themes. This visualisation of the network of connections between themes at the two levels of abstraction provided an invaluable map for use in my analysis of the data corpus. By this stage of the analysis I had moved from the computer screen to using large sheets of A3 paper on which I drew the thematic network generated by my TA process. It was fascinating to see how the initial chaos of data chunks and codes had eventually crystallised into a small set of super-ordinate themes that I could represent graphically in the form of a network. I felt, in fact, that I had arrived at the core findings, in condensed form, of my research. These three global themes represented overarching metaphors that captured for me the core of all of the different understandings, responses and reflections of the mediators and interpreters I had engaged with in my research project.

The final thematic network is shown in fig. 4 below.

Fig 4. Global Themes and Thematic Network



7. Ethical Considerations

Research does not take place in a vacuum and the possible impacts of a researcher's actions on participants in the research and on the wider field within which the research takes place have to be carefully considered. At the planning stage of my project, I identified three categories of ethical considerations relevant to my DProf project: the protection of the interests of participants (considerations raised by engagement with human subjects in the research, as participants, interviewees or facilitators of the research); the recognition of joint work (considerations raised by use of data collected via collaborative work on the UJ project) and the wider social impact of my project (considerations raised by the possible impacts of the research on mediation and interpreting practice and matters of equality and fairness). Having completed my DProf research, I now add to these a fourth ethical dimension to my project work. This is the need to explicitly account for the position of the researcher relative to the interpretation of the data, whether through the use of TA or any other qualitative data analysis methodology. Based on my work in this project, I believe that this is both a methodological and an ethical issue. In what follows I will consider how these categories of ethical concerns were addressed in the execution of my DProf project.

i. [Recognising the inter-connectedness of the researcher and the interpretation of data](#)

My research makes a claim to providing insight into the dynamics of the phenomenon of language interpreting in mediation. I hope moreover that this insight will be a catalyst for a refinement of practice in this area on the part of mediators and interpreters. To allow others to evaluate the validity of my insight and how far it is based on sound, objective analysis requires me to be clear about my own position as an insider-researcher, and about the pre-suppositions that I bring to the analytical process. Without this clarity about my research and the possibility this creates of bias in the drawing of conclusions, the overall face validity of my research would be undermined. I have therefore tried to make my position as a researcher relative to my data clear at every stage of my report.

ii. [Participant protection](#)

As a researcher, one is asking research participants to reveal information about themselves and their own practice and behaviour that will be reported later in the research outputs. Being an insider-researcher also raises the possibility of impact on persons within an organisation or on the organisations themselves, where these form the focus of the research. In the case of my research, all the respondents were free-lance practitioners and not situated within organisations *per se*. However, the matter of consequences for those research participants still needed to be addressed. The core question of mitigating possible harm was therefore one of how their participation might impact on their professional lives as free-lance practitioners.

I decided that a key measure to mitigate possible impact on participants from participating in the research was openness and transparency about my practices and motivation at every stage. This allowed participants to make informed decisions about whether to participate and about how much they were prepared to reveal to the researcher. This involved executing the standard protocols for the

conduct of research interviews, the storage and security of materials, the protection of the identity of participants and getting informed consent. On the day of the interview itself, I made a further verbal check for consent to be audio-recorded and for the data to be used in the project report, and interviewees were given a further opportunity to ask any questions before proceeding. In the case of the use of video-recordings of simulated interpreted family mediation sessions, consent for use of the material from participants was given at the time of the simulations being carried out under the auspices of the UJ project.

A further measure to mitigate possible impact was the anonymization of the data provided by respondents. Although all of the respondents expressed orally a willingness to be identified in the research as sources of data, as anonymization of data is normal practice in research, I decided that this would be a better measure in the long term. Thus, the respondents in my research are not identified in the research output, and care is taken to avoid any possible identification of individuals from the data provided.

iii. Recognition of joint participation

As I outlined in the description of the structure of my project, my DProf research project builds upon work undertaken in the UJ project in collaboration with other project partners. I occupied a dual role in the project, as the project initiator and coordinator and as an active researcher in specific parts of the project's work, including acting as editor of the final report. Thus while a large part of my coordination role involved management (ensuring that interim targets were set and met, reporting back to the EU funders and coordinating the different research efforts) I was also an active researcher in the project and involved in the analysis and presentation of data from all parts. In particular, I was engaged in the development of the survey to collect quantitative data on the phenomenon of interpreting in mediation in the seven EU member states represented in the project and in designing the online self-assessment tool for interpreters.

In my DProf project report, I ensure that the participation of other partners in the production of the data from the UJ project that I refer to in my DProf project is clearly and transparently acknowledged and that the collaborative venture of the project is described in my DProf report.

iv. Wider social impact

I turn now to what I characterise as the 'macro' level of ethical considerations for my DProf project, a consideration of the wider matter of equality of access to mediation and equality of arms in a mediation for NLEP speakers.

Mediation as a form of ADR is embedded in the wider domain of civil justice. As such, the fundamental rights to equal access to judicial proceedings and equality of arms in those proceedings and to 'equal treatment before the tribunals and all other organs administering justice'⁸ that apply to all judicial proceedings apply equally to mediation (Vanden Bosch & Van der Vlis, 2016, 11). It is this consideration that underlies the higher level of ethical considerations in my DProf. Mediation has an obligation to recognise principles of equal access, fairness, elimination of discrimination and equality

of arms. Language, however, can be a barrier to the exercise of rights and to equality of arms in judicial proceedings. This is recognised in the founding UN charter, which refers to the promotion of international cooperation and the realisation of human rights and fundamental freedoms ‘without distinction as to race, sex, *language*, or religion’ (UN Charter, 1945, article 13b) (emphasis added). The same concern for the realisation of fundamental human rights without distinction to race, sex, language or religion is re-iterated in the Universal Declaration of Human Rights (UDHR) (UDHR, 1948, art. 2), and in the International Covenant on Civil and Political Rights (ICCPR) (ICCPR, 1966, art. 26).

Mediation needs to recognise those barriers explicitly and to make provision to mitigate their impact.

The provision of an interpreter (or bilingual person purporting to fulfil that function) is not, in itself, however, a guarantee of the protection of an individual’s rights in the mediation process; the quality of that interpretation is also an issue. This is recognised in the 2010 EU Directive on the right to interpretation and translation in criminal proceedings (European Commission, 2010). This states that the interpretation provided for participants in judicial proceedings in the EU common area of justice and security should be ‘of a quality sufficient to safeguard the fairness of the proceedings’ (article 2, 8). As in court based judicial proceedings, so in mediation; in order to guarantee an individual’s rights in mediation where an interpreter is used, the interpretation needs to be of a sufficient standard.

The mediators interviewed for my project, however, reported little or no knowledge of the professional qualifications of the interpreters they worked with and showed little understanding of how they might judge whether the interpreter was practicing within professional norms for interpreting or not. My DProf project therefore confronts an uncomfortable reality. This is that, despite overarching commitments in civil justice and by extension mediation to equality of treatment and non-discrimination on the basis of, among other characteristics, language, the reality of practice in mediation does not meet those commitments. If mediators and/or mediation providers engage interpreters without understanding of what constitutes interpretation of a sufficient quality, or without checking of the professional background of the interpreters supplied to them, there is a significant possibility that the criteria of sufficient quality will not be met. This is also unlikely to increase the appeal of mediation for NLEP speakers. We can hypothesise that the negative impact of sub-optimal interpreting may reduce the likelihood of NLEP speakers choosing mediation rather than court-based dispute resolution.

8. Reflective evaluation

My DProf project is underpinned by the principle that being a non-or limited English speaker should not present an insurmountable barrier to the exercise of civil rights in the UK, including access to mediation. By setting out to explore and explain the impact of interpreting on mediation and by examining so far unquestioned practices on the part of mediators around using interpreters, my DProf project aims to address this ethical concern about equality of access, fairness and non-discrimination. Putting this principle into practice requires, however, action on the part of mediators to ensure that the interpretation they rely on in cases of language difference is sufficient to ensure the rights of NLEP mediation users.

To conclude this chapter on Methodology, I would like reflect on the overall effectiveness and/or limitations of my methodological choices.

i. Personal

Reviewing the process of data collection and analysis, it is clear to me that, when I started the process of analysing my data using the TA approach outlined above, I was more or less following a recipe set out for TA in the relevant literature. As the analysis developed, however, and as I gained confidence in my ability to manage the data, I realised that thematic analysis is not just a mechanical processing of the data, but a dynamic interaction between the systematic steps of the analysis and my own interpretations of the data. In short, my thematic analysis of my data was a hermeneutic process in which my analytical and interpretative choices were a key component. I needed therefore to bear in mind my own pre-suppositions born out of my practitioner background, continually checking whether I was comfortable that what I was seeing was valid or whether it was too influenced by my own preconceptions.

I believe this affected the research process in a number of ways. The first is that, as a PSI practitioner, I have an experience-based understanding of the impact of interpreting on interpreted encounters between different types of service providers and NLEP speakers. This led me to hypothesize in general terms about the impact of interpreting in mediation. I predicted, for example, that mediators would show a limited understanding of how interpreting is a professional activity and of the skills set of an interpreter and their professional practice when interpreting. I also expected to find present in the mediation context as well many of the features that characterise interpreted encounters in other settings (concerns about role boundaries, lack of shared understanding of good practice, misconceptions about interpreting as an activity etc).

To a large extent, these expectations were confirmed by my analysis. Many features that I recognise from other face-to-face interpreted encounters did appear in the data. This raised questions, however, about the impact of my own bias and how far the themes identified in the data were simply reflections of what I expected to find. This question concerned me most when deciding on the basic, organising and global themes in the collected data. As Braun and Clarke point out in their discussion of TA, themes do not pre-exist in the data separately from the researcher's perspective, and the identification of them is not a passive process of simply uncovering something which is already there. Rather, the development of themes is 'an active role [that] the researcher plays' [identifying patterns/themes, selecting which are of interest and reporting them to the readers' (Taylor & Ussher, 2001: 310) cited in Braun and Clarke, 2006:7). It seemed to me that the higher the level of abstraction from the data, the greater the role of interpretation and therefore the scope for the influence of my pre-conceptions and bias.

I don't believe that when working with qualitative data and applying a 'double hermeneutic' (where the researcher is interpreting the interviewees' interpretation of their own experience), the possibility of such bias can be completely removed. I decided therefore that the best I could do was to 'acknowledge [my] own theoretical positions and values', and to offer 'clarity around the process and practice of method' (Braun and Clarke, *ibid*, p.7). In this way, my underlying assumptions and their impact on the methodology applied in the research can be as clear and transparent as possible.

ii. Procedural

I believe that my choice of a flexible research design allowing for the use of a range of data collection methods (in-depth interviews, field notes, and quantitative data from the UJ project) was the most appropriate design for my project. Given the exploratory nature of the research, using the perspectives of mediators and interpreters on the phenomenon of interpreting in mediation, and TA to analyse the data corpus, a flexible design has served well in the context of the project and its aims.

I recognise, however, that My DProf project draws on a small sample of mediators, and the small size of the sample means that this piece of research can only be a preliminary step in advancing research on this topic. My initial plan was to interview five or six mediators with experience of working through interpreters but my approaches to other mediators recommended by my interviewees did not produce any response. I also put out a call for expressions of interest from mediators with experience of working through interpreters via the Family Mediation Council but again, this did not produce any leads.

Despite the small sample size, however, I believe that the relatively small sample is still functional. Costley notes that 'the scale of a work-based project is likely to be relatively small' (*ibid*: 30). My DProf project investigates practice in a specific, niche activity with a view to making suggestions for improvements in practice, and the sample did provide me with sufficient data from which to draw conclusions and make recommendations on practice in this area. There remains, however, an area of research that my project methodology was unable to account for, the viewpoint of the NLEP mediation client. Viewed as a three-way communicative relationship (mediator, mediation client, interpreter), my methodology accounts for two parts of the triad (mediator and interpreter) but not for the third. The task of collecting data from NLEP mediation clients is one that will need to be completed if a full picture of all aspects of the interpreted mediation encounter is to be generated. It is also one which poses considerable research challenges. There is a significant doubt about whether such clients would be willing to engage with external research into their experiences. The researcher would also confront the language barrier and, once again, interpreters would need to be engaged for any qualitative research interviews. For these reasons, this aspect of the research could not realistically be undertaken within the parameters of this DProf project, but any actions flowing from this piece of research need to be taken in full awareness of this, so far, missing piece of the puzzle.

Chapter Four: Activities

1. Overview

In this chapter, I describe the data gathering and analysis activities undertaken in the two sequential phases of my research. I revisit and evaluate the activities of the UJ project, the precursor to my DProf research project and also describe and evaluate the data gathering and analysis at the heart of my DProf project. I also include information on critical events during the period of my DProf project that required adaptation of my data collection approach. I present these research activities as a whole comprising both data sets, in order to highlight how both data sets link together.

5. Understanding Justice project (RAL 8)

As outlined in my Methodology chapter (Chapter Three) my research into interpreting in mediation has utilised two forms of data gathering in the two different phases of my research. The first of these was a quantitative data gathering activity undertaken in 2015 as part of the UJ project.

One of the objectives for the UJ project was to carry out

[an] investigation of the use of bilingual mediators in preference to interpreters [and] [further investigation of the role of the interpreter in mediation proceedings and the options for the use of bilingual mediators] [with linked recommendations for best practice (Townesley, 2013, 4)

There was at that time, however, no statistical data available to indicate the scale of the phenomenon at European level. Nor was there information available about the methods adopted by European mediators to deal with language difference when it was encountered. Although the existence of language difference in mediation and the need for interpreters had been noted in general terms in the literature on mediation (see Chapter Two, Review of Knowledge and Information), and particularly in cross-border mediations (see Kiesewetter & Paul, 2011; Carroll, 2014), this did not provide any large scale picture of the scale of the phenomenon. In order to achieve the objective set out above, we clearly needed to collect quantitative data regarding the incidence of language barriers and the use of interpreters in mediation in the European common area. We also needed data about the approaches taken by mediators in managing language difference. This data could then be used to prepare country reports for each of the project member countries and to inform practical recommendations for good practice when working with interpreters in mediation.

i. UJ project data collection

We decided to collect this data via a two-stage data collection process. The first stage was a 'scoping' exercise where project partners made initial contacts in their respective countries (Belgium, Italy, the Netherlands, Poland, Romania, Spain, the UK) with mediators or mediation providers and gathered responses to a set of five '1st tier' questions.

These questions were:

- How many mediations do you undertake per annum?
- In how many of these mediations do you encounter a language difficulty?
- If so, what is the nature of these difficulties?
- What approaches do you use to address these difficulties?
- Do you use a form of bilingual mediation or a dual role mediator/interpreter, or do you engage an independent interpreter?
- What types of mediation do you typically carry out? (family, neighbourhood, labour disputes etc)

The function of these questions was to provide provisional data regarding the frequency of language difference in mediation and the preferred practices of mediators when confronted with language difference. This data was then used to inform the design of the second stage of the data collection process, a more detailed and extensive online questionnaire for mediators and organisations providing mediation in all seven countries represented in the project. For this survey, we designed two questionnaires, one for mediation providers and one for individual mediators; of particular interest to us were the different means adopted by mediators in practice when confronted with language difference. We wanted to find out whether mediators were habitually engaging third party interpreters to deal with language difference in mediation or resorting to other methods to deal with the problem, such as bilingual mediation, the use of a dual-role mediator/interpreter or adopting a lingua franca for the mediation encounter.

The two questionnaires for mediation providers and for individual mediators contained 32 questions regarding the frequency and type of mediations where language difference was encountered and the practices and procedures followed in these cases. The questionnaires were translated into the languages of the respective project partner countries by project partners and then trialled with selected mediators and mediation providers in each country. Feedback from these trials was then incorporated into the final version of the online questionnaires, posted live on the UJ project website between July and October 2015. Partners in each country also made contact with mediation providing organisations and individual mediators to signpost them to the online questionnaires and in an attempt to drive up the response rate to the survey. By the end of the survey period, the survey had gathered responses from 174 individual mediators and 90 mediation providing organisations across seven EU member states.



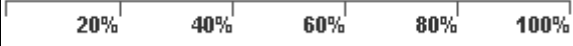
I include at Appendix One (p.) an extract from the final report generated at the end of the data collection to illustrate the type of data collection and the questions asked by the UJ project⁹. In order to focus on the frequency of occurrence of mediations involving more than one language and on the practice of mediators in these situations, I have included in this extract only those questions directly related to the use of interpreters and excluded questions seeking more contextual information about the practice of mediation. Questions 14 – 19 of this edited report seek information about the frequency of language difference in mediation, while questions 20 – 42 seek information specifically about mediators' practice around the use of interpreters.





A full version of the report from which the extract above is taken can be found in appendix 2, pp. 132-150


⁹ . Please note that due to technical reasons in the publication of the translated questionnaire online, a separate run of the questionnaire was required for Romania (one of the project partner countries). Data for Romania does not therefore appear in this final report.

This online questionnaire provided us with data about the frequency with which mediators were confronted with language difference in their practice and about their procedures when dealing with that language difference. The programme used for the data collection¹⁰ also allowed for the extraction of different types of reports based on selected questions. These functions were particularly valuable for project partners when preparing country reports on the conditions pertaining in a particular member state. The option to extract data reports on specific sections of the overall data also proved useful for my DProf research, as it allowed me to focus exclusively on the data for the UK. I include a sample of such an extracted report for UK mediation providers in fig.2 below:



Fig 2: Filtered report for UK only





Q16. Do you carry out mediations involving more than one language?			
Responses	Responses	%	Percentage of total respondents
Yes	5	55.56%	
No	4	44.44%	
(Did not answer)	0	0%	
Total Responses	9		

Q22. Which of the approaches shown below are used by your organisation when the mediator and one or more of the parties do not share a common language?			
Responses	Responses	%	Percentage of total respondents
a bilingual mediator is used	0	0%	
an interpreter is used	4	44.44%	
two mediators are used, one of whom is bilingual	0	0%	
any of the above, depending on circumstances.	1	11.11%	
Other (Please specify)	0	0%	
(Did not answer)	4	44.44%	
Total Responses	9		

Q23. Does your organisation use bilingual mediators in mediations involving more than one language?			
Responses	Responses	%	Percentage of total respondents
Yes	1	11.11%	
No	0	0%	

¹⁰ SoGo survey. (www.sogosurvey.com)

(Did not answer)	8	88.89%	
Total Responses	9		

Q28. Does your organisation use interpreters in mediations involving more than one language?			
Responses	Responses	%	Percentage of total respondents
yes	4	44.44%	
no	1	11.11%	
(Did not answer)	4	44.44%	
Total Responses	9		

6. Reflections on the Understanding Justice project

Reflecting on procedural aspects of the UJ data collection I recognise that there was a lack of triangulation of the data collected from the survey. In pursuit of better reliability for our data, we should have sought to triangulate the initial findings of the questionnaires either by a larger scale analysis of the available statistical data about mediation in the EU member states or by targeted qualitative research interviews with purposively selected interviewees. This would have deepened and broadened the initial quantitative findings of the questionnaire and increased the face validity of the data. It is clear to me now how the two data gathering approaches could have been used together to improve the original data gathering exercise. My DProf project, however, undertakes the type of qualitative data gathering that should have been used to triangulate the quantitative findings of the UJ questionnaire.

7. DProf project data gathering activities

While the UJ project provided quantitative data about the phenomenon of interpreting in mediation, it also provided the foundation for my DProf project. As I explained in my Introduction chapter, in my DProf project I was interested in the collection of data about experiences, perceptions and understandings of the interpreted mediation encounter from the point of view of mediators and interpreters. In this phase of the research, rather than seeking to quantify the extent of the phenomenon, I wanted to dig deeper into the dynamics of the interpreted mediation encounter to understand how this could be made more functional for both. My DProf data collection therefore is characterised by questions seeking qualitative data about mediators' experiences of working through interpreters and the experiences of interpreters who have encountered mediation.

8. Data collection and Critical Events

For my DProf project, I collected data from several different sources. My first round of data collection for the DProf project consisted of interviews with individual mediators I had identified as fitting in my sample frame (see i below) and one interpreter with extensive mediation experience.

These interviews were undertaken using Skype. The resulting transcripts formed the core of my data and I was able to analyse these using the Thematic Analysis that I describe below. In these semi-structured interviews I explored with my interviewees their experience of mediating with an interpreter present and in the case of the interpreter, their experience of working with mediators. I also chose to include data on the subject of interpreting in mediation collected at an earlier stages in the *Understanding Justice Project*.

After the fourth transcribed interview, I moved to a second phase of data collection from a range of further sources, in order to supplement my findings from the in-depth interviews. From my professional contacts made during the UJ project and suggestions made by the interviewees in the initial round of data collection, I made contact with two further mediators with mediation research and policy backgrounds. Although they had limited experience of working with interpreters, through conversations with these interviewees I was able to check the themes I had identified in my initial data collection phase. In this second phase I was also able to bring in other research, including an interview with a mediator and a video-recorded simulation of an interpreted mediation encounter undertaken during the UJ project. Using this range of sources in the second phase of data collection, I augmented the data collected in the first phase. When complete, my DProf data collection activities had assembled a corpus of data collected from seven mediator respondents and three interpreters. These interviewees' experiences and insights into the nature of the interpreted mediation encounter provided the raw data for my subsequent thematic analysis.

i. Data from mediators

As set out in my Methodology chapter, for my data collection and analysis, I decided to use semi-structured one-to-one interviews with selected participants as my core data collection activity followed by a thematic analysis of the data. In what follows, I will describe these activities in detail, reflecting on the specific challenges I encountered in this phase of the research process.

My first step in this data gathering process was to set a relatively broad sample frame for data collection. My criteria for inclusion were that my respondents should be mediators currently working in the UK, with experience of working with NLEP clients through an interpreter. I did not specify that they should be practicing in any particular branch of mediation, although in practice the bulk of the work undertaken by my mediator interviewees was in family mediation. Identifying suitable respondents to populate the sample frame was, however, still a challenge. As noted in my Methodology chapter, the UJ survey undertaken in the UK, despite being disseminated via the websites and membership lists of the main UK mediation providers¹¹, yielded responses from only six mediation providers and 61 individual mediators. These survey responses suggested that my data

¹¹ the Family Mediation Council (including its six members: National Family Mediation, the Family Mediators Association, Resolution, the ADR group, the College of Mediators, and the Law Society), the Civil Mediation Council, ACAS (Hammond, 2016, 130-131)

collection would have been from a small field of suitable respondents. I had therefore to decide how to approach the collection of data from such a small respondent base.

Given the constraints referred to above, I adopted a purposive sampling approach to gather data from individual mediators, rather than a random sampling approach requiring a larger sample frame. Denscombe explains that Purposive Sampling is a non-probability sampling approach particularly suitable as a data collection approach when the researcher already has knowledge about the specific people or events that form the subject of the research. It operates on the principle that a hand-picked sample can provide 'the best information by selecting items or people likely to have the experience or expertise to provide quality information' (Denscombe, 2010, 34-35). Thus, rather than attempting a random sample across all UK mediators and mediation organisations, I contacted selected mediators with experience of using interpreters in their mediation practice. The UJ questionnaire had asked respondents about their willingness to be contacted at a later date and these mediators had given a positive response. Thus my interviewees had already self-identified as having an interest in engaging with the research. Having contacted my first potential respondent and secured their agreement to participate in my research, I then used a linear 'snowball sampling' technique where each respondent nominated one further possible contact for interview to build up my sample of mediator respondents. Purposively selecting interviewees in this way, based on their knowledge and experience of the phenomenon under investigation, enabled me to access rich data in a relatively short time frame and from a small sample.

i.

ii. Data from interpreters

From the outset of my research project, I intended to combine interview data from mediators with interview data collected and transcribed from interpreters. My plan was to conduct an equal number of interviews with mediators and interpreters and to apply a thematic analysis to the entire data set to achieve a 360 degree view of the interpreted mediation encounter from both perspectives. My attempts to canvass expressions of interest from interpreters with experience of interpreting in mediation via my professional networks met with no success, however, and I was only able to secure one interpreter respondent with sufficient professional experience of working in mediation.

I believe the difficulty I met with collecting data from interpreters is linked to the fragmented and diffuse nature of the profession. Language interpreters are predominantly low-paid free-lance professionals, often not registered with a central professional body such as the Chartered Institute of Linguists or the Institute of Translators and Interpreters. They are also generally supplied through commercial intermediaries who are not willing to disclose details about their lists of interpreters or about their experience of supplying interpreters for mediation assignments. Reaching out to the wide diaspora of interpreters was therefore difficult, particularly so when looking for data on a small and specialised branch of interpreting activity.

I had therefore to change my approach to collecting data on the interpreter perspective. As noted, I was lucky to be able to carry out one in-depth interview with an interpreter with extensive mediation experience in the same way I had done with mediators, and this interview provided a

useful point of comparison. In order to augment the data from interpreters I incorporated further data collected from a simulated family mediation encounter with an interpreter, carried out as part of the UJ project. At an early stage of the UJ project I collaborated with two professional (co-) mediators to set up a simulation of a proto-typical family mediation encounter of the type common in their practice, carried out through an interpreter.¹² These two mediators also make an appearance in my later data collection for my DProf project. The simulation was filmed in its entirety, as were follow-up interviews with both the interpreter, the speaker taking the part of the mother in the simulation and the two co-mediators.

I transcribed the recordings of the video-recorded interviews and used this additional data, combined with the interview with an interpreter referred to above as the raw material for a thematic analysis of data from interpreters. Although more limited in scope than I had hoped at the outset, this did provide data from the interpreter perspective to balance that from the mediators.

Details of all mediator and interpreter interviewees can be found at fig. 1 in my Methodology chapter (pp.26-27).

¹² The simulation consisted a Romanian-speaking mother of a young child, whose English husband had died and the father-in-law/grandparent of the child. Contact between grandparent and child had broken down due to the reluctance of the mother to allow it, and the parties resorted to Family mediation in order to seek a workable solution. As the mother spoke limited English and the grandparent and mediators no Romanian, a Romanian-speaking interpreter was used to facilitate communication.

9. Personal and procedural reflexivity

In this chapter so far I have described the research activities that I undertook in my project on the impact of interpreting in mediation. I will now turn my own reflections on these activities and the role played in them of my own perspective as an insider researcher.

i. Personal

Reflecting on the trajectory of my research over time, I can see that what I have termed the 'naïve positivism' of the UJ project was replaced in my DProf research by a more reflexive and informed understanding of qualitative research. In particular, it is clear to me how my DProf data collection and analysis was fundamentally an exercise, not of uncovering facts pre-existing in the data but of hermeneutic interpretation. In this sense, it was constructivist rather than realist in its orientation. Interpretation of data, however, presupposes a (hermeneutic) interpreter who brings to the activity of interpretation their own presuppositions and world-view and as my thematic analysis progressed from basic themes, through organising themes to global themes, I began to understand fully the critical role played by reflection on my own theoretical position and values (Braun and Clarke, 2006, 7). This has led me to question repeatedly throughout the data collection and analysis process how far I was identifying underlying themes, patterns and latent meanings in the data that I wanted to discover and how far I might have downplayed the significance of data that would disrupt my pre-conceived notions.

On balance, I am confident that I have accounted reflexively for the presence in my research of my own position as an insider researcher and of the perspective linked to it. In the final analysis, however, I can't state unequivocally to what extent the concerns born of that position have or have not affected my analysis. It is the case that I am, first and foremost, a PSI interpreter and that I share that professional group's concerns and, to a degree, participate in its political outlook. This is characterised by a suspicion of commercial agencies, resistance to the downward pressure exerted on standards and terms and conditions by the outsourcing of interpreting and a struggle for recognition of the professional status of PSI. I can, however, account transparently for that background and try to correct for its possible impacts.

ii. Procedural

One way I tried to address the fundamental conundrum of interpretative analysis as I experienced it (the contingency of the analysis on the preconceptions of the researcher) was to introduce a degree of triangulation of my findings in the data from mediators by comparing it to the data I collected from interpreters and against the quantitative data collected by the UJ project. That triangulation tended to confirm support the themes abstracted from the mediator data, particularly regarding the global theme of interpreting in mediation as mutually unknown territory (see above and Chapter Five following). I am aware, however, that the extent of triangulation in my DProf project is limited. A more complete triangulation would require a wide ranging quantitative analysis of the phenomenon of language difference in mediation in the UK, by undertaking a further online

questionnaire. This represents an extension of my research activities that I might undertake at a later date to extend and expand the impact of my DProf project. At this stage of my investigation, however, I believe that I have enough information from my data gathering and analysis activities to support the analysis outlined in the Findings chapter that follows.

Chapter Five: Findings

In this chapter, I use the data gathered from my interviews with mediators and my interpreter respondent and from my analysis of data collected from the Understanding Justice project to tell the story of mediation carried out through an interpreter from their point of view. This story is told mainly through the voices of the mediators I interviewed and tells of their experience of the complexities added to the mediation process by having to work across language through a spoken language interpreter. I supplement this main story with additional data from a trained legal interpreter with experience of working in Family Mediation and also from interpreters who participated as interpreters in a simulated Family Mediation across languages. Finally, this story contains my own interpretation of what these respondents told me of their experiences. There is therefore a double-hermeneutic process at work in this story, with my interpretation of their experience as a researcher-practitioner combined with their own to present an account of my research subject.

As outlined in the Methodology chapter, I used Thematic Analysis as an analytical tool to organise and interpret my data. My analysis in this chapter is therefore structured around three super-ordinate themes (Control and Management by Mediators/ the impact of communicating through an interpreter /unfamiliarity) arising from that analysis. I also bring into my analysis nine sub-themes (time/ atmosphere/emotions, conflict and inappropriate interventions/ exclusion of the mediator from the mediation process/information loss in interpreting/unfamiliarity with interpreting (mediators)/unfamiliarity with mediation (interpreters)/accessing competent interpreting) that I identified in my data that add further detail to the super-ordinate themes.

In table 1 (fig. 7) below, I set out for ease of reference the three global themes and the nine organising themes linked to each. These are numbered as they appear in the body of the text.

Fig.7

Table 1

Control and management	i. Exclusion of the mediator from the mediation process
	ii. Information Loss
Communicating through an intermediary	i. Time
	ii. Atmosphere
	iii. Emotions, conflict and inappropriate interventions

Unfamiliarity

i. Unfamiliarity with interpreting:
mediators

ii. Unfamiliarity with mediation:
interpreters

iii. The discourse of mediation

iv. Accessing competent interpreting

1. Communication flow in interpreted dialogue

Communication through an interpreter affects the interaction between the speakers engaged in a dialogue in multiple ways, in mediation as in all interpreted face-to-face exchanges. In order to understand the narratives about the interpreted mediation encounter contained in my data corpus, it is important, therefore, to understand some of the aspects of communicating through an interpreter that are common to all interpreted face-to-face interactions.

A common effect of the interpretation of a dialogue in a face-to-face encounter is a shift in communication flow between participants and in the way information is exchanged and understood. An understanding of this shift caused by interpreting is central to understanding its impact on mediation.

In figure 9 (a) and 9 (b) below I model the communication flow in a monolingual dialogue between participants using a common language.

Fig. 9 (a) Dialogic communication flow in a monolingual exchange



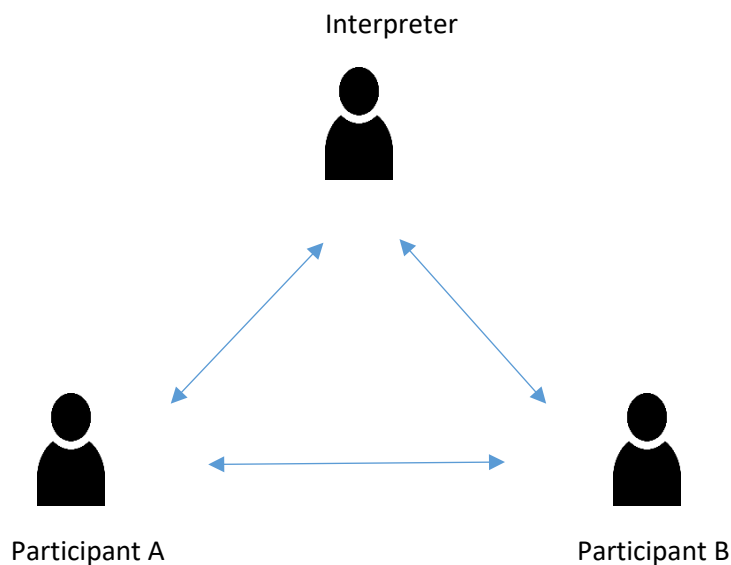
In this monolingual dialogic interaction participant A and participant B interact directly with each other. Their dialogue is constructed around consecutive turns of speech (although some overlapping of speech is common), with each participant listening to the utterances of the other. Each participant also observes and responds to the other's linguistic and para-linguistic behaviours (eye gaze, tone of voice, intonation, language register and body language). Participant A and B place their own construction of meaning on those utterances and para-linguistic behaviours and what

each participant hears at each turn of speech are the original unedited words of the other. Each then chooses their responses accordingly. In short, communication is direct and unmediated, with each participant interacting directly with the other.

The introduction of an interpreter into the dialogic exchange, however, shifts the exchange of information and the flow of communication, as shown in fig. 9 (b) below.

2. Communication through an interpreter

Fig. 9 (b) Dialogic communication flow in an interpreted dialogic exchange



In a dialogic interaction through the medium of an interpreter, the direct, dyadic interaction between participant A and B is now replaced with a three-way (or triadic) interaction with an interpreter participating in the communicative exchange. This has a number of consequences. Firstly, both participant A and participant B are now interacting not only with each other but also with a third party. They will therefore be affected by that third party's linguistic and para-linguistic behaviours as much as by that of the other participant. Analysis of this encounter therefore now needs to take account of the possible impact of the gender, ethnicity, personality, and background¹³ of that third party on the now triadic communication exchange

The most critical change brought about by interpreting, however, is in the way in which meaning is constructed in the interaction. In the monolingual dialogue, participant A and B place their own construction of meaning on the utterances of the other. In the interpreted dialogic interaction, participant A and participant B's understanding of each other is no longer based on their own direct reception and decoding of each other's utterances. Now, what each participant A and B hears and understands is the meaning placed by the interpreter on the utterances that are exchanged, not the unmediated original. It is the interpreter's construction of the meaning of each participant's

¹³ During a recent training session for Tribunal Judges, for example, a delegate related to me his story of an appellant in his hearing room who refused to remain in the room with the interpreter, as the two belonged on different sides of an ethnic conflict in their country of origin.

utterances that the participant A and participant B hear and based on which they choose their response.

Some direct interaction between participants does persist, despite the presence of an interpreter. Although separated by a language barrier, both principal participants can still hear the sounds produced by the other speaker, and take note of the other speaker's tone and intonation and observe their body language. Thus, the English speaking mediator will still listen to and observe the NLEP party in a mediation and form a meaning hypothesis (Gile, 1994, 103) about what that party's para-linguistic behaviour might indicate. This further complicates the triadic communicative exchange, as each participant is construing and combining meaning from two sources, the version delivered by the interpreter and their own construal of meaning of the linguistic manner and behaviour of the other participant. As we will see in the data from mediators, apparent contradictions between what they infer from the para-linguistic behaviour of an NLEP participant and what they hear from the interpreter can lead to doubts about the reliability of the interpretation.

This analysis suggests, moreover, that the interpreter exercises considerable influence over the progress of an interpreted dialogic encounter, both in terms of their choices of how to construe the meanings that a participant expresses and simply by virtue of being present in the room. The interpreter has become the gateway through which information between speakers is passed and their understanding and personal interaction with the speakers in the exchange can affect the quality of that information. In some circumstances, the interpreter can choose to close the gateway altogether or to constrict the information that flows through it.

3. Mediation through an interpreter

In figures 10 (a) and 10 (b) below, I model how this applies to the configuration of an interpreted mediation.

Fig 10 (a) A bilingual mediation: single mediator, one NLEP client

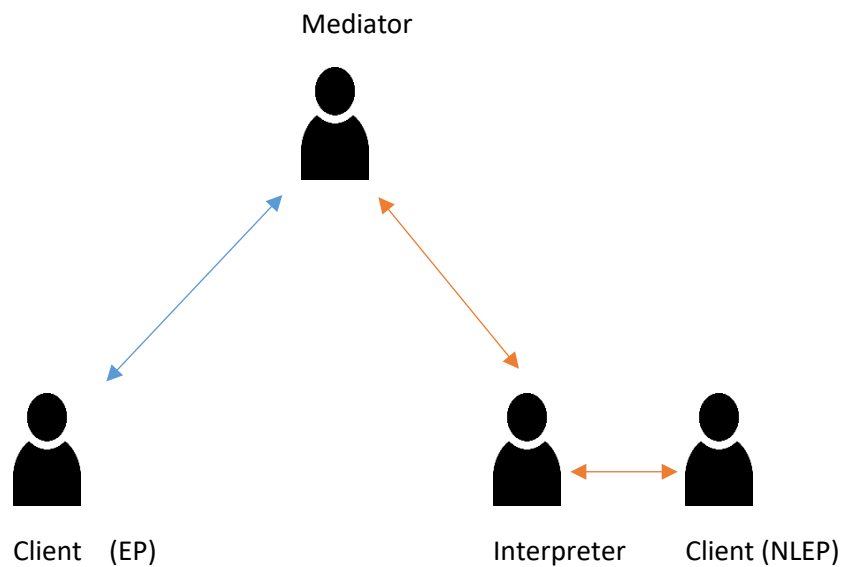
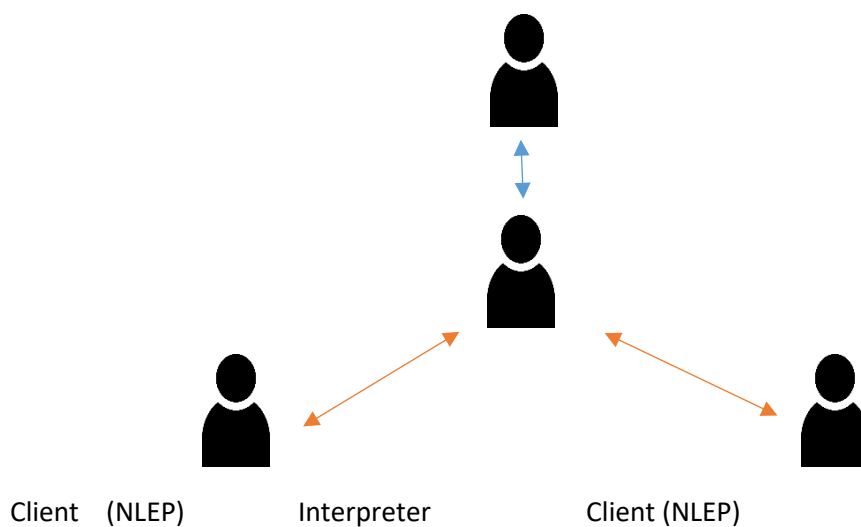


Figure 10 (b) A bilingual mediation, two co-mediators, two NLEP clients



All of the general observations about structural shifts in the interaction between participants brought about by interpreting apply to the interpreted mediation. As illustrated in figs. 10 (a) and 10 (b) above, when a mediation is interpreted, direct interaction between mediator and one or both

parties is replaced with indirect, mediated interaction through an interpreter. Now, what the mediator and the NLEP party (or parties) understand the other to have said is based on how the interpreter has construed the original utterances and responses of the mediator and/or NLEP parties. The same combination of inference from para-linguistic behaviour and meaning from the interpretation takes place in the minds of both mediators and NLEPs and the interpreter exercises the same power to influence the development of the encounter. If an interpreter, whether through lack of ability or conscious decision, shifts the meaning of the utterances of the different participants in interpretation, then this will affect the progress and the direction of the mediation.

4. Global themes: control and management by mediators, communicating through an intermediary and unfamiliarity

The themes in my data describe how the mediators and interpreters in my sample experienced the impact of interpretation on the mediation encounter. I argue that the experiences of interpreting reported by the mediators in my sample of interpreting in mediation can all be traced back to the structural changes in the communicative encounter that I have outlined above. In what follows, using extracts from the interviews, I identify and describe these experiences under the headings of three global themes and reflect on their significance for mediators and interpreters.

I. Control and management by mediators

Keeping control and managing the mediation encounter was crucial for all the mediators in my sample. LB (mediator) noted that she likes to 'really be in control of things and keep tabs on things', while ALC (mediator) stated that 'my role is to manage that process of conversation and try to help them make progress'. One of the effects of working with an interpreter, however, is a possible loss of control by the mediator, and anxiety about a possible loss of control of the mediation caused by the introduction of an interpreter manifested itself in several sub-themes.

i.i. Exclusion of the mediator from the mediation process

When NLEP parties speak with each other or with the interpreter in a non-English language and these exchanges are not interpreted, the mediator is excluded from the mediation process. ALC was keenly aware of the potential for losing control of the mediation encounter due to exclusion through language difference. She notes how

It can be quite difficult in a mediation because you get people who come along for whom English is not a first language. They will say things like 'oh, it's okay, my husband doesn't speak very good English but I can explain'. Now, there are difficulties about that because you have no way of knowing what that person is saying to their partner if you do not speak that particular language. It isn't that, you know ...you suspect there might be something going on but simply that you do not have management of that process if you aren't clear about what's being said in the room.

ALC also reported an incident where she was excluded from an exchange between NLEP parties by the interpreter, ostensibly on the basis of culture and/or ethnicity. Here

the interpreter actually said to me at one point....because there was a conversation going on and it wasn't coming back to me and I wasn't sure what was happening there... so I just touched the interpreter, more or less to say...could you...? And they said 'oh, it's fine. You wouldn't understand this'.

LB reported a different scenario where the mediator can become excluded from conversation between the parties to the mediation. She stated that:

The only thing that can make it a little bit difficult when we've got parties who have virtually no English is when they start to feel that they are beginning to make some progress in mediation]... [They can actually then go off into a conversation by themselves in their own language, which obviously, the mediator is then locked out of.

Here, she noted that, 'the problem you have got is, if it's not an English conversation between the two parties, you can't mediate it, where the dialogue is going, what's what'.

LB's reference to parties beginning to communicate directly when they begin to make progress in the mediation underlines a paradox of the interpreted mediation. In a monolingual mediation, parties beginning to communicate directly and to negotiate is a desirable outcome and a sign of moving away from conflict and towards negotiation. LB (mediator) explained, for example, that

In a monolingual mediation there's times when we're working with English speaking people and sometimes, it's really great because they're actually starting to have conversations they need to have, and the mediator is probably best advised to sit quiet for a bit while they're making progress and then try to acknowledge the progress and congratulate them on it.] [[So, if in the room, they're really starting to communicate, I think the last thing the mediator is going to do is to stop that.

If NLEP parties start to converse directly in another language, however, the mediator is excluded and left trying to interpret what is going on by 'gut instinct' (LB). The challenge for mediators working with NLEP clients through an interpreter, therefore, is to find a way to allow that direct communication to develop without the mediator being excluded from the process.

A practical solution to this problem would be for interpreters to switch from consecutive interpretation to whispered simultaneous interpretation of the dialogue between the NLEP parties as it unfolds. A trained interpreter should be able to change mode to whispered simultaneous (or *Chuchotage*) interpreting¹⁴ as required in the mediation encounter. Changing to this simultaneous mode of interpreting would allow the mediator to take up a monitoring role, as described by LB, and to follow the exchanges between NLEP parties in the same way that they would if they were using English. Knowing that an interpreter could switch to whispered simultaneous as required would also allow the mediator at the outset of the mediation to say to her clients

X is here, as you know, as the interpreter today and s/he will be able to tell me exactly what you're saying. And if...when you need to talk to each other at some length, please be assured that I'm going to be able to hear that through the interpreter. If I need to stop that, then I will do so. (ALC, mediator)

ALC was the only mediator in my sample, however, who reported having had an interpreter who could provide a simultaneous interpretation. She described the experience in very positive terms, saying

¹⁴ Whispered simultaneous interpreting (*Chuchotage*) is a form of simultaneous interpreting where the interpreter moves close to the party receiving the interpretation and murmurs a low volume, continuous interpretation of what is being said by the other parties, directly to the receiving party. It is a method of interpreting that allows the listener to listen in on a monologue or dialogue.

...you know, I can hear it going on, see it, playing out, ...and I'm getting from the interpreter almost exactly....a running dialogue, what's happening. That is really helpful when that happens.

The other mediators, when informed of the possibility, responded that it would be very helpful but that they had never had an interpreter who used this mode of interpreting.

i.ii. Information loss in interpreting

A further loss of the mediator's control of the interaction is caused by information loss when working through an interpreter. A faithful interpretation covers the entirety of a speaker's utterances, including accurate content, (themes, topics, events), appropriate context (register, speaker goals etc) and appropriate linguistic form (transitions, vocabulary, register etc) (Winston and Monakowski, 2002, 15-16) Information is lost, therefore, when any of the aspects of discourse noted above are not reflected in the interpretation. This might be through omission or by addition in the interpretation of material or by misrepresentation of the original. In all these cases, the listener will not receive the totality of the information as contained in the original utterance.

For the user of an interpreter, a loss of information in an interpretation distorts their understanding of what each participant says and affects the cycle of interaction (utterance and response) between them. This represents a loss control over the encounter, for both professionals and NLEPs, as their motives, goals and meanings are not faithfully expressed to the other party in the other language. The mediators I interviewed expressed concern about this loss of information in interpretation by emphasising their need for a faithful reflection of exactly what was said. RAC (mediator) expressed his concern that the interpreter reflect closely what he says, noting that 'if I ask a very precise question, and sometimes I do, I want exactly that question translated', while AL insisted that

I really need to hear exactly what they say. I don't want [the interpreter] to interpret the nuance of it or the meaning of it. I simply need to know exactly what was said'.¹⁵

Mediators were not, however, always confident that this degree of faithfulness was delivered by their interpreters. ALC reported her sense that interpreters might be tempted to 'move something slightly, to make it sound, perhaps, maybe, less conflictual'. SF was particularly ambivalent about whether the interpreters she worked with were delivering a full and accurate interpretation at all times. She reported that she was

... sure that they rephrase. I'm sure they do...and I'm sure they cut bits out. Because sometimes we hear, um, the parents say quite a bit and then we say, 'look, what's that? Stop a minute, what's that?' And they'll say 'oh he said so and so'....but, he said more than that.

She also expressed doubts about the reflection of the tone of an NLEP party's utterances by the interpreter. In response to my question asking her to clarify what she meant by re-phrasing' on the part of the interpreter, she explained that

¹⁵ ALC's reference to nuance and meaning is, in fact, slightly contradictory. At another point in the interview, she noted the importance of the interpreter capturing nuances of meaning in their interpretation. I believe her intention, however, is to emphasise her need for a faithful interpretation in order for her to be able to mediate.

...the interpreter says, you know, he says so and so, and they say it quite reasonably, and I'm thinking 'well, that is not quite how it sounded by his tone of voice'. I don't think they make it up, but they....yeah...I do think they rephrase. It is the only word I can think of.

These concerns about the accuracy and faithfulness of interpreting led her to reiterate to her interpreter that

we need you to tell them exactly what it is we're telling them and we want to hear from you exactly what that reply is.

The mediators' sense of loss of control through inadequate interpreting was not based only on linguistic factors. With an interpreter, there is an additional person in the mediation room whose behaviour and persona can affect the interaction (see 2 above). SL (trained interpreter) insisted that from her experience

even without speaking, you know, the presence of the interpreter is going to have an impact. The gender of the interpreter is going to have an impact, how the interpreter is dressed will have an impact, you know, where the interpreter positions himself or herself in the room will have an impact, his or her accent, you know, is going to be immediately picked up by one or both of the parties, 'oh, she's from Brazzaville, Congo' you know. It's all impacting, maybe not visibly, but it is impacting. Hugely.

SF also reported on how the gender of an interpreter in itself could affect the dynamic of a mediation. She explained that

I had a young...Hungarian? I can't remember. We had a very...quite a young man, he was a student, came to do...he got on extremely well, again, with the father. Had a completely different dynamic going on between that male interpreter and the father than the women seemed to have with the father.

The mediators in my sample were aware, therefore, of the multiple impacts on their control of the mediation from having an interpreter in the mediation meeting. They understood as well that their understanding of the utterances of their NLEP clients and therefore their overall interaction with those clients now depended entirely on the interpreter. In this respect, how their words and their carefully considered communication strategies were received by the NLEP party was now subject to the agency of that interpreter, an uncomfortable experience for a professional tasked controlling and managing an encounter.

My intuition as a practitioner tells me that the experience of loss of control in a communicative encounter through an interpreter applies equally to NLEP speakers. They come to a communicative encounter (a police evidential interview, a private meeting with a solicitor) with their own concerns about representing themselves, about how they will be perceived and how this will impact on the outcomes of the meeting. Their voice in the encounter, however, is now heard through an interpreter, who can exercise control over what the other participants understand the NLEP participant to have said. We should bear in mind, as well, that this interpreter will, in the majority of cases, be unknown to the NLEP party. The NLEP person is therefore faced with sharing an intimate and potentially life-changing event and their representation of themselves with a stranger. In this respect, communicating through an interpreter can be seen as a disempowering experience for the NLEP participant in the encounter.

I believe that anxiety on the part of mediators about losing control and management of the mediation when working through an interpreter may also be linked to structural similarities between

the two professional roles. Comparison of the diagrams of communication flow in a monolingual mediation (fig.10 (a) above) and that of an interpreted dialogue (fig. 10 (b) reveals the structural similarities between a monolingual mediation and an interpreted encounter. The diagrams show that a triadic communicative relationship underlies both phenomena and that both mediators and interpreters share a role as intermediaries between other participants in the encounter. Both participate, moreover, as facilitators of the communication of others.

These structural similarities between the two activities and the roles that mediator and interpreter adopt in those activities, however, bring with them the complexity of having two intermediaries present in the mediation, rather than one (the mediator alone). It is particularly important, therefore, that role boundaries for each activity are clearly defined and understood. Mediators need to have insight into the intermediary functions of language interpreters, while interpreters need to beware of overstepping the boundaries of their role as an intermediary and attempting to share the mediating function of the mediator.

II. Communicating through an intermediary

My second super-ordinate theme concerns more tangible effects of interpreting on the progress of a mediation. The mediators in my sample described three main effects of interpreting on the mediation process, on the time required for the mediation, on the ambience of the mediation encounter and the impact of inappropriate interventions by interpreters. I discuss these below.

ii.i. Time

According to the mediators in my sample, working through an interpreter increases the time required for a mediation to run its course. There are two main reasons for this. The first is the requirement for extra time before the mediation starts for the mediator and interpreter to meet and prepare, the 'pre-meeting briefing' stage. ALC noted that she likes to

spend time with that interpreter so they understand what the mediation process is, what you're trying to achieve, what people in mediation may be trying to achieve.

This is important so that the interpreter can gain 'a base understanding of the process, how you work and what you need from them'.

Both SF and LB also referred to allocating time to a pre-meeting briefing session with the interpreter. LB made time 'to introduce myself, to break the ice with them, before introducing the parties into the room', while SF referred to holding a brief conversation with the interpreter prior to the mediation session to outline her expectations of the interpreter. Both LP (mediator) and MR (mediator) noted that allocating time for a pre-meeting briefing with an interpreter represented good practice for all mediators.

RAC, however, reported that typically he had no pre-meeting briefing with the interpreter prior to a mediation session and that the first time he would meet his interpreter was when he, his co-mediator and the two parties convened in the mediation room. This is an unusual choice and may be due to the inherent difficulties in allocating extra time to meet with an interpreter. As ALC explained, she has to

...persuade that interpreter to spend enough time with you that you can outline what you do and how you do it and the things that are quite important, and it's difficult, it's difficult. And I would think it must be very difficult in the legally aided cases because, you know, there are such limits on what time can be made available.

She also commented

And then, of course, we've got the problem of money because, with the best will in the world, you know, how are they going to make a living if they are having to spend an hour or so with you or on the phone or whatever it is, while you say 'look, it's really important for you to understand some things before we start.

The second cause for an increase in the time required for the mediation when working through an interpreter is the slowing down of the process of communication. LB (mediator) noted that a mediation with an interpreter is

...noticeably slower, because things need to be said twice. So you certainly need to make sure that you've booked your room and you've got sufficient time and everybody is aware, the parties are aware that it will perhaps take an hour and a half, whereas a session might usually be an hour.

For the majority of professionals this increase in time required for interpreting is a negative feature. Having to allocate extra time for Tribunal hearings or court proceedings, or for private meetings or GP appointments puts pressure on already over-burdened schedules. The impact on process time was construed less negatively by mediators, however, as it can represent an opportunity for managing the emotional temperature of the meeting and for conflict management. For SW this slowing effect

isn't necessarily a bad thing sometimes, because it can be harder for people to get into a full-on tit for tat row if they have to do it through a translator.

A similar unintended but positive consequence of the increase in process time caused by interpreting is noted by LB, who reported that, with an interpreter, 'everyone has to be a bit more patient and a bit more polite to each other'.

ii.ii. Atmosphere

The third impact of working through an interpreter reported by the mediators is on the atmosphere of the mediation session. This impact, however, is generally negative. For SF the impact of an interpreter in the room

kind of doesn't help. It takes a lot longer...and it tends to break, how can I say, the atmosphere, it puts a different dynamic on it and we tend not to be able to be so...friendly]... [Having an interpreter there, it takes a lot longer and you're not absolutely sure... you can't make a sort of little joke to break the tension. You can't just chatter.

The impact on the atmosphere in the mediation session is also noted by the other mediators. Speaking of the importance of working with interpreters who understand the nature of mediation, ALC observes that:

If you're working with someone quite formal and who is looking at it simply as passing messages as it were, it does not help the whole ambience of, really, of being in that room because]... [you're trying to settle three people into the conversation. In these circumstances, it can be 'quite difficult to get that sort of easy communication.

Achieving a relaxed ambience in the mediation session was important to the mediators. SF underlined that 'we're not a criminal court, so we like to have an open, friendly atmosphere if we

can'. The negative impacts brought about by interpreting are to some degree offset, however, by the benefit that interpreting brings to the NLEP speaker(s) in the mediation. SW believes that having

somebody who really speaks both languages and understands the cultural ramifications overcomes the big barriers around, you know...feeling you have a voice at the table, if you like, feeling understood.

LB also noted the positives attached to having an interpreter in the mediation, and noted that

the parties are very, very relieved to be able to converse in their own language. It just causes them to feel more relaxed and comfortable.

This, in turn, makes it 'easier to negotiate and reach a settlement'.

ii.iii. Emotions, conflict and inappropriate Interventions

Mediation encounters can be a site of significant conflict and heightened emotions, and ALC was aware of the challenge this posed for interpreters. She noted that

the tension in the room can be huge and, of course, if you're an interpreter, you pick up those signals, you know, 'what's going on here?'

SL (interpreter) also described the mediation encounter as 'very emotional, much more so than most of the other scenarios in which I interpret', one where parties 'often try and talk over each other....you know....end up in tears, people crying, shouting occasionally'. For her, this was one of the most significant challenges of interpreting in mediation.

The heightened emotional tension and possibility of conflict in a mediation can also lead the interpreter to make inappropriate interventions in the mediation process. ALC believed that an interpreter may find it 'irresistible] [if two people are shouting at each other or having an argument to get in and stop it'. This is because interpreters 'want to do what everyone wants to do, which is to stop it'. Thus, interpreters might use body language or verbally intervene to try and stop the escalation of the discussion into conflict.

Intervening in this way is, however, a breach of the role boundaries of the interpreter and was not welcomed by mediators. As Boule and Nestic point out, in mediation, conflict is not always a bad thing and skilled mediators may not inhibit parties from expressing it. (Boule and Nestic, op cit, 9). This was echoed by ALC who stated that

as mediators, we don't always immediately stop people. There are reasons we don't do that. Our threshold as mediators watching that conflict is around, first of all, understanding...trying to get an understanding of people's communication style.

Interpreters intervening inappropriately can also occur when parties appear not to be answering a mediator's questions. ALC noted that mediators often ask reflexive questions that required reflection, and that

we want people to think before they answer. But what happens is an interpreter thinks they're not answering. You'd ask questions...don't get an immediate answer, so they sort of....edit it.

In all these cases, unfamiliarity on the part of the interpreter with the mediation process leads interpreters to intervene in the mediation process in ways unwelcome to the mediator. Being prepared for dealing with high emotions and conflict in the mediation encounter requires therefore from the interpreter 'a personal understanding about how comfortable you're going to be in that

room' (ALC) and also the ability to accept lack of response from a party or silence, rather than attempting to repair an apparent breakdown in communication.

III. Unfamiliarity

The super-ordinate themes of Control and Management by Mediators and Communicating through an Intermediary that I have described above capture between them many of the effects that interpretation and the presence of an interpreter can have on the mediation encounter. My final theme captures an over-arching feature of all aspects of the interaction of mediator and interpreter and is the most difficult theme to fully account for. I label this super-ordinate theme 'unfamiliarity'.

iii.i. Unfamiliarity with interpreting: mediators

A brief review of definitions for the noun 'unfamiliarity' give a range of definitions that share a common theme of something not being recognised or of lacking experience or knowledge of something. Although a nebulous concept and difficult to pin down, the sense of the unfamiliarity of the interpreted mediation for both mediators and interpreters runs through all of my data.

Like PSI, mediation in its current form is relatively young profession, with its roots in the resurgence of interest in alternatives to traditional court-based dispute resolution in the 1970s (Roberts, 2014, xviii). Perhaps for this reason, the implications of increasing language diversity and the need to mediate through interpreters appears not to have appeared on the agenda for this profession so far. This is reflected in the mediator ALC's account of her early career when she noted that in mediation the matter of language barriers and interpreters was 'sort of unknown territory really. We hadn't thought about it a great deal'. She also describes the sense of breaking new ground with few resources when she notes that

certainly, when I started, talk about babes in the wood! I mean, really, I look back.... we didn't think...we learned a lot.]... [When we look back... we're still a very young profession, as family mediators in this jurisdiction. And we've had to learn, we've had to learn a lot, on the hoof really, and sometimes without very much resource, we've had to make it happen.

For ALC, this meant a process of 'learning through doing' when using interpreters in mediation in the absence of formal guidance.

SF (mediator) also commented on the unfamiliarity of language difference and having to work through interpreters earlier in her career. She noted that she 'didn't work with interpreters for a long time' and that initially her only experience of interpreting was at conferences, where the interpreters 'are in boxes and you've got a headphone'. This is, however, a different mode of interpreting from the face-to-face dialogue interpreting used in mediation sessions and would have provided little preparation for the dynamics of face-to-face mediation with an interpreter. I was interested to hear that, despite this limited exposure to interpreting, she was 'pretty confident' about working through an interpreter' when she started to work with Reunite¹⁶.

A lack of practical insight into using an interpreter among mediators was noticed by SL (interpreter). She stated that in her experience mediators are 'uninformed, generally...about working with an

¹⁶ Reunite is a UK charity specialising in parental child abduction and the movement of children across international borders.

interpreter', and that 'it is very obvious that they don't quite know where we fit in the scenario'. This affected her practice as an interpreter in a number of ways. SL stated that she had to

spend a lot more time with them at the outset explaining, you know, professional guidelines and so on that we are supposed to work in accordance with. For example, I will be saying 'I am going to interpret everything unless one of the parties and/or the mediator ask me not to'.

She also had 'to explain a lot about the interpreter's role. They don't seem to know about it'.

SL's description of briefing mediators on the processes of interpreting and interpreter role echoes the description that mediators gave about briefing the interpreter in advance about the processes of mediation (see below). The fact that both mediators and (professional) interpreters feel that they need to brief each other about their respective professional roles reinforces the sense of the mutual unfamiliarity of both professionals with the complexities of each other's practice.

The mediator's unfamiliarity with interpreting extended to the matter of the most appropriate interpreting techniques in the context of the mediation encounter. I asked SL about mediators' awareness of the different technical interpreting skills she could offer (short consecutive interpreting for dialogue, whispered simultaneous interpreting and oral sight translations as required). She responded that mediators were surprised to hear of the existence of these options. She also referred to a 'baffled' response from mediators if she asked them for their preferences for how the interpreting should be carried out, noting that 'they don't really know how to answer that one'. Overall, their response to any invitation to discuss the technical aspects of the interpretation was typically 'do what you think best'.

My over-arching impression of unfamiliarity among mediators with interpreting and how it might affect mediation is reinforced by an apparent absence of any established procedures for mediators working through interpreters. None of my mediator interviewees made reference to any formal guidelines on how to work with interpreters. In this respect, MR observed that there was a need for formal guidelines to be provided to mediators by the mediation professional bodies.¹⁷ SL also commented on the absence of formal training for mediators on working through interpreters, noting that 'they're just not getting the right training'. She pointed out that this applies equally to interpreters, stating that 'I've never had any training from mediator organisations and I would welcome it'.

The absence of formal guidelines or training on working with interpreters may be a symptom of the youth of the profession, but also of a belief that the phenomenon of language difference in mediation is too minor to warrant systematic attention. The UJ project survey of mediation providing organisations in the UK reports, for example, that National Family mediation¹⁸, a major mediation provider delivering 30,000 mediations per annum, reported only 12 mediations involving the use of one or more languages in the previous year (2014-15). Other mediation providers that

¹⁷ The absence of a formal or systematic approach to the use of interpreters in mediation was also noted by the UJ project. Hammond (2016, 137) observes in the UK Country Report that 'where interpreters are used, there was no apparent consistency of policy in their management by the mediation provider or the mediator'.

¹⁸ National Family Mediation (NFM), www.nfm.org.uk (accessed 17/04/2019) *Work this into the introduction*

responded to the survey also reported a low incidence of mediations involving more than one language.

The Advisory, Conciliation and Arbitration Service (ACAS), on the other hand, reported up to 1,000 conciliation and mediation cases per annum involving more than one language and indicated that in these cases, an interpreter is engaged (Hammond, 2016, 135). Also, as set out in my Methodology chapter, the 61 UK-based individual mediators (rather than organisations) who responded to the survey, reported a higher incidence of mediations involving more than one language and interpreter usage. The true scale of the phenomenon of language difference in mediation in the UK and the number of mediations conducted through an interpreter is, therefore, hard to quantify definitively.

With the growth of cultural and linguistic diversity that characterises contemporary British society, however, the incidence of language difference and the resulting need to mediate through interpreters might be expected to increase. The recruitment of bilingual mediators who could work with different linguistic communities would be one response and would circumvent the need to use interpreters at all. ALC notes in this respect, however, that

We have struggled in this country to advance mediation into other cultures and particularly to be able to recruit mediators from those cultures. And that's why we have increasing problems in having interpreters because, I'm afraid to say, mediation remains a social and white middle-class occupation.

It is likely, therefore, that interpreters will continue to be part of the solution for advancing mediation into other cultures in the UK. The responses of individual mediators in the UJ project survey support this prediction. All 61 individual mediator respondents from the UK reported English as their first language, and 35 reported having no competence in any second language.¹⁹ Invited to self-assess their competence in any additional languages, moreover, the modal average response was level B1 on the Common European Framework of Reference for Languages (CEFR), (defined in the most recent CEFR Companion Volume with New Descriptors as 'the Threshold Level specification for a visitor to a foreign country' (Council of Europe, 2018)). For these mediators, even with their knowledge of another language, an interpreter would still be required to mediate with NLEP speakers of that language.

ii. iii.ii. Unfamiliarity with mediation: interpreters' unfamiliarity from the point of view of mediators

The unfamiliarity of the interpreted mediation encounter also extends to interpreters. I asked mediators in my sample for their impression of prior experience of the mediation encounter among their interpreters. SF responded that '99% of the time, they have not interpreted in mediation' and ALC, that:

I can't say I've met many who have ever come into a setting quite like it. And I know that simply because they say 'I've never done anything like this before'.

As a result of this unfamiliarity, both LB and SF tried to compensate for lack of mediation experience among their interpreters by using the same interpreters again. SF reported that she liked to use the

¹⁹ Of the 26 who did, French was the most common.

same interpreter in the mediation as she had used in the previous Mediation Information and Assessment Meeting (MIAM)²⁰ and LB noted that

we really try to have them again when that language crops up again. In that way they would be gaining a lot more experience of mediation.

This concern to use the same interpreter again where possible suggests that lack of prior experience of interpreting in mediation is a drawback for mediators and one they try to address by keeping the same interpreters engaged.

Given the unfamiliarity of the mediation context for interpreters and the value mediators attach to an interpreter's understanding of the mediation setting, ensuring a pre-meeting briefing with that interpreter would appear to be a logical choice, despite the difficulties in allocating the extra time required. The account given of pre-mediation briefings for interpreters by the mediators in my sample, however, suggests that, even when given, this briefing focussed on the practice of mediation, with little discussion of the interpreting component. In this respect, I was interested in how SF (mediator) accounted for what she tells her interpreter prior to the start of a Mediation Information and Assessment Meeting (MIAM). She explained that

When they arrive to do the MIAM we have to explain....you know, take 20 minutes explaining to them what it is all about, about the Court and about what will happen if it doesn't... so they know, one of the parents might throw something in...they've got an idea what is going on.

She goes on to outline to the interpreter in some detail the nature of the case and the purpose of the forthcoming MIAM. In response to my linked question about whether she also explains her expectations of the interpreting process she responded

Briefly. We don't labour it, but we usually say to the interpreter, 'look, you know, keep to the short sentences (sic). We need you to say to them exactly what it is we're telling them and exactly....we want to hear from you exactly what that reply is'.

The mediator LB's account of her preliminary briefing with the interpreter also focusses exclusively on the mediation process. She reports that

At the beginning of the first mediation session, we run through with the parties the terms of the agreement to mediate, which are identical with the information they would have had when they came individually to their Mediation Information and Assessment meeting.]...[also the benefit to the interpreter is that they are hearing in a very simple explanation the fact, you know, the mediation is impartial, it is a voluntary process, the decision making is with the parties and it's confidential, apart from the exceptions.

Later in her account, however, she appears to contradict her account of her practice on first meeting an interpreter, saying that she would 'probably just take them into the mediation room, make sure they are settled, offer them a drink, just to break the ice with them, before introducing the parties to the room'. In neither account, however, is there is a report of discussion of the arrangements for the interpreting process or of the mediators' expectations of the interpreting process.

²⁰ Mediation Information and Assessment Meetings (MIAMs) are now a legal requirement in most Family Law cases.

While it is important that interpreters have a preview of the process and objectives of mediation, it is equally important that both mediator and interpreter are clear about how they can collaborate over the interpreting component of the mediation. This will be particularly important if the interpreter engaged for the mediation is not, in fact, a trained interpreter at all, which appears from the data in my sample to be a not uncommon occurrence. LB, for example, explained that

I've worked with a gentleman quite recently who normally works in a scientific background. He himself is doing his PhD in a science subject, so he's doing this to bolster his income, but he was perfectly adaptable, you know. Although when we had a chat between ourselves afterwards, he said that it was something that was new to him.

It appears in this case that LB was not working with a trained interpreter, but rather a bilingual from another professional background. SF (mediator) also referred in her account to using a medical student for a mediation session with an Israeli client procured through a local Rabbi. She was at pains to point out, however, that 'she was great! Absolutely fantastic! And Legal Aid didn't query it!' For both these mediators, then, it appears that the use of untrained bilinguals to provide interpreting in mediation sessions was not seen as problematic. In both cases, it is also likely that the bilingual used had neither prior experience of mediation nor of the norms and practices of professional interpreting and a discussion of both prior to the mediation starting will therefore be that much more important.

iii.iii. The discourse of mediation

The unfamiliarity of the interpreted mediation for interpreters also manifests itself in their unfamiliarity with the discourses of the mediation encounter. In a discussion group with interpreters and his co-mediator, RAC referred to the peculiar quality of the discourse of mediation by comparing it with the quality of discourse in Criminal law. He states that:

In the criminal field, you'd say, so...you went into the shop...yes....what did you see when you went into the shop...and you have a series of short questions with very straightforward answers, which are purely factual. Whereas in mediation it's much more about feelings, emotions, telling the story in a narrative sense rather than...chop, chop, chop.

ALC also reflected on the peculiarities of the discourse in mediation, noting how mediators rarely use straightforward direct questioning. She explained that

They certainly don't use 'why' very often because it's quite an accusatory form. When you are dealing with people who are pretty sensitive to language and may be feeling pretty raw emotionally, it can feel quite attacking if you're talking and somebody says to you 'why? Why would you have done that?' So people tend to say something like 'can you tell me a little more about...'

For ALC, mediation is, in fact, 'a different sort of conversation', and she emphasised the importance of an interpreter being aware of the nuances of that conversation. She explained that

If an interpreter comes in and what they understand themselves to be in is simply a three-way conversation... they don't pick up the nuance of that. They're not actually, they're not in the mediation frame, as it were]... [so it's quite difficult if you are trying to work with someone who doesn't pick up those nuances, or have an interest in it.

Roberts also outlines that mediators use language in a special way, moulding their discourse to promote the overarching goal of mediation, the promotion of a process of negotiation between parties in dispute (Roberts, 2014, 104). Boule and Nestic (2010) also note the emphasis in mediation manuals on the reframing of inappropriate language used by parties into more positive and constructive terms, thus promoting ‘problem-solving’ rather than ‘problem-reinforcing’.

Fig.11 below gives some examples of how terms are chosen to achieve this end.

Fig.11

Framing

Instead of saying

Mediators might say

Dispute/conflict

Matter/situation

Claims/demands

Current hopes

Concede

Agree to

Tell us the facts

Give us your understanding of []

Damages/award

Ways of addressing/making good

I don't believe you

I'm having trouble understanding you

(Boule and Nestic, 2010, 143)

Conley and O’Barr (2005, 41), moreover, note how mediators will demonstrate both through their body language and their linguistic behaviour that they are listening actively to the parties by using phrases such as ‘what I hear you saying’ or ‘you seem to be saying that...’. These phrases are carefully chosen to encourage and support the speaker. They are also a conflict-reduction strategy, shifting attention to the mediator as the target of the speaker’s utterance rather than the other party.

These are complex communicative strategies, where words and phrases and body language are carefully chosen by mediators at every turn of the interaction. To work collaboratively with a mediator, therefore, an interpreter needs to be aware of these features of mediation. For interpreters used to practising in other legal settings, however, the communicative moves and carefully chosen phrases in a mediation may be confusing and their purpose unclear. Their expectations will have been conditioned by interpreting in other legal and para-legal settings, where discourse is characterised by well-defined question and answer sequences and more direct exchanges of factual information (see RAC, above). Their focus will, therefore, be more on the accurate rendition of factual detail rather than the capture of nuance and careful choice of particular formulations.

While factual accuracy is also asked for by mediators (see Information Loss, above), in mediation the nuance and modulation of discourse and achieving the right ambience for the mediation is equally important. For interpreters, this presents a linguistic task that goes far beyond the passing of information back and forth between different language speakers. Capturing nuance and reflecting the complex communicative strategies of a mediator are as challenging, if not more so, than the accurate repetition of factual detail. To be able to reflect in interpretation the range communicative

strategies used by a mediator demands a high degree of bilingual competence, acute active listening skills and an insight into mediation practice. While the first two of these are core competencies for a trained interpreter, familiarity with the special discourse of mediation is unlikely to be part of their skills-set without special training. This runs the risk of the mediator's conflict reduction and negotiation strategies being frustrated by the interpretation.

Underlining the importance of para-linguistic features in mediation as well as factual information, ALC also emphasised the importance of tone of voice in mediation. She noted that

...tone of voice can be really important in the mediation process because people may be in, as I've said, a highly sensitive or emotional state; they [mediators] may need to adopt a tone that is helpful to them, that doesn't...it isn't spiky, isn't difficult, isn't formal. So that they are able to relax a little bit more and maybe start to talk.

Reflection of the tone of voice used by a mediator is an important component in achieving the sought-for effect on the NLEP participant who receives the interpretation. ALC (mediator) claimed, however, that she can tell when an interpreter has not reflected her tone of voice or the framing of her questions, 'because you see the reaction in people'. In this situation she might have to ask the interpreter exactly how s/he framed the question in the other language. This, however, creates the further complexity of 'trying to say to the interpreter in the room 'could you just tell me how you've just phrased that?'

In order to augment the interpreter perspective in my research on the challenges of the discourse of mediation, I turned to accounts given by two interpreters (CO and OD), who encountered interpreting in mediation for the first time in a simulated family mediation encounter. I set up this simulation as part of the data gathering for the UJ project. OD was an experienced legal interpreter, with more than 5 years of experience of interpreting in formal legal settings, while CO was recently qualified.

For OD, interpreting the exchanges in a simulated mediation presented an entirely new set of demands compared to her previous experience. She was surprised in particular by the length and complexity of the utterances, reporting that

What was challenging for me was keeping up the lengthy chunks. I think...it's this dialogue, keeping it accurate, all of it, the dialogue. I find it challenging.

For CO, however, the most challenging feature of the mediation encounter was the heightened emotional tension. She noted that 'there are 'emotions that you have to kind of try to convey, [and] you have to deal with them as well'.

5. Locutionary, Illocutionary and Perlocutionary Speech Acts: the peculiar discourse of mediation and the challenge to interpreting.

I have underlined the importance attached by mediators to interpreters identifying and reflecting all aspects of a mediator's communicative moves in their interpretation to an NLEP party. Mediators are concerned in particular that the interpreter should reflect faithfully both the content and the manner of delivery of their utterances, including both the propositional content and the linguistic

features (register of language, choice of phrase, and tone of voice). They underline as well the impact this can have on the ambience and progress of the mediation encounter. Refer back to literature review in this context

From a trans-disciplinary perspective, I believe that concepts proposed in Speech Act Theory (Austin, 1962) can help to elucidate in more depth the requirements of an interpreter in mediation, an understanding that can be incorporated into recommendations for interpreting in mediation. Speech Act Theory provides a descriptive framework for how people use speech utterances to cause things to happen. It is premised on the idea that an utterance is not merely the vocalisation of words but can also represent the performance of an act. Two simple comparative examples can help to illustrate this core concept.

The final words of the Church of England marriage ceremony are 'I now proclaim that you are husband and wife'. In uttering these words in the context of the solemnisation of a marriage, the celebrant performs the act of marrying and his or her utterance has brought about the intended state of affairs. This constitutes a simple performative speech act (Austin, 1962, 6), where the words of the utterance reflect closely the act that the utterance performs.

If we compare this example with that of the man in a meeting room who announces, (perhaps loosening his collar at the same time): 'It's very hot in here!' eliciting the response from another meeting attendee 'okay, I'll open the window', we can see a different type of speech act. According to Austin, the speaker who said 'it's very hot in here' may not be making an observation about the temperature in the room at all. He may, in fact, be performing a request ('would somebody please open a window, or adjust the air conditioning?'). Austin attributes to this utterance an *illocutionary intent*, (in this case to cause the opening of a window). This illocutionary intent, however, was not explicit in the actual words of the utterance.

The opening of the window by a hearer of the utterance means that the illocutionary intent in his choice of words has been realised. The man's utterance has caused other listeners who have correctly interpreted the illocutionary intent to behave in a certain way. In Austin's speech acts model, this impact of an utterance with a particular illocutionary intent on the people around the speaker is termed the perlocutionary force of an utterance.

The distinction Austin draws between the simple performative utterances, (the vicar announcing the completion of the marriage ceremony above) and utterances that are intended to achieve a different state of affairs than those stated in the actual words is particularly relevant to interpreting in mediation. I believe that the importance that mediators attach to their use of particular linguistic strategies (re-framing, appropriate questioning, reiterating, paraphrasing, summarising (Boulle and Nestic, 2010, 151-160) underlines the need for interpreters to identify the illocutionary intent of a mediator's utterances and to reflect this in the interpretation. As we have seen, there is nothing accidental about a mediator's choice of words and phraseology, in their intonation or body language, nor in their interventions or silences. Their utterances are carefully chosen to achieve a particular impact on the mediation participants.

When communicating in a monolingual exchange, the complex web of meaning and intention created by the participants in a dialogue can usually be navigated without conscious thought by the participants (including the mediator). When communicating in a bilingual exchange with an NLEP party, however, the interpreter needs to consciously identify the illocutionary intent of the

mediator's utterances and to reflect that in the language of the NLEP. I would suggest that this requires, therefore, understanding by the interpreter of the nature of illocutionary intent and its function in the context of the mediation.

If the mediator's illocutionary intentions in uttering particular words and phrases in a particular tone of voice in English are successfully reflected in the other language by the interpreter, then the mediator's utterances may achieve the sought-for effect in the setting of the mediation, either directly on a participant or on the ambience of the encounter. (In Speech Act Theory, this would be termed the *perlocutionary effect* of an utterance). There is, however, no certainty that a speaker's illocutionary intentions mono- or bilingually, will result in the sought-for effect. A receiver of an utterance may misunderstand the illocutionary intent or even deliberately choose to ignore it. If in the context of a mediation, the illocutionary intent behind a mediator's utterances is not even recognised, however, the chances of realising those illocutionary intentions in the perlocutionary effects on the other participants in the mediation encounter are hugely reduced. Unaware of their presence and significance, the interpreter may shift the illocutionary intent of the mediator's words in the other language, either through lack of ability or a desire to affect the progress of the mediation.

In mediation, language is used not only to express factual meaning but also to influence already difficult personal interactions. The interpreter is therefore required to grasp and reflect something more illusory than the discourses of fact and institutional terminology. The language used in a mediation session may, in fact, appear to be deceptively quotidian. Compared to the ritualised formality of the court room or the police interview the mediation encounter is conducted in the everyday language of conversation and discussion. Interpreters trained for and experienced in the formal discourses of other settings may therefore be deceived by this apparent informality and fail to recognise that the illocutionary intent and perlocutionary effects of the mediators' and the parties' utterances are as important as matters of fact or terminology.

The question arises, therefore, about how well prepared interpreters are for the complexities of the interpreted mediation. I have noted before that interpreters sent to mediators are likely to have interpreted different types of discourse to that they will meet in a mediation. Interpreters supplied for legally aided mediation by the bigword through the Ministry of Justice contract will have worked in police stations and court room settings, while other interpreting jobs may combine elements of the inquisitorial role of the legal system and the more collaborative approach of the health care and social services. In all these settings, however, the primary requirement for the interpreter is to grasp and accurately interpret factual information and to manage the specialist terminology of the institutional setting. This is not to say that illocutionary intentions do not apply to utterances in these types of encounter at all. An interviewing police officer's manner and questioning technique could also be said to have particular illocutionary intentions. These intentions are however less at the forefront of the discourse than they are in mediation.

6. Accessing competent interpreting

The peculiar discourse of mediation and the emotionally charged atmosphere can be seen therefore to make high demands on the linguistic and inter-personal competencies of the interpreter, and the mediators in my sample were aware of this. LB (mediator) stated that 'the role of the interpreter is particularly challenging' while ALC (mediator) also understood that

we are asking a lot of an interpreter to come in to what is a very intimate setting. And it could be a quite difficult and complex, angry setting, and do their job. It's not easy.

These mediators also articulated clearly their need for interpreters to adapt to the mediation setting. ALC notes how important it is that 'that person [the interpreter] is able to work in a way that aids the process and doesn't have it backwards'. She refers to this as 'being in the mediation frame'. She wanted her interpreter, therefore, to have 'a base understanding of the process, how you work and what you need from them', along with being sensitive to the nuances of language and to the impact of tone of voice and of speakers' communication styles. She recognised that, to be able to manage the complex communicative and inter-personal demands of the mediation encounter with an interpreter present, 'it is incredibly important to get the quality of interpreter you need'.

Given their awareness of the need for interpreters to have a high degree of interpreting competence and an understanding of the mediation setting, one might expect that mediators would be discriminating in their choice of interpreter and make efforts to establish their background, specifying some minimum levels of professional qualification. In the UK, this would be one of the UK benchmark qualifications in interpreting, the Diploma in Public Service Interpreting (IoLET)²¹, the Diploma in Police Interpreting (IoLET) or even the Level 6 diploma in community interpreting (the International School of Linguists, an offshoot of thebigword agency). Holding these qualifications would indicate that the interpreter had been formally assessed in their competence in Dialogue Interpreting, Whispered Simultaneous Interpreting (both directions), Oral Sight Translation (both directions) and Written Translation (both directions). The mediators in my sample did not, however, report making any specifications to the agencies who supply their interpreters about the qualifications or skills that they required. On the subject of whether she asked for an interpreter with any particular experience, qualifications or background, SF (mediator) noted that 'we just tell them that we need an interpreter for so long in such and such a language'. Her description of the process of engaging an interpreter through an agency was simply

send an Italian interpreter next Tuesday and Wednesday... and that's what we get. And their name. And they come with an ID card. And that's it.

She also noted that

we hope, if they belong to an agency, they know what they're doing. We need to be able to have some degree of faith that they are interpreting correctly.

SF (mediator) explicitly acknowledged, however, that 'the agencies aren't ...so fussy about the qualifications of their interpreters', and questions about the quality of the interpreters supplied by agencies were also raised by ALC (mediator), who noted her surprise at the variations in the competence of different interpreters supplied to her. She reported that

It did surprise me that there was a huge variation. You know, you get people who, as you say, did seem... I described it as a job, they claim it is a job at work and they were quite formal and their body language didn't aid anything. It was a quite sensitive conversation, whereas I had assumed that an interpreter would be an active listener simply because, you know, they are having to listen in order to interpret.

²¹ Institute of Linguists Educational Trust.

The interpreter SL's account of her experience of working with commercial agencies gives an insight into why this variation in quality might occur. I asked her whether the agencies who contacted her enquired about her background as an interpreter or her professional skills set and qualifications. Her response was that the agencies 'took it on trust' that she would be qualified because she is listed on several of the professional registers for professional interpreters (the National Register of Public Service Interpreters, the Chartered Institute of Linguists membership directory, the Institute of Translating and Interpreting membership directory). While it is a reasonable supposition that registration would presuppose qualification, their questions regarding her background and skills set were confined to 'are you available?' and 'have you done this before?' I also asked whether she was given any prior information by the agencies before attending a mediation interpreting session. She responded that 'on the whole, nothing was offered, or very little was offered before I arrived at the venue'. SL (interpreter) wasn't sure whether 'it was because they were quite lazy and they can't bothered to ask the client for it', or whether to believe them when they say that 'the end client is saying it's confidential. You'll find out when you get there'. She concluded that 'it's quite hard to know where the truth lies'.

There appears, therefore, to be an inherent contradiction in the data between the mediators' awareness of their need for highly competent interpreters and their practice in securing those interpreters. On the one hand, they are aware how important it is to have the right interpreter able to meet the demands of the mediation encounter. On the other, they make no specifications to the supplying agencies about the quality of interpreter they need. The reasons they don't do this are, I believe, two fold. The first is an assumption that hiring through an agency will, in itself, give them some assurance of competence on the part of the interpreter. This is understandable; some expectation of due diligence on the part of the agency in supplying suitably qualified interpreters seems reasonable. The accounts given by mediators suggest, however, that this assumption may be misplaced.

The second, however, may be the widespread misconception that any sufficiently bilingual person can undertake an interpreting role successfully. Both SF (mediator) and LB (mediator), for example, referred to using students as interpreters in mediation sessions. ALC, SF and ALC (all mediators) also referred to family members acting as interpreters at MIAMs, although not at any subsequent mediation. This indicates to me an underlying belief, latent in their responses, that any sufficiently empathetic and adaptable bilingual should be able to take on the role of interpreter in mediation and that they see no absolute requirement for using only professional interpreters.

The belief that simple bilingualism automatically indicates capacity to interpret is something that the PSI profession has struggled against throughout its relatively short life. While a high degree of bilingual ability is a pre-requisite to becoming an interpreter, it is not sufficient in itself to carry out the task of interpreting to a professional standard (Johnson, 2008; Martinsen and Rasmussen, 2001; Ostarhild, E (1998); Interpreting with the degree of accuracy and faithfulness called for by mediation, reflecting both the semantic content of a speaker's words and the pragmatic impact of their speech behaviour are professional skills acquired through training and accredited through qualification. Only an interpreter who has acquired these competencies and honed them over time could reasonably be expected to possess them and to use them consistently in the field.

7. Non-standard languages and non-standard qualifications

Even if interpreting qualifications are specifically asked for by mediators, however, it is possible that interpreting qualifications in the language concerned is not available. The DPSI, the benchmark professional qualification in the UK for interpreters working in the public sector is available in 52 languages, but this is, of course, far fewer than the number of language combinations that might arise. This raises the question of what agencies supplying mediators with interpreters might do in the event that a qualified interpreter of that language cannot be secured.

The practice of the contract holder of the current Ministry of Justice Framework Contract for the provision of language services to the Judicial sector sets a precedent for how the matter of language combinations for which no qualification exists might be dealt with. First introduced in late 2011, this contract for the supply of all face-to-face, telephone and video-remote interpreting services to the Judicial sector (excluding the CPS) has been held since October 31st, 2016 by thebigword Group Ltd, a large scale supplier of language services across the UK public sector. Interpreters for legally aided mediations have to be chosen from the list of interpreters held by thebigword or their nominated sub-contractors.

Although the MoJ framework contract requires interpreters supplied for the 41 ‘standard languages’²² listed in the contract to hold

at least one of the qualifications: CCI (IOL), Diploma in public service interpreting (DPSI) (Law), DPI (formerly Metropolitan Police Test) or level 6 diploma in community interpreting (international school of linguists)

the contract also allows for the supply of interpreters with limited or no interpreting qualifications in the 152²³ so-called ‘Languages permitted exceptional qualification requirements (languages without DPSI)’ (MoJ, 2018, 13).²⁴ The contract specifies that

2.2 to work on a Complex Other Booking for a ‘language permitted exceptional qualification requirements’:

²² Albanian (all variants), Arabic (all variants), Armenian, Bengali, Bulgarian, Cantonese, Croatian, Czech, Dari (all variant), Dutch, Estonian, Farsi, French (all variants), German (all variants), Greek, Gujarati, Hindi, Hungarian, Italian, Japanese, Kurdish (Sorani), Latvian, Lithuanian, Mandarin, Pashto (all variants), Polish, Portuguese, Punjabi (all variants), Romanian, Russian, Serbian, Slovak, Slovene, Somali, Spanish, Tamil, Thai, Turkish, Ukrainian, Urdu and Vietnamese.

²³ Acholi, Afar, Afrikaans, Akan, Amharic, Amoy, Anaang, Ashanti, Assyrian, Azerbaijani/Azeri, Babani, Balochi, Bamanankan, Bambara, Bantu, Barawe, Basque, Belarusian, Bemba, Berber, Bilen, Bisaya, Bosnian, Bravanese, Burmese, Catalan, Chaldean – Neo Aramaic, Chechen, Chinese (all variants), Chichewa, Creole (all variants), Cypriot, Daju, Danish, Dholuo, Dioula, Dzongkha, Edo, English, English (Pidgin), Eritres Ewe, Ewe (Togo), Filipino (all variants), Finnish, Fijian, Flemish, Fula, Fur, Ga, Gaelic (Irish), Gaelic (Scottish), Georgian, Gusii, Gorani, Hakka, Hausa, Hebrew, Hindko, Igbo, Ilocano, Indonesian, Ishan, Jula, Kachchi, Kannada, Kashmiri, Kazakh, Khmer, Kibajuni, Kikongo, Kikuyu, Kinyamulenge, Kinyarwanda, Kirundi, Konkani, Korean, Krio, Kurdish, Kyrgyz, Lak, Lao, Latin, Lango, Lingala, Luba-Kasai, Luganda, Macedonian, Makaton, Malagasy, Malay, Malayalam, Malaysian, Maltese, Mandinka, Maninka, Marathi, Minangkabau, Mirpuri, Mongolian, Montenegrin, Mooré, Ndebele, Nepalese, Norwegian, Nzema, Oromo (Central), Oshiwambo, Otjiherero, Pahari, Papiamento, Patois (Jamaica), Pokomchi, Potwari, Quechua, Roma, Rohingya, Runyankole, Saho, Shina, Shona, Sindhi, Sinhala, Soninke, Sudanese, Susu, Swahili, Swedish, Sylheti, Tagalog, Taiwanese, Tajik, Tama, Telugu, Tetun, Tibetan, Tigre, Tigrinya, Tswana, Turkmen only), Wolof, Xhosa, Twi, Urhobo, Uyghur, Uzbek (Northern), Venda, Welsh (interpreted in England or Scotland, Yiddish, Yoruba, Zaghawa, Zarma-Songhay and Zulu.

2.2.1 the Language Professional must meet the requirements of Paragraph 1.2; **or**

2.2.2 the Primary Language of the Language Professional must be the Relevant Language or the Language Professional must have sufficient ability to communicate in the Relevant Language and **either**:

(a) the Language Professional must have provided at least fifty (50) hours of interpretation services in the Relevant Language' (MoJ, *ibid*) **or**

(b) the Language Professional must **either**

(i) have obtained at least one of the following qualifications: BA in English, BA in interpreting, BA in interpreting & translation, BA in linguistics, BA in modern languages, BA in philology, BA in translation, degree in English language, degree in English philology, diploma in English philology, degree in linguistics, DPSI (Health), DPSI (Law) partial, DPSI (local govt.), language related degree where English features as part of the course, language related diploma where English features as part of the course, MA in teaching of English, Masters in interpreting, Masters in interpreting & translation, Masters in linguistics, DPI partial, post graduate diploma in interpreting, post graduate in conference interpreting, language related degree (foreign language), language related diploma (foreign language) **or**

(ii) **either**:

(1) have passed the English Proficiency Test; **or**

(2) the Primary Language of the Language Professional is English and

(c) the Language Professional must have provided suitable references (MoJ, *ibid*) (emphasis added)

Here, a lower level of qualification or indeed, no qualification beyond competence in spoken English is allowed. Under the terms of the MoJ language services contract it is, therefore, possible for an interpreting agency (in the case the contract holder or one of its nominated sub-contractors) to supply an interpreter to a client with no prior qualifications or background in interpreting without being in breach of contract. This means that in cases of a legally aided mediation, where the language combination does not fall within the 'standard list', the interpreter sent to the mediation could be an unqualified bilingual with limited or no prior experience of interpreting. Even where the interpreter does hold interpreting qualifications, however, this does not indicate prior experience of mediation. Interpreters on thebigword's list for the Ministry of Justice contract will have been engaged primarily to service the need for interpreters of the Police and Court and Tribunal services. This will not have prepared them for the significantly different discourse of mediation.

8. Conclusion

In this chapter, I have told the story of my interviewees' experiences of working with interpreters or of providing interpretation in mediation. In doing so, I have traced the super-ordinate themes that run through the full data set and discussed also the sub-themes that provide the detail of those themes. I have shown how the mediators in my sample recognise that working through an interpreter represents a challenge to their mediation practice, that they are sometimes doubtful

about the efficacy of their interpreters and concerned about the implicit risks that working through an interpreter poses. However, their accounts indicate lack of insight into how they might optimise working with interpreters. In this respect it is also notable that they appear to have no formal guidance on how to work with an interpreter.

From the interpreters' perspective, I have shown through the details of the data set how mediation presents an interpreting task unlike others they are likely to have encountered in other areas of their practice. Working as a court or police interpreter or a community interpreter doesn't prepare an interpreter for the discourse of mediation or the ambience of the mediation encounter. Even qualified interpreters who have received training in the competencies of PSI are unlikely to have insight into the demands of the interpreted mediation.

The references by the mediators to using family members as language intermediaries at MIAMS, and of using non-professional language intermediaries in mediation sessions also suggest that they share with other professionals an underlying belief that simple bilingualism, a willingness to cooperate and the exercise of common sense is sufficient to be able to undertake an interpreting role. Interpreting deals, after all, with the common human experience of language, speech and communication and the ability to speak two languages may appear to make interpreting between those languages a relatively mundane process. The details of the data and the experience of the mediators in my sample however, show that this is not the case. One of the tasks of the interpreting profession, therefore, is to help mediators and other professionals to recognise that bilingualism is not sufficient for effective interpreting in anything more than the most basic of linguistic transactions.

I also have a keen sense of the perspective I bring to this data from my experience as a practitioner of interpreting. I share with my interviewee SL (interpreter) first-hand experience over a number of years of working as an interpreter and of negotiating that role with other professionals. As a result, I may be over-sensitised to the possible difficulties and pitfalls in those professional interactions and more likely to identify them in the accounts of the mediators in my sample. In this respect, I should report the overwhelmingly positive account of working with interpreters given by the mediator LB. She noted that she has 'worked with some very good interpreters. In fact, I can't think of [anyone] who hasn't been extremely helpful and very professional'. For her, 'all the interpreters I have ever worked with are lovely and they just sort of blend in with everything that's going on'. Her upbeat account of working through interpreters is a good counterbalance therefore to my expectation of difficulties in the process.

LB's perception of her experience is, of course, valid. I would argue, however, that the super-ordinate and organising themes that I have described in the data suggest that the 'blending in' she refers to may mask deeper problems with the process than she is aware of. She, like the other mediators, works without the benefit of systematic insight into the nature of interpreting or of any formal guidelines for the interpreted mediation process. What she perceives as 'blending in' might, on closer examination turn out to be faulty in other ways.

The lack of systematic understanding of the interpreted mediation and of guidelines on how to manage it has been a topic in my discussion in this chapter. In the next chapter, therefore, I turn to a discussion of how mediators and interpreters might optimise the processes of interpreting in mediation through collaboration over matters of professional practice.

Chapter Six Conclusions and Recommendations

1. Conclusions

My DProf research into the experience of mediators of using interpreters started with three research questions:

1. How do mediators experience the use of interpreters in mediation?
2. What impact does the use of an interpreter have on a mediation's progress and outcomes where language difference is an obstacle?
3. How do interpreters understand their own role and function in mediation?

In this chapter I return to these research questions and reconsider them in the light of my data and the themes arising from my thematic analysis, while re-situating them in the context of my RAL 8 claim. I then present my conclusions flowing from this analysis. I also reflect on my methodology to identify how successful my methodological approach has been in finding answers to the questions initially posed.

RAL 8

As I outlined in my introduction and reported on in my RAL 8 claim, the survey undertaken by the UJ project of mediators and mediation providers in seven EU member states, including the UK, indicated that mediators and mediation providers in the different states surveyed adopted different solutions to managing language difference in mediation, including the use of bilingual mediators, mediating in a lingua franca or using an interpreter. It was also clear that using an interpreter was the preferred solution for UK based mediators. A common theme in the data from all seven countries, however, was that mediators and mediation providing organisations had limited awareness of the implications that different methods of managing language difference might have for the processes of mediation. This is theme also present in the data collected for my follow-up DProf research, and also in the limited literature directly addressing interpreting in mediation (see Dominguez-Urban (*op cit*) and Bernal (*op cit*)). Many mediators and mediation-providing organisations appeared to believe that language barriers in mediation were reasonably simple to overcome given limited bilingual ability on the part of a mediator or the use of an interpreter.

In my DProf project following the *Understanding Justice Project*, I wanted to expand and deepen my understanding of the interaction of mediator and interpreter and its impact on mediation, with a view to making recommendations for improvements in practice in this field. My intention was to supplement the broad overview of interpreting in mediation in the *Understanding Justice Project* with a more detailed examination of the internal processes of the interpreted mediation. Different methodological approaches were available to achieve this. One would have been to record a set of interpreted mediations (simulated) and used Conversation or Discourse Analysis to make a detailed analysis of the interpretation therein. This is a well-trodden methodological path in Interpreting Studies (see Wadensjö (1998); Roy (2000); Mason (2001); Zambrano-Paff (2011); Gallai (2017); Davitti (2013)). Being a work-based project, however, I decided that the collection of mediators' subjective experience of working with interpreter would give me a better understanding of the

working relationship between mediator and interpreter on which to form my recommendations for practice. I decided, therefore, to research this topic from within a phenomenological perspective (see Chapter 3), a research perspective that privileges the subjective perceptions of participants and the interpretation of those perceptions by the researcher. Thus, rather than undertaking a discourse-analysis approach to the linguistic detail of interpreted mediations, I chose to collect qualitative data from mediators through a set of 'discussions-as-interviews' (Costley et al (2010): 86) conducted via a series of Skype calls. In this way I sought to add a further dimension to the quantitative data collected in the *Understanding Justice Project* survey. I also believed that this approach would allow me to bring my own work-based perspective to bear on the data, and draw connections between the reported experience of mediators and my experience of working as an interpreter with public service professionals.

I reflect on this approach in more detail in my Personal Learning and Professional Journey chapter (Chapter Seven). At this point, however, I can say that the approach has allowed me to collect a small body of data within which I can identify underlying themes about mediator experience of working with interpreters. Concentrating on mediator experience as reported in the interviews has also enabled me to reflect on and interpret that experience in the light of my own practitioner experience and to draw conclusions and formulate recommendations. This data set is, however, limited in size and the conclusions drawn from it are therefore necessarily extrapolations from a small data set. I acknowledge as well that the information gathered was based on unverified self-reports rather than analysis of actual interpreter assisted mediations. I believe however that this was still an important step in advancing research into interpreting in this field. More conclusive and wide-ranging conclusions would, however, require a larger research project.

Research question one (*here I return to each research question. I give a brief summary of results following each question, recapping by way of a conclusion what was in the findings section*).

In pursuit of insight into the dynamics of mediators' experience of using an interpreter, my first research question was posed within the phenomenological perspective outlined above, and sought self-reports of mediator experience of interpreting and its impact on their mediation practice...

The data collected from these self-reports indicate that mediators experience the impact of an interpreter in mediation across several dimensions. These are reflected in the superordinate themes arising from my Thematic Analysis (see Chapter Five). One of these dimensions is an overall loss of control of the mediation encounter caused by the presence of an interpreter. This was reflected in my mediators' concerns that interpreters did not always reflect closely the content of what they or an NLEP party said. They also believed that the interpreter was editing the information flow between parties and mediator thereby compromising the mediator's ability to monitor closely how the interaction develops at each turn of speech. Alternatively, the interpreter appeared to be augmenting original utterances, giving rise to the belief that the interpreter was adding their own content to their interpretation of the original speaker's utterance. A concern was also expressed that interpreters do not to reflect the tone of what a speaker says or fail to reflect the nuances of the mediator's questioning strategy, thereby changing the pragmatic impact on the listener.

Other dimensions in which the mediators experienced the impact of an interpreter were in the ways that an interpreter's behaviour and attitude could impact on the atmosphere of the mediation.

Here, the addition of an interpreter to the mediation encounter could lead to a loss of small talk in the encounter, (a phenomenon also reported in the literature on interpreter use in doctor-patient communication. See Aranguri *et al. op cit*) or a more formal interaction between mediator and parties than would have been preferred. Mediators were also concerned about the possibility of exclusion from the encounter when NLEP parties engaged in dialogue in a non-English language. Here, they reported feeling cut out of the circuit of communication and left to rely on impressionistic understandings of what was happening between the parties (also reported in reports on interpreting in psychotherapy. See Miller *et al (op cit)*). This also presented mediators with a conundrum. On the one hand, a direct exchange between parties could be a sign of willingness to negotiate and to address contested issues directly between themselves. This could signal positive progress towards the goal of negotiation. For mediators working with NLEP parties through interpreters, however, the development of this direct exchange leaves the mediator unable to monitor the exchange and evaluate its progress.

Finally, an over-arching thread running through experience of mediators was the mutual unfamiliarity of mediators with the processes of interpreting and of interpreters with the dynamics of mediation. It seems that the mediators in the sample although able to reflect on the impact of an interpreter on the mediation, were less clear about what they could expect an interpreter to do or about exactly what the normative role for an interpreter entailed. In this respect, each mediator followed their own intuition about the best way to work with interpreter, but without reference to an external set of best practice guidelines to follow. Interpreters for their part were mainly surprised by the different type of discourse they met in a Mediation, with its emphasis more on connotation, the negotiation of feelings and viewpoints, rather than the exchange and discussion of purely factual information.

2. What impact does the use of an interpreter have on a mediation's progress and outcomes where language difference is an obstacle?

Where my previous research question interrogated the subjective experience of mediators of working with an interpreter on the process of mediation, my second question sought their opinions on whether interpretation affected the outcomes of a mediation. My assumption was that mediators would report that using interpreters reduced successful outcomes. Given the ways in which mediators identified how having an interpreter did impact on the interaction, I was surprised therefore by their insistence that overall interpreting did not have any impact on successful outcomes. Measured in terms of whether the parties reach the stage of negotiation and an agreed settlement, the incidence of successful mediations where language difference was an issue and an interpreter was present, was no higher or lower than in a monolingual mediation.

As noted above, these are self-reports from mediators and represent their views based on experience. To answer this question conclusively, a quantitative study of all mediation outcomes in a given period comparing mediations with and without an interpreter would be required, to identify any differences in outcomes for which the presence of an interpreter might be a causal factor. Such a study could be used to triangulate the reports of mediators in this sample.

3. How do interpreters understand their own role and function in mediation?

My third research question sought self-reports from interpreters on their experience of working in the mediation setting. In this way, I hoped to triangulate the reports of mediators with those of

interpreters to gain a dual perspective the mediator-interpreter interaction. It turned out to be the hardest question for which to collect data, however, due to difficulty in accessing interpreters with experience of working in this field. Through my contacts in the industry, I put out a call for expressions of interest from interpreters with experience of working in mediation settings. I received only four responses and of these three had not in fact worked in mediation and were not suitable for the project. I was therefore limited to interviewing one experienced and qualified interpreter with a background in interpreting in mediation and to using data collected from simulations of interpreted mediation encounters. The simulations referred to were undertaken as part of the *Understanding Justice Project* and are reported on my RAL 8 claim. All the interpreters who participated in these simulations were trained and qualified as Public Service Interpreters at Level 6, although with varying degrees of length of experience, ranging from more recent qualification to more than 20 – years in the profession of Public Service Interpreting.

The interpreters in my sample reflected on their role in a mediation through the lens of the normative model for dialogue interpreting set out in the professional codes of conduct. As such, they focussed on the need for accurate and complete renditions and the adoption of a neutral position in the encounter, and expected to function in the mediation encounter in the same way as they would in other legal and quasi-legal settings... However, they also reported their surprise at how the mediation encounter was significantly different from other interpreting settings they had experienced. They were, at times, wrong-footed by the type of discourse nature in the encounter, with its exchanges of factual information combined with explorations of attitude and feelings. They also noted how the mediation required them to deal with highly emotive subjects and the raised possibility of conflict between the parties. In this respect, the interpreters' reflections on their own experience in the simulations were aligned with the comments of the mediators themselves about what they considered to be the particular challenges for the interpreter inherent in mediation.

Conclusions (here I draw some overall conclusions flowing from the data reported on above, before going into a set of practical conclusions).

The concerns expressed in the self-reports of mediators are echoed in examinations of the impact of interpreters in other fields. Miller *et al* (op cit) note a common belief among psychotherapists that the introduction of an interpreter fundamentally alters the familiar dyadic relationship between therapist and client, a theme reflected throughout the data collected from mediators. Other themes in my data are also echoed in reports from other fields. The theme of loss of control is highlighted by Suurmond *et al* (2016) in their review of secondary data on the impact of interpreters on cross-language health research, and Leanza (2005), who reports that paediatricians working with NLEP parents through interpreters experienced a sense of exclusion from the interaction with the parent. (*ibid*). The loss of phatic language and small talk in the use of interpreters and its resultant impact on the atmosphere of doctor-patient encounters is also reported by Aranguri *et al*. (*op cit*). I am also familiar from my professional experience of the field with reports by professional end users of interpreters of suspicions that interpreters usurp their control by editing (reducing or augmenting) or shifting the tone of utterances in interpretation. While contributing to a Judicial Studies College training programme to improve the use of interpreters in PIP tribunals²⁵ (2019 – 2020, currently suspended due to COVID) from delegate's s repeatedly included references to truncated renditions

²⁵ Appeals against decisions of the Department of Work and Pensions not to allocate Personal Independence Payments (PIP).

by interpreters and instances of un-interpreted exchanges between interpreters and NLEP applicants to the Tribunal.

Of particular interest to me, however, is how the mediators in my sample respond to these concerns. When the mediators call for interpreters to 'say to them exactly what I am saying' or express their desire to 'simply' [know exactly what was said', I would argue that they conflate close or verbatim interpreting with maintaining the same primary, un-shared control over the interaction that they would enjoy in a monolingual mediation. This suggests that, unreflectively, they subscribe to what Wadensjö (*op cit*: 8) terms a 'textual model' of interpreting. In this model of the interpretation process, interpreters are seen as engaged primarily in the production of interpreted 'texts', much as a written translator would produce a written translation of a source text. These interpreted texts are expected to be close reflections of original monolingual 'texts' produced by a speaker. Such a textual model of interpreting also underpins the normative codes of conduct for interpreters, which call, above all, for faithful reproduction of source utterances in the target language and neutrality in the encounter on the part of the interpreter, what Miller refers to as a 'black box' model of the interpreter. This normative model emphasises the need for close renditions with a minimum or no intervention in the interpreted exchange beyond linguistic clarifications, and cast the interpreter exclusively as a faithful relay of words uttered (Cambridge, 1999:209).

The research into interpreter use in interpreting studies and in other professional fields discussed in Chapter 3 shows, however, that verbatim interpreting and the attempt to confine the interpreter to the role of an information conduit between languages does not, in itself, restore to a mediator, therapist or doctor exclusive control of the encounter. Detailed analyses of interpreted encounters (see Baraldi & Gavioli, 2007; Mason, (2001); Roy, (2000); Wadensjö, (1998, 2001) suggest that even with apparent strict adherence to the deontological codes of close accuracy and non-intervention, an interpreter still actively participates in the construction of meaning and understanding and actively coordinates the communication between parties. As such, they cannot realistically be viewed as a simple 'black box' carrying out language switching activities or as entirely neutral non-parties in the interaction. They always exercise some agency in the interpreted encounter, overtly or covertly.

The data gathered from mediators suggests an unexamined assumption that interpreters are, or should be, engaged solely in inter-lingual information transfer. Any deviation from this prescription is identified as a failing on the part of the interpreter and blamed for negative impact on the conduct of the mediation. In this respect, interpreting will always be seen a less successful version of a mono-lingual encounter and the impact of the interpreter on the interaction will inevitably be seen as negative.

An alternative, however, would be for mediators to recognise from the outset, (as Wenk-Ansohn and Gurriss (2011) suggest in the context of counselling, that 'even if an interpreter makes an effort to translate with utmost neutrality and maximum accuracy, it can be assumed that his or her presence and personality will have an impact on the interaction' (ibid: 184). Starting from acceptance of this premise leads to accepting that the interpreter is a full participant (albeit within specific parameters) in the interaction. Mediators' modelling of interpreter input into the mediation could then focus on the positive benefits that an interpretation can bring to a mediation with NLEP parties. It might lead mediators, for example, to recognise that some un-interpreted exchanges may be a necessary part of rapport building between interpreter and NLEP speaker(s). In this sense, the

un-interpreted exchanges that the mediators experience as exclusion may, in fact, be instrumental in building a conducive atmosphere in the mediation, restoring the conversational and 'chatty' aspects of a mediation lost in a more rigid and norm-orientated approach to interpreter role. Similarly, the increased time required for a pre-and post-mediation briefing with the interpreter, and for the process of the mediation to complete, while a burden in terms of organisation, can also contribute to defusing conflict and requiring a more cooperative approach from parties.

Mediators might also choose to more make more conscious use of the inter-cultural skills offered by the interpreter. This is not to propose a simple 'cultural consultant' role for an interpreter as a source of background information on the NLEP's origins, however. It proposes rather recognition that, in difficult conversations about highly emotive subjects, an interpreter may have an intuitive understanding of what can and cannot be said or how difficult passages should be phrased, given an NLEP speaker's cultural background. In this way, the cultural understanding of the interpreter can become a benefit to the progress of the mediation (see Bujra, *op cit*: 174). To achieve this, however, the interpreter would need to be authorised to modulate, augment or reduce in their phrasing the original utterances by the mediator in English. Such a communicative choice on the part of the interpreter should not be seen automatically as a deviation from the professional norm of accuracy at all costs. The possibility that it contributes towards promoting the aims of the mediation should also be considered.

Such an alternative view of the interpreter can be proposed by Tribe (2009) in her discussion of the role of interpreters in psychotherapy. There, she sets out the positive impacts that the presence of an interpreter can have on the therapeutic process. These include the opportunity for the therapist to use the interpreter to normalise the experience of psychotherapy; to create an opportunity for co-reflection between therapist and interpreter on language use and the use of the interpreter as a cultural consultancy resource (*ibid*: 5). In a companion paper, Tribe and Thompson propose a 'co-working couple' model for the therapist and interpreter, where they work collaboratively to 'manage the changing shape' of the triangular relationship between therapist, interpreter and client. (Tribe and Thompson 2009: 20).

Tribe and Thompson's view of the interpreter as a co-worker, if adopted by mediators, could optimise the mediators' experience of using interpreters. Rather than adopting the deficit model of interpreting guaranteed by a simple transfer model of interpreting, recognition of the interpreter's active role in the mediation as a coordinator of communication and as a possible resource could transform mediators' experience of working across language barriers.

I believe that this 'co-worker' model of the interpreter could equally be applied in mediation to optimise mediators' experience of using interpreters. Here, the interpreter would become a collaborator with the mediator in a mediation where NLEP parties are present, actively contributing to the progress of the mediation across a number of dimensions (as outlined above). This may not, in fact, represent such a major shift on the part of mediators as it might appear. The mediators in my sample showed a keen awareness of the impact of different ways of speaking and questioning, and of lexical choice and tone of voice. . As mediators, they are attuned to the ways in which a mediation is a dynamic social interaction where the exchange of information may be a secondary consideration (Kovach, *op cit*: 51-52). Being well aware that interaction through language is much more than a simple exchange of information should make it less difficult for them to accept a more nuanced role

for the interpreter in mediation, based on participation and collaboration rather than simple information transfer.

2. Recommendations

The conclusions drawn from my analysis of the data combined with my practitioner experience lead me to offer some practice-orientated recommendations for mediators. They are made with a keen awareness of limited resources and the reality of what is likely to be possible. The development of language services, including interpreting, is rarely seen as a priority target for the allocation of resources and any recommendations therefore need to be focussed and realistically achievable. It is with these factors in mind that I frame my recommendations.

2. i. Encourage mediators to reframe their understanding of interpreting in mediation.

As discussed above, the mediators in my sample implicitly subscribed to an information-transfer model of interpreting. A first step towards optimising the use of interpreters in mediation would be to adopt instead an interactional view of interpreting that foregrounds the ways in which interpreters produce both linguistic renditions, but also coordinate the interaction between speakers and potentially contribute to the creation of a positive atmosphere in the encounter. Such a view is premised, however, on acceptance of the interpreter's involvement in the creation of the communicative event and exploration of the opportunities offered by the presence of an interpreter to further the aims of mediation.

My experience over the 23 years of my practice tells me that this shift in perception can be brought about quite rapidly. Particularly in the case of mediators, (who have already moved beyond a simple conduit model of communication in their understanding of monolingual interaction), the paradigm shift from a transfer model of interpreting to an interactional model of interpreting could be started with a small amount of training input. Short (half or full day) training for mediators where they were encouraged to examine their existing presuppositions about interpreting and given the rationale behind a more interactive model could be delivered as a stand-alone unit or as part of a wider

training initiative. It could also be delivered online, reducing the resources required for accommodating trainers and delegates. In this respect, the online training for interpreters constructed by the *Understanding Justice Project* provide a template.

2. ii. Inter-professional training

In addition to the delivery of training materials specifically for mediators, the development of the co-worker model for mediator and interpreter (see Tribe *op cit*) could be nurtured by inter-professional training for mediators and interpreters. Such workshops could initiate a positive cycle of development, increasing mutual understanding of the phenomenon of interpreting in mediation and promoting more effective collaboration. A long term aspiration might be the establishment of a cadre of professional interpreters with mediation experience, to be called upon both to service the needs of mediators and also for training other interpreters for work in mediation²⁶.

2. iii. Commit to using professional interpreters

The writing and delivery, face to face or online, of training materials is a relatively easy step. There is a body of existing knowledge and practice to draw on (see for example the *Building Mutual Trust i* and *ii* projects).²⁷ A more challenging step towards improving interpreting in mediation is to persuade mediators and mediation-providing organisations to commit to working only with trained and qualified interpreters. As I have shown, mediation is a challenging environment in which to interpret. The nuances of language and choice of phrasing, the heightened emotion and possibility of conflict and the unpredictability of the direction of dialogue all demand the exercise of professional skills and attributes on the part of the interpreter. An untrained bilingual, however well-meaning, is unlikely to be able to meet the challenge of interpreting in a mediation, or perhaps even to recognise where the challenge lies. The development of the co-worker model for interpreter and mediator suggested above would also benefit from the engagement of professional interpreters. Only the insight into interpreting processes and the reflection on practice that comes with professional training and qualification can provide foundations for constructive co-working.

A commitment to using professional interpreters, however, is not cost free. Professional interpreters, like professionals in any field, can command higher fees than their unqualified, amateur counterparts and the supply of professional interpreters is, for reasons of qualification and training, more limited (see Chapter Five, section 8). The premium in fees, however, is not so significant as to present an insurmountable barrier. A professional interpreter with qualifications and registration on the NRPSI might expect to charge in the region of £30-£35 per hour at current prices, with a minimum call out fee of 2 or 3 hours and travel time at a reduced hourly rate. All of these figures are, of course, negotiable with the individual interpreter. Unqualified language intermediaries, however, are paid less per hour by commercial agencies, often with no minimum call out fee, much reduced or no travel costs and no travel time payment. The fee charged by the agency to the

²⁶ We took an initial step in this direction in the UJ project, with the preparation of an online self-assessment tool for interpreters to measure their skills against the requirements of mediation. Available at: <http://www.understandingjusticeproject.com/assessment/>. Accessed 24th July, 2019.

²⁷ www.buildingmutualtrust.com

mediator end user will, however, be at least as high as that of a professional interpreter engaged directly.²⁸ In reality, there may not be a negative cost implication of engaging a professional interpreter directly rather than using an agency.

The second challenge of committing to using a professional interpreter is more difficult to meet. Here mediators are confronted with the problem of supply. There are fewer qualified professional interpreters in all language combinations than mediators may require. The NRPSI had a total of 1,729 registrants in April 2020 across 2,056 languages, (down from 2,392 in Jan 2012)²⁹ It may therefore be difficult to locate a professional interpreter for a particular rare language combination. Mediators also have to contend with the demographic spread of interpreters. A brief examination of the National Register of Public Service Interpreters shows that professional interpreters with PSI qualifications are overwhelmingly concentrated in Greater London and the South East.

These are hard realities of the current *status quo* regarding PSI, qualifications and supply and demand. Set against these, however, is the fact that there are over 1,807 registered PSI professionals on the National Register offering a total of 2,142 language combinations (NRPSI, 2018). If a mediator needs a professional interpreter for a mediation session with a particular language combination, they have a reasonable chance of discovering that there is one on the register and perhaps not a massive distance away. Individual mediators will have therefore to weigh up the balance of benefits and dis-benefits of committing to using professionals only.

2. iv. Be aware of good practice in interpreting

Committing to using professional interpreters is an aspiration that cannot be realised unless mediators have a clear understanding of what constitutes professional interpreting. PSI has struggled to discard the image of being an activity that can be undertaken by anyone with some bilingual. (There were intimations in the data from mediators that they, albeit not explicitly, shared that viewpoint). This has also hindered PSI's attempts to lay claim to the status of being a genuine profession. Nor is there legislative protection of title for the job of 'Interpreter' in the UK and no legal requirement for certification or registration with a professional body in order to practice as an interpreter. These factors have contributed to a lack of recognition of what a professional PSI interpreter should be able to do in practice. Whereas the public understanding of some professions is well established (although we don't know the technical details, we have a clear picture of what our GP should or should do), the practice of a professional interpreter is less well known. In what follows, therefore, I give an outline for mediators of the core interpreting competencies that a professional PSI should be able to employ during an interpreted mediation. They will also be able to switch between these modes of interpreting as required by the demands of the evolving meeting, without being explicitly instructed to do so by the mediator. If any one of the below are missing in

²⁸ In March, 2019, out of curiosity about the difference between remuneration to interpreters and charges to end-user clients, I carried out a brief experiment. An agency contacted me via the NRPSI register offering £80.00 flat rate, including all travel time and travel expenses for a 3-hour interpreting assignment. I contacted the same agency later as a potential client and asked for a quote for the cost of an interpreter for the same job in the same place for the same language and same number of hours. I was quoted £190.00. Based on comments made on an interpreters' Face Book group (www.facebook.com/groups/PublicServiceInterpretersForum/) this level of mark-up is common.

²⁹ Mike Orlov, Executive Director, NRPSI Ltd, personal communication, 03/11//2020

the performance of the interpreter, this might be an indication to a mediator that the interpreter is not fully competent in the role.

2. iv.i Short consecutive interpreting

This is the default mode used by interpreters for the interpretation of dialogue. In the context of a mediation, this means that the interpreter will interpret each turn of speech of the mediator out of English and each turn of speech of one or more of the NLEP parties into English, switching language direction at each turn. They will interpret in the first person, reflecting the words used in the utterance of the mediator or NLEP, not re-framing these words into a report of what was said. They will try to reflect not only the propositional meanings of what is said by either mediator or NLEP but also the manner of speech, including intonation, attitude and register of language used. This will be a key part of capturing in the interpretation the illocutionary intent of the mediator's and the NLEP speaker's original utterances (see previous discussion). This will go as far as interpreting faithfully outbursts of anger and perhaps extreme language. It will not extend to mimicking body language or physical ticks.

The interpreter will not intervene in the interpreted interaction, except in clearly defined circumstances. They may intervene to ask for a repeat or clarification of something that was said, so that they can interpret it faithfully. They may intervene to point out a misunderstanding between mediator and NLEP speaker based on language and culture differences. Any intervention will be interpreted and/or clearly explained to all participants. Overall, the interpreter will seek to achieve '360° communication', where throughout the period of the interpreted interaction, everything that is vocalised will be interpreted and no party, English-speaker or NLEP speaker, will be excluded from the communicative exchange. Under no circumstances will the interpreter engage in private, uninterpreted exchanges with any party, NLEP speaker or mediator, in the context of the interpreted encounter.

The interpreter may also take brief notes - usually no more than words, initials, numbers or symbols - to help with accuracy of recall. The interpreter should make it clear at the start of the session that, in the interest of confidentiality, any notes they take during the mediation will not leave the mediation room.

Short consecutive interpreting of dialogue is the mode of interpreting that allows for the closest interpretation of the exact meanings and intentions of speakers in dialogue across a language barrier, including locutionary, illocutionary and perlocutionary features. It relies, however, on all participants taking clearly defined turns of speech. A professional interpreter will be able to unobtrusively coordinate turn-taking between speakers in dialogue but it would be helpful if, at the outset of the session, the mediator stresses the importance of turn-taking and allowing participants to finish their utterances.

2. iv.ii Whispered simultaneous interpreting

Not all communication takes the form of a dialogue and there may be parts of a mediation where only one party is speaking for an extended period of time. It may be a participant setting out their position to the mediator(s) and the other party or the mediator outlining the ground rules for the mediation. At these points, a professional interpreter can switch to whispered simultaneous (or

chuchotage) interpreting to provide a continuous interpretation without the need for pauses for interpretation. Professional interpreters will be able to use this mode of interpreting bi-directionally, into and out of both languages.

When using this mode of interpreting, the interpreter will move close to the person receiving the interpretation (typically close on one side and slightly behind), so as to speak close to the receiving party's ear, but without blocking their line of sight to the speaker. If they deploy this mode of interpreting, they should have discussed it with the mediator in advance and the NLEP party should also be warned that the interpreter might switch to this mode of interpreting.

Alternatively, two NLEP participants may start an interaction directly between themselves in the non-English language that the mediator would like to allow to continue uninterrupted (see Chapter Five, section 4.1). In this case, the interpreter can move close to the mediator and enable them to adopt a listening role, monitoring that exchange of dialogue between the NLEP parties and only intervening when they judge it to be necessary. I refer to this as 'eaves-dropping' interpreting.

A further possibility is that the interpreter will provide 'stand-by' interpreting. This mode is employed when a participant in an exchange predominantly uses English, but switches to the other language and speaks through the interpreter if they feel unable to express themselves adequately in English. In these cases, the interpreter will take a monitoring role, remaining silent until invited to provide an interpretation of an utterance by either the NLEP speaker or mediator.

Stand-by interpreting adds another dimension to the ways language difference can be managed by an interpreter in a mediation encounter. It does however require the mediator and interpreter to have agreed in advance on what to do if an NLEP speaker switches between languages. This will also need to be agreed with the NLEP party at the outset of the mediation session.

2. iv.iii Oral sight translation

Professional interpreters can also offer a range of additional language transfer skills in addition to the modes of oral interpreting set out above. One of these is the 'on-sight' translation of short pieces of written text either into or out of English.

It may be that a mediator has a short document that s/he would like to be read to the NLEP participant in their non-English language. Alternatively, the NLEP participant may produce a document that they want to have read to the mediator in English. In these situations, a professional interpreter will be able to deliver a spoken translation of the document 'on the spot', in either direction. Referred to as oral sight translation, this skill is suitable for relatively short documents (forms for completion, information leaflets, or extracts from longer documents). Longer and more complex documents will require translation at a later date.

An oral sight translation is assumed, by default, to be a full, sentence by sentence spoken translation of everything in the source document, not a summary. It may be, however, that a summary translation of the gist of the source text is wanted by the mediator or NLEP party. A professional interpreter can provide a gist summary of the main points of the document. Alternatively, the interpreter may be asked to undertake an information search in the document, reporting references in the text to a particular topic. Once again, the key is clarity in the instructions provided by the mediator. Professional interpreters have the skills to carry out these functions, but they rely on the

mediator to instruct them to do so.

2. iv.iv Written translation

Spoken language interpreting and written translation are sister disciplines, both sub-forms of the over-arching concept of Translation. They are, however, separate and for most purposes should be kept so. Not all translators committed to working with written text can or would wish to undertake spoken interpreting, and not all interpreters engage in professional written translation. PSI interpreters, however, do train and qualify in a particular branch of written translation, sometimes referred to as 'community translation' (Niska, 2002, 135; Taibi and Ozolins, 2016, 1-187) or as 'service translation' (Newmark, 1995, 62), (in so far as it involves translating both into and out of the language of habitual use). This means they can produce written translation both into and out of both languages of their combination of short public service related texts, e.g. public information leaflets, forms, certificates. Translation of anything longer or more specialised should be commissioned from a professional translator.

2. iv.v Professional qualities and attributes

Becoming a professional is more than just the acquisition of a set of technical skills and qualifications. It also represents an induction into a community of professional practice, with its own norms of behaviour and codes of conduct. Becoming a member of such a professional community of practice entails taking on the qualities and attributes of a professional in that field. This applies in PSI as in any profession.

In addition to the technical interpreting skills discussed above, a professional PSI interpreter should therefore exhibit the following attributes:

2. iv.vi Qualification and registration

Professional PSI interpreters can lay claim to being a professional by virtue of holding accredited qualifications in interpreting. In the UK, this would be a Diploma in Public Service Interpreting (DPSI)³⁰ or an equivalent level 6 qualification from a Further or Higher Education provider. First offered in 1994 by the Institute of Linguists Educational Trust (IoLET) (now CIOL Qualifications) the Diploma in Public service interpreting, with its five modules is an Ofqual accredited qualification at level 6 (first degree level in terms of language skills required). It is the benchmark PSI qualification for the UK and sets the standard that all subsequent attempts to design a level 6 PSI qualification have emulated. It tests and accredits all the skills described above.

Being a successful DPSI candidate allows interpreters to register on the National Register of Public Service Interpreters (NRPSI). The NRPSI is an independent voluntary (non-statutory) regulator of professional interpreters specialising in PSI and maintains a free-to-access online public register of professional, qualified and accountable PSI interpreters (NRPSI, 2019). Mediators should make the NRPSI their first point of call when looking for a suitably qualified professional interpreter (see also 2.4. below).

i. A commitment to accurate and faithful interpreting

³⁰ www.ciol.org.uk/qualifications

Professional PSI interpreters work within an ethical framework that holds that a client has the right to choose what they want to say, and to have that reflected faithfully in another language. Therefore, they will interpret everything they hear in the context of the interpreted encounter without omitting, adding to, or editing what they hear, irrespective of its tone or content. Professional interpreters will also demonstrate through their interaction with all participants in the mediation, including the mediator, that they occupy a neutral and non-aligned position. Thus, they will refrain from intervening in the mediation with offers of information or reactions of their own. They will also make it clear that everything that is voiced in the context of the mediation is subject to being interpreted, unless specifically excluded by the mediator, who then takes responsibility for that decision.

ii. A commitment to abide by a professional code of conduct

Professional interpreters, like other professional practitioners in other fields, often join a professional membership body, in order to enjoy the benefits that come from being part of a larger professional group. In the UK, this means membership of one of the lead professional bodies for language work (the Chartered Institute of Linguists (CIOL)³¹ and/or the Institute of Translation and Interpreting (ITI)³². This is in addition to their registration on the NRPSI (a regulator rather than a membership organisation). Membership means that an interpreter has agreed to practise according to a professional code of conduct, and to cooperate with disciplinary proceedings should a breach of that code be alleged. This provides for the end user of interpreting services an independent third party who can hear complaints in cases of alleged malpractice.

I suggest that all of the above are the features that mediators should look for in any interpreter they engage. As noted above, however, there is no legal requirement for any of these in order to practice as a PSI. They are voluntary and undertaken by the interpreter for their own professional development. In this lax regulatory environment, therefore, it falls entirely to end users (in this case, mediators) to ensure that the interpreter they engage can give a credible account of their interpreting skills, training and experience.

4. Refine procedures when working with intermediary agencies

It is here that I turn to the role of commercial agencies in the supply of interpreters. At this point, I should make my own position in this matter clear. As a practitioner I have watched a process of de-professionalisation of PSI take place over the last 8 years due to the policy of outsourcing the supply of interpreters to commercial agencies. The move to outsourcing has gone hand in hand with a drop in quality standards in PSI and an increase in the use of non- or minimally qualified bilinguals to undertake

³¹ www.ciol.org.uk

³² www.iti.org.uk.

interpreting tasks.³³ Rates of pay and terms and conditions for interpreters have also been reduced to levels lower than in 1997, when I started my career as a legal interpreter. Thus far, the experience of outsourcing for interpreters has mirrored that of many other public service industries where supply has been handed to the private sector.

I share with many of my professional colleagues a profound distrust of the commercial agencies, of their business practices and of their ethos. In my case, having been engaged in the first national outsourcing project in 2011 as then chair of the NRPSI, and as an advisor on the feasibility of the methodology proposed by the initial contractor for the MoJ, I have personal grounds for this distrust. As a researcher, however, I bear my position in mind in my discussion of agencies below.

The attractions of working with a commercial agency are reported to be two-fold. The first is that the agency deals with all aspects of the location, engagement and then payment of an interpreter. The mediator need, in theory, do no more than pick up the telephone, place a request, and then wait for the interpreter to arrive at the appointed date and time. On completion of the interpreting job, the interpreter will then disappear, and the mediator need have no further dealings with the matter, beyond paying the agency's invoice in due course. The second attraction of working through an agency is that the agency agrees to confirm an interpreter's qualifications and skills and their appropriateness for the interpreting task. In short, these two tasks are the basis of the agency's offer of service to a mediator, and it is for undertaking these that the mediator or mediation provider will be charged. The mediators in my sample all secured their interpreters through agencies, while those providing Legally Aided mediations are obliged to use the Ministry of Justice designated commercial intermediary, thebigword.

For a bulk user of interpreting services such as HM Courts and Tribunals Service (HMCTS) or the National Health Service (NHS), with many thousands of requests for interpreters to fulfil every year, outsourcing the back-office functions required to service this demand may represent a significant saving. For mediators, however, who according to the data collected by the UJ survey may only use interpreters on an infrequent basis, the convenience offered by this service comes at a high cost. It might also surprise mediators to discover that agencies source interpreters from publicly available registers of qualified interpreters that any mediator or office manager could access equally well themselves, free of charge. The NRPSI (www.nrpsi.co.uk), for example, maintains a free-to-access searchable national database of qualified interpreters where mediators can view an interpreter's language pair, qualifications, security clearances, location and contact details, including their distance from the point where they are required. The Chartered Institute of Linguists Find-a-Linguist website (www.ciol.org.uk) also offers a similar free, searchable database of qualified professionals, as does the Institute of Translation and Interpreting (www.iti.org.uk)³⁴. These organisations can also offer advice about acceptable terms and conditions for

3. ³³ See the Public Accounts Committee report on the Ministry of Justice's language service contract of 14th December 2012. Available at: <https://www.parliament.uk/business/committees/committees-a-z/commons-select/public-accounts-committee/news/moj-language-services-report/>. Accessed on 24th July, 2019. See also the Commons Select Committee report on interpreting and translation services and the Applied Language Solutions contract, 6th February 2013. Available at: <https://www.parliament.uk/business/committees/committees-a-z/commons-select/justice-committee/news/interpreters-and-als-report/>. Accessed on 24th July, 2019.

³⁴ In the UK, this means membership of the Chartered Institute of Linguists (CIOL) or the Institute of Translation and Interpreting (ITI) and registration on the National Register of Public Service Interpreters (NRPSI).

qualified professional interpreters. There is therefore no over-riding need for individual mediators or mediation providers to go through an agency to secure the services of a professional interpreter. I believe mediators should ask whether the service they receive is actually worth the premium that an agency charges.

Mediators should be also cautious about assuming that an interpreter supplied by an agency will be trained and qualified in interpreting to the level required for mediation. I have outlined in my DProf report the complexity of mediation for an interpreter. This underlines that mediation is not a setting for a beginner interpreter or untrained bilingual to test out their interpreting skills. Mediators should be aware, however, that many professional PSI interpreters will not work through agencies at all, as the terms and conditions they offer are so poor.³⁵ Agencies may, therefore, only be able to recruit less experienced or minimally qualified interpreters for mediation work who are willing to accept lower rates of pay and poorer terms and conditions.

It is important therefore that mediators are fully informed of the realities in the marketplace for interpreting and that, even if using an agency interpreter, they confirm the following with the agency and/or the interpreter in person:

- i. Has that interpreter interpreted in a mediation before? If not, what public domains has s/he interpreted in?
- ii. Does that interpreter hold any interpreting qualifications and if so, which?
- ii. Is that interpreter registered on the NRPSI? Are they a member of any professional language body (the CIOL, the ITI or the APCI)?³⁶

Mediators need to ask these questions about the background of the interpreters they are supplied with, in order to be able to make an informed decision about how or whether to proceed. They should also bear in mind that the answers to questions ii and iii will be displayed along with details of the interpreter's security clearances, availability, location and contact details on the NRPSI database.

5. On the day of the mediation

I now turn to some practical suggestions for the conduct of the interpreted mediation itself.

i. Speak through the interpreter, not to the interpreter

Working through an interpreter can sometimes lead English speakers and NLEP speakers to address themselves to the interpreter rather than directly to the other participant(s) in the encounter. Even if participants start off addressing themselves directly to the other party, over time they may slip into addressing themselves to the interpreter with the expectation that the interpreter will then report what they have said in the other language.

³⁵ Exact figures for the numbers of professional PSI interpreters who have left the profession or are currently inactive or under-employed since the advent of outsourcing at the MoJ are not available, but anecdotal evidence from professional interpreter groups about the number of non-professional interpreters being supplied to the HMCTS are an indicator. See for example the Professional Interpreters Alliance blog. Available at: <http://professionalinterpretersalliance.blogspot.com/>. Accessed 24th July, 2019.

³⁶ Association of Police and Court Interpreters.

It is very important throughout the interpreted mediation that mediators and NLEP participants address each other directly. Not doing so may lead to utterances being changed and to an overall reduction in the quality of the interpretation. Mediators should address themselves directly to the NLEP speaker, in this way modelling how the interaction should be. They should also encourage NLEP speakers to address themselves directly to the mediator, (unless the two participants in the mediation are starting to communicate directly in a way sanctioned by the mediator (see Chapter Five, section 4.1).

ii. Schedule in breaks

Interpreting is a demanding activity, requiring sustained concentration for extended periods. Although interpreters can work for many hours in a day, they do need short breaks to refresh and prepare to continue. Mediators and interpreters should agree in advance on short breaks, on their frequency and on a signal that a break in proceedings is required. Once again, the professionalism of the interpreter is a factor. A professional will know how often they would normally need a break to refresh and be able to arrange this with the mediator in advance. Mediators should also watch for signs of interpreter fatigue; if not addressed, the quality of the interpretation can begin to degrade.

iii. Don't leave the interpreter alone with the parties

Mediators should avoid leaving the interpreter alone with any of the other participants in the mediation. This can put an interpreter in a difficult position as it is likely that the other participants will seek to engage the interpreter in conversation. Professional interpreters know that they must avoid this sort of interaction, and being left with an NLEP speaker puts them in the position of having to politely rebuff that person's attempts to strike up a more personal connection. Others may enthusiastically engage with the other participants in the absence of the mediator, leading to their impartiality in the encounter being seriously compromised. Avoid either of these outcomes by ensuring that the interpreter is only with the participants in the presence of the mediator(s).

iv. Make time for a pre-session and post session briefing

It will be clear from the recommendations above that there is some work to be done with the interpreter before the mediation itself starts. This means that mediators need to make time, either in person or even by telephone, before the mediation proper, to ask questions about background and skills, agree on the conduct of the interpreting in the mediation and to put in place the foundations for a professional collaboration. On completion of a mediation session, mediators should hold a de-briefing session with the interpreter, however short. This is an opportunity for both mediator and interpreter to reflect on how the interpretation went and to settle any questions arising from the session. It also serves to cement a working relationship with an interpreter, should the mediator wish to use them again. There may also be paper work to complete; interpreters supplied by agencies usually have to get a job sheet signed off.

6. Concluding remarks

My research through the UJ project reported on in my RAL 8 claim and this DProf project suggests that mediation is at an early stage of its engagement with the multiple challenges of working with interpreters. Mediators appear to have limited insight into the modalities of interpreting and how it can be best exploited to support the mediation process when working with NLEP mediation clients. Interpreters, for their part, are not prepared for the unusual linguistic and inter-personal challenges that the mediation context presents.

The relative infrequency of mediations requiring an interpreter in the UK also means that interpreting in mediation has not attracted sufficient attention from mediation providers or researchers to the implications of growing language diversity. This may be part of a vicious circle, whereby the infrequency of interpreted mediations results in the phenomenon remaining unexamined, resulting in lower standards of interpreting. These lower standards of interpreting create a negative experience for NLEP mediation clients. This in turn reduces the attractiveness of mediation as a solution to civil disputes for NLEP linguistic communities. The predominantly white, middle class make-up of the mediation profession in itself may also retard the growth of understanding of the impact of language difference on mediation and how interpreters can best be used to address this.

The question is, therefore, whether the two professions of mediation and PSI can collaborate to improve the quality of interpreting in mediation as a means. My DProf project aspires to encourage this inter-professional collaboration by building mutual insight and disseminating knowledge of both professions to the other. It is hoped that in this way mediators can partner successfully with interpreters to address the challenges of increasing language diversity, and increase access to mediation for parties from all social, cultural and linguistic backgrounds.

Such an alternative view of the possibilities of using interpreter in mediation, and a more nuanced understanding of the underlying assumptions of the deontological codes for interpreters, might lead mediators to accept that some un-interpreted exchanges may be a necessary part of rapport building between interpreter and NLEP speaker. In this sense, the un-interpreted exchanges that the mediators experience as exclusion may in fact be instrumental in building a conducive atmosphere in the mediation, and are not necessarily a sign of loss of control. Similarly, the increased time required for a pre-and post-mediation briefing with the interpreter, and for the process of the mediation to complete, while a burden in terms of organisation, can also contribute to defusing conflict and requiring a more cooperative approach from parties.

Chapter Seven: Personal Learning and Professional Journey

As I reach the end of my seven-year journey from the beginning of the UJ project in 2014 to completion of my DProf project now in the summer of 2019, I am in a position to look back over what I have learned personally and professionally through this period. It has been a challenging time. Keeping up the motivation to continue over a relatively long period and combining research and study with a full-time job has demanded patience and endurance. On the other hand, my DProf journey has been intellectually stimulating. At its best, it has been exciting to still be learning and developing, at a personal and professional stage of life when one runs the risk of becoming jaded.

In this chapter, I reflect on my learning and professional development through my DProf journey, including the activities reported on in my RAL 8 claim. I structure this reflection in two sections. One looks back from the point of time at which I write to the start of my DProf programme. The other attempts to predict the possible life of my DProf project after its completion date.

1. Looking back

Looking back over the trajectory of my two part project (RAL 8 and DProf), I am struck first of all by the quality of the learning I have gained through undertaking a DProf. As I explained in my Methodology chapter with reference to the UJ project, at the outset of that piece of work, I was working with no real insight into the theoretical frameworks or methods of small-scale research. At that time, I viewed myself first and foremost as a practitioner and would-be agent of change in my professional field (chairmanship of the National Register of Public Service Interpreters over a crucial period of change for the wider profession, and vice-chairmanship of the Chartered Institute of Linguists). As such, I made what I now realise was a naïve distinction between ‘practicality’ and ‘theory’, believing that I should only legitimately be concerned with the former. The latter could be left to one side as not really relevant to the practicalities of the profession.

The experience of undertaking my research project, however, and of learning about the methods and the methodological concepts that underpin research has fundamentally changed my viewpoint. Rather than drawing an impermeable boundary between the practical business of a professional activity and the theoretical considerations of an academic researcher, I can see now how the two can interact to bring about new insights and understanding, and to create the potential for change. In this respect, I am glad I undertook a professional doctorate programme, rather than a PhD. The insider-researcher perspective and the possibility it offers to integrate practice, reflection and theory is a better fit for me as an individual, for my style of learning and my overall interests and concerns. As a practitioner, I have been able to draw on invaluable experience of interpreting, of the wider profession of PSI and the knowledge present in my professional networks to inform my research. On the other hand, reading and digesting information on theoretical positions, the ontology of a researcher and project, personal epistemologies and different philosophical frameworks has enabled me to revisit and re-examine my professional experience with a fresh insight. In this sense, my DProf has also been a retrospective re-evaluation of experience in the light of new information. Achieving this learning about research and the wider topic of the generation of new knowledge has been one of the most intellectually stimulating parts of the process.

Carrying out my DProf research has therefore brought about the potential for change, not only in my profession (see my notes on plans for further development below) but also for me as an individual. From using the opportunity for reflection and new learning that doing a DProf has offered, I have

become, I believe, less rigid in my outlook and more intellectually mature. These are outcomes of the process that I value greatly.

My research into interpreted mediation has also had an impact on my understanding of my own practice as an interpreter. Many of the aspects of my practice that I was intuitively aware of, I now have the tools and vocabulary to reflect upon and describe explicitly. This applies in particular to the underlying dynamics of an interpreted dialogic interaction and the relationship between content and context. The DProf process has also had an impact on my teaching and training activities. As a result of my learning through this process, I am now more confident in my ability to coach research skills and 'research-mindedness' in my own undergraduate and graduate students.

There are aspects of my DProf that, with the benefit of hindsight, I would do differently a second time. There are two features in particular that would improve the project. The first would be to use a larger quantitative data set than that provided by the UJ project. With a larger data collection from UK mediators and mediation providers, the qualitative data from the research interviews could be better triangulated. This would have involved the design and distribution of a second survey to all registered UK mediators and mediation providers.

The second missing piece of my research, however, is the perspective of the NLEP mediation client. In common with much research into PSI that I have read, the voice of the NLEP end-user (as opposed to the professional end-user or interpreter) is missing from my DProf data collection. It is quite possible that it will always remain so; locating and engaging NLEP mediation clients who had had an interpreter present presents significant challenges. If successful, however, it would close the circle of data collection about the interpreted mediation by including the perspective of the mediation client.

2. Looking forward

There is always the possibility, once a piece of research is completed, that the knowledge generated will remain unnoticed and that impact outside of the academic environment will be limited. I fear this has been the fate of the UJ project, to a degree. Dissemination of that project was not as widespread as I would have hoped. This was to some degree due to the vagaries of European funding, which does not supply ongoing funding for the maintenance of the project after the project completion. The project contains, however, a body of valuable work, and I hope to be able to extend it further in the future, in particular with development of the online self-assessment tool for interpreters. This represented an exciting departure in incorporating self-assessment methodologies into interpreting and I would like to return to it again. My experience from the UJ project, however, it is something I want to avoid with my DProf project. I would like to use this research to highlight the significance of interpreting in mediation as a method of extending mediation more widely into other language communities. In this respect, I have already been invited to contribute an article on my research to National Family Mediation, and a chapter on interpreting in mediation is awaiting publication in the journal of Comparative Dispute Resolution. A second impact of my research could be in the field of Continuous Professional Development. I would like to use the work completed in my DProf to develop inter-professional training and development for mediators and interpreters on working in mediation. I have undertaken training work of this type for the Advocacy Training College and for the Judicial Studies College, in addition to providing training for a range of local government bodies and for the National Probation Service (as was). From these experiences I have seen the significant impact that a relatively small amount of training can have when well designed and delivered.

Completing my DProf also has implications for my professional future. A large part of my motivation for starting my DProf journey was for my own professional development in my post at Middlesex University. Having a Professional Doctorate was to be an element of my progression in academia. Since then, the University has decided to close the entire interpreting and translation programme area and progression in academia seems unlikely, at least at my current institution. In this respect, my DProf project has been overtaken by events. However, as I consider my next steps, I believe that having a professional doctorate will be valuable for my 'face-value' as an expert and consultant in my field. Although faced with an uncertain future, I am still pleased to have completed level 8 work of this type.

In my Conclusions and Recommendations chapter, I stated my belief that both interpreting and mediation, in different ways, contribute to the overall public good (see chapter six, p.84). PSI has an important role to play in extending access for NLEP speakers to public services and constructive engagement with the wider society. In the judicial sector, good quality interpreting is a key factor in ensuring basic human rights and the availability of interpretation can also be an important first step in the process of integration and establishment in the host country for new arrivals. Mediation, for its part, offers a constructive and accessible route to civil dispute resolution, with better outcomes both for disputants and the wider circle affected by dispute. Both professions therefore have contributions to make to the life of civil society.

Finding a way for mediators and interpreters to collaborate more effectively could help to increase the accessibility of mediation for NLEP speakers. This would also help to break down the perception noted by one of my mediator interviewees that mediation is a predominantly white, middle class concern. I hope that, despite its limitations, my research in my DProf into how the two professions can collaborate will make a contribution to making this happen.

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Appendix One

Fig 1. Final report all countries

Q1. Which country do you practice mediation in?		
1(a) : Which country do you practice mediation in?: Country		
Answer	Responses	%
Belgium	16	10.32%
Italy	16	10.32%
Netherlands	9	5.81%
Poland	35	22.58%
Spain	17	10.97%
United Kingdom	61	39.35%
Total Responses	154	

Q14. Do you carry out mediations involving more than one language?		
Responses	Responses	%
Yes	84	52.50%
No	71	44.38%
(Did not answer)	5	3.13%
Total Responses	160	

Q15. Please indicate the frequency of mediations involving more than one language		
Responses	Responses	%
daily	1	0.63%
weekly	4	2.50%
monthly	9	5.63%
less often	71	44.38%
(Did not answer)	75	46.88%
Total Responses	160	

Q16. Which types of mediation most often involve more than one language?		
Responses	Responses	%
voluntary	70	43.75%
court-ordered	13	8.13%
(Did not answer)	77	48.13%
Total Responses	160	

Q17. Please indicate the number of mediations per annum for each type involving more than one language:	
Responses	Average
voluntary	7.64
court-ordered (mandatory)	2.07
Did Not Answer	79
Total Responses	160

Q18. In which types of dispute is more than one language most often used?		
Responses	Responses	%
Family (e.g. divorce, custody of children, child abduction)	48	30.00%
Non-family civil (e.g. neighbour disputes, torts, personal injury)	21	13.13%
Commercial (e.g. business and commercial contracts, banking, insurance)	31	19.38%
Employment and labour (e.g. employer-employee)	5	3.13%
Administrative (e.g. public policy, , environmental policy)	3	1.88%
Other (Please specify)	8	5.00%
(Did not answer)	76	47.50%
Total Responses	192	
Multiple answers per participant possible. Percentages added may exceed 100 since a participant may select more than one answer for this question.		

Q19. Please indicate the number of cases for each type per annum:	
Responses	Average
Family	8.94
Non-family civil	5.35
Commercial	15.3
Employment and labour	1.73
Administrative	0.29
Other	2.74
Did Not Answer	80
Total Responses	160

Q20. Which of the approaches shown below do you use when you and one or more of the parties do not share a common language?		
Responses	Responses	%

a bilingual co- mediator is used	13	8.13%
an interpreter is used	38	23.75%
either a bilingual mediator or an interpreter, depending on circumstances	16	10.00%
Other (Please specify)	16	10.00%
(Did not answer)	77	48.13%
Total Responses	160	

Q21. Do you offer bilingual mediation, where you both mediate and interpret as required?		
Responses	Responses	%
Yes	31	19.38%
No	16	10.00%
(Did not answer)	113	70.63%
Total Responses	160	

Q22. Do you have formal language qualifications in your second or third languages?		
Responses	Responses	%
Yes	20	12.50%
No	28	17.50%
(Did not answer)	112	70.00%
Total Responses	160	

Q23. If yes, what level of qualifications? Please tick all that apply:		
Responses	Responses	%
equivalent to CEFR A1/A2	1	0.63%
equivalent to CEFR B1/B2	5	3.13%
equivalent to CEFR C1/C2	15	9.38%
(Did not answer)	140	87.50%
Total Responses	161	
Multiple answers per participant possible. Percentages added may exceed 100 since a participant may select more than one answer for this question.		

Q24. Do you mediate using an interpreter in mediations involving more than one language?		
Responses	Responses	%
yes	49	30.63%
no	36	22.50%
(Did not answer)	75	46.88%
Total Responses	160	

Q25. If yes, in how many cases?	
Responses	Average
Per annum	7.58
Did Not Answer	115

Total Responses	160
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Q26. Are interpreters required to have completed formal training in interpreting?		
Responses	Responses	%
Yes	30	18.75%
No	17	10.63%
(Did not answer)	113	70.63%
Total Responses	160	

Q27. What minimum level of qualification is required? Please tick all that apply:		
Responses	Responses	%
Basic/introductory	9	5.63%
Undergraduate (BA degree or equivalent)	14	8.75%
Postgraduate (MA or equivalent)	11	6.88%
(Did not answer)	131	81.88%
Total Responses	165	
Multiple answers per participant possible. Percentages added may exceed 100 since a participant may select more than one answer for this question.		

Q28. Are interpreters required to have completed formal training in mediation?		
Responses	Responses	%
Yes	4	2.50%
No	44	27.50%
(Did not answer)	112	70.00%
Total Responses	160	

Q29. What minimum level of qualification is required? Please tick all that apply:		
Responses	Responses	%
Undergraduate (BA degree or equivalent)	2	1.25%
Postgraduate (MA or equivalent)	2	1.25%
Professional or in-service qualification	1	0.63%
(Did not answer)	156	97.50%
Total Responses	161	
Multiple answers per participant possible. Percentages added may exceed 100 since a participant may select more than one answer for this question.		

Q30. If you use interpreters in court-ordered mediation cases, from where are they selected?		
Responses	Responses	%
list of freelancers held by the court	7	4.38%
list of freelancers held by the mediation organisation	7	4.38%

list of freelancers held by an external translation agency	5	3.13%
Other (Please specify)	12	7.50%
(Did not answer)	132	82.50%
Total Responses	163	
Multiple answers per participant possible. Percentages added may exceed 100 since a participant may select more than one answer for this question.		

Q31. If you use interpreters in voluntary mediation cases, from where are they selected?		
Responses	Responses	%
list of freelancers held by the court	2	1.25%
list of freelancers held by the mediation organisation	19	11.88%
list of freelancers held by an external translation agency	13	8.13%
Other (Please specify)	15	9.38%
(Did not answer)	116	72.50%
Total Responses	165	
Multiple answers per participant possible. Percentages added may exceed 100 since a participant may select more than one answer for this question.		

Q34. Do you hold a briefing session held with the interpreter before the first mediation session?		
Responses	Responses	%
yes	37	23.13%
no	12	7.50%
(Did not answer)	111	69.38%
Total Responses	160	

Q35. If yes, who participates?		
Responses	Responses	%
the interpreter and the mediator	28	17.50%
the interpreter, the mediator and both parties	4	2.50%
the interpreter, the mediator and the Other Language speaking party	5	3.13%
Other (Please specify)	0	0%
(Did not answer)	123	76.88%
Total Responses	160	

Q36. Do you provide interpreters with best practice guidelines?		
Responses	Responses	%
yes	23	14.38%
no	24	15.00%

(Did not answer)	113	70.63%
Total Responses	160	

Q37. Do you instruct the interpreter on how they should interpret in a mediation session?		
Responses	Responses	%
yes	37	23.13%
no	12	7.50%
(Did not answer)	111	69.38%
Total Responses	160	




Q38. If 'yes', which mode of interpreting do you prefer? Please tick all that apply:		
Responses	Responses	%
the interpreter listens and takes notes until one party has finished speaking and then interprets (consecutive with notes)	13	8.13%
the interpreter listens until one party has finished speaking and then interprets, but does not take notes (consecutive without notes)	24	15.00%
the interpreter whispers a simultaneous interpretation to one party as the other party is speaking (simultaneous)	10	6.25%
(Did not answer)	123	76.88%
Total Responses	170	
Multiple answers per participant possible. Percentages added may exceed 100 since a participant may select more than one answer for this question.		




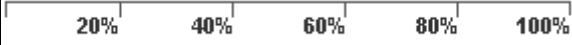
Q39. Do you hold a de-briefing session with the interpreter at the end of an interpreted mediation session?		
Responses	Responses	%
yes	28	17.50%
no	19	11.88%
I don't know	2	1.25%
(Did not answer)	111	69.38%
Total Responses	160	

Q42. Would you be prepared to be interviewed about your experience of mediations involving more than one language?		
Responses	Responses	%
yes	64	40.00%
no	21	13.13%
(Did not answer)	75	46.88%
Total Responses	160	

This online questionnaire (above) provided us with data about the frequency with which mediators were confronted with language difference in their practice and about their procedures when dealing with that language difference. The programme used for the data collection³⁷ also allowed for the extraction of different types of reports based on selected questions. These functions were particularly valuable for project partners when preparing country reports on the conditions pertaining in a particular member state. The option to extract data reports on specific sections of the overall data also proved useful for my DProf research, as it allowed me to focus exclusively on the data for the UK. I include a sample of such an extracted report for UK mediation providers in fig.2 below:




Fig 2: Filtered report for UK only




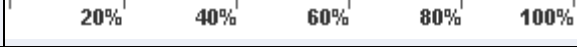
Q16. Do you carry out mediations involving more than one language?			
Responses	Responses	%	Percentage of total respondents
Yes	5	55.56%	
No	4	44.44%	
(Did not answer)	0	0%	
Total Responses	9		

Q22. Which of the approaches shown below are used by your organisation when the mediator and one or more of the parties do not share a common language?			
Responses	Responses	%	Percentage of total respondents
a bilingual mediator is used	0	0%	
an interpreter is used	4	44.44%	
two mediators are used, one of whom is bilingual	0	0%	
any of the above, depending on circumstances.	1	11.11%	
Other (Please specify)	0	0%	
(Did not answer)	4	44.44%	
Total Responses	9		

Q23. Does your organisation use bilingual mediators in mediations involving more than one language?			
Responses	Responses	%	Percentage of total respondents

³⁷ SoGo survey. (www.sogosurvey.com)

Yes	1	11.11%	
No	0	0%	
(Did not answer)	8	88.89%	
Total Responses	9		

Q28. Does your organisation use interpreters in mediations involving more than one language?			
Responses	Responses	%	Percentage of total respondents
yes	4	44.44%	
no	1	11.11%	
(Did not answer)	4	44.44%	
Total Responses	9		

Appendix 2

RAL 8 Claim

Brooke Townsley



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1. Introduction to the Review of Previous Learning at Level 8 Claim

This claim for credit at Review of Previous Learning at Level 8 is for advanced developments in the field of legal interpreting training and practice through my work as the initiator and coordinator of three EU-funded projects, the *Building Mutual Trust* projects I and II and the *Understanding Justice* project³⁸, between 2007 and 2016, and my contribution as project partner to the *Qualitas* project (2014). In this claim I will outline how these projects demonstrate that I have been working at the leading edge of professional practice in my field, Legal Interpreting and Translation, and that I have been an agent of change within my profession. I will also show how the recent *Understanding Justice* project is a catalyst for development of knowledge, by examining a so far un-problematised area in Mediation, the impact of interpreting on Mediation. This will form the basis of my subsequent DProf project.

2. Background to the Review of Previous Learning at Level 8 claim: interpreting in legal settings

Before introducing the projects, I would like to outline for the reader the field of Legal Interpreting and Translation (LIT) in which both my Review of Previous Learning at Level 8 claim and my DProf project are situated and also my position within it.

2.1 My position as insider-researcher (Costley, 2010)

I have been a qualified practitioner of legal interpreting and translation since 1997, when I achieved my professional qualification (the Chartered Institute of Linguists Diploma in Legal Interpreting), and was accepted on to the National Register of Public Service Interpreters³⁹. After three years of full-time practice as an interpreter in the criminal and Civil Justice systems of the UK, I joined Middlesex University in 2000. Since then, I have combined professional and academic practice. In this way, I occupy the position of an 'insider-researcher' (Costley *ibid*). This position affords me the dual perspective on legal interpreting of both practitioner and researcher.

I now turn to the professional context of my claim.

2.2 The Legal Interpreting and Translation context of my Review of Previous Learning at Level 8 claim

The requirement for a defendant facing trial or other judicial proceedings in a language not his own to be provided with interpretation of oral proceedings and translation of key documents is explicit in

³⁸ The project was a multi-party, trans-national project with participants from the UK, Belgium, Holland, Poland, Italy, Spain and Romania.

³⁹ I went on to Chair the National Register of Public Service Interpreters between 2006 and 2011 and was instrumental in its re-establishment as an independent non-statutory regulator for public service interpreting, the position it currently occupies.

a range of EU and International treaties. These range from broad guarantees in the Universal Declaration of Human Rights (1948: arts 10 & 11), the European Convention on Human Rights (1950: arts. 5.2, 6.3a), and the International Covenant on Civil and Political Rights (1966. art. 14.f) to the more recent EU Directive on the Rights to Interpretation and to Translation in Criminal Proceedings⁴⁰. It was not until the 1997 Treaty of Amsterdam⁴¹ called for the creation of an EU common area of freedom, security and justice (the Amsterdam Treaty, art. 1.5) however, that consideration of how these rights might be implemented in practice was started with projects funded through the *Grotius* and *Agis* funding streams. Projects supported by these funding streams set out to explore the legal foundations for legal interpreting and translation and to develop recommendations on the effective deployment of legal interpreters and translators in EU Criminal Justice proceedings and suggestions for training. (Hertog et al, 1998, 2001, 2003, 2006)⁴².

3 Building Mutual Trust i (2007-10)

I designed and launched the Building Mutual Trust project as part of this trajectory of development in 2007. The project was informed by an earlier call in the 2003 Green Paper on Procedural Safeguards for Suspects and Defendants in Criminal Proceedings⁴³ that noted:

‘the Commission considers that in order to comply with the requirements of the ECHR and numerous other international instruments, all Member States should ensure that training, accreditation and registration of legal translators and interpreters is provided’

My examination of the principles and guidelines for the professionalisation of LIT through training and accreditation and the setting of minimum benchmark standards for the same, first set out *Aequitas* (Hertog, et al. 1998), with further development in *Aequalitas* (Hertog, et al. 2001), and *Aequilibrium* (Keijzer-Lambooy & Gasille, 2003) showed a clear road-map for the establishment of common standards for LIT practitioners and training programmes in the European common area. Following discussion with the *Aequitas* and *Aequalitas* project partners, within my community of practice and from my evaluation of the corpus of work I concluded that the existing body of work, although seminal in its analysis, required further work on the means of practical application. My thinking at this point is encapsulated in the distinction drawn in the 2003 Green Paper (*op cit*) between ‘theoretical and illusory’ rights and ‘practical and effective’ rights, and the paper’s emphasis on the importance of developing practical tools to enhance the visibility and operation of standards at EU level (Green paper, *op cit*: 9). Applied to Legal Interpreting, I believed that the developmental journey started in *Aequitas* in 1998 (Hertog et al *op cit*) needed to move on to the ‘practical and effective’ implementation phase alluded to above.

⁴⁰ Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings [2010] OJ L 280/1)

⁴¹ Treaty of Amsterdam Amending the Treaty on European Union, the Treaties Establishing the European Communities and Certain Related Acts [1997] (OJ 97/C 340/01)

⁴² *Aequitas* (1998), *Aequalitas* (2001), *Aequilibrium* (2003), *Status Quaestionis* (2006)

⁴³ Green Paper from the Commission - Procedural Safeguards for Suspects and Defendants in Criminal Proceedings throughout the European Union/* COM/2003/0075 final *//29

To reach this objective, I designed and guided to completion the three-year Building Mutual Trust project, disseminated via the Building Mutual Trust open access website (www.buildingmutualtrust.eu) and the hard-copy publication (see supporting evidence). Working together over a three-year period with a total budget of 330,456 eu, the 14-person project group, comprising partners from Belgium, Denmark, Italy, Romania, Spain and the UK, carried out the following actions:

- i. elucidated the benchmark generic and LIT-specific competencies required for LITs (Hertog 2010)
- ii. produced a set of template training modules linked to these competencies (Giambruno, 2010)
- iii. provided practical guidelines on LIT trainee selection and selection tools (Giambruno 2010)
- iv. offered guidance on the assessment of core competencies for LIT (Maxwell-Hyslop 2010)
- v. provided a large resources bank of template training materials for use in LIT training (Martinsen and Wølch Rasmussen 2010)
- vi. Discussed the application of Computer Assisted Interpreter Training (CAIT) for LITs (Sandrelli 2010) while providing practical guidance on resources and technology
- vii. Examined the provision of 'Training of Trainers' for LIT, including training course templates (Townesley 2010)
- viii. Provided guidance for judicial users of LITs (judges, police officers etc) on how to work effectively with a language interpreter (Corsellis, Clement and Vanden Bosch 2010)

I ensured that the theoretical insight and policy-formulation experience of the project team brought was harnessed to the production of pragmatic outcomes, with the potential for real impact on the development of the LIT training and standards in the EU. This involved working collaboratively with the expert project group, where existing paradigms of LIT training and practice were examined, evaluated and modified. I was also able to bring the perspective of an LIT practitioner to the management of perspectives and backgrounds represented on the project team. This helped throughout to ensure a continued focus in the project on operationalisation and pragmatic outputs.

The resulting project has been described as 'an extensive and practical treasure-trove of teaching and training materials which could serve as templates for similar materials in different languages'. (Hertog, 2015, 23). The project is also cited on the EULITA website, a central resource for LIT-related material and policy in the EU.⁴⁴ I attach with this claim a copy of the final project publication for reference.

4 Building Mutual Trust ii (2011-13)

The second project I cite in my Review of Previous Learning at Level 8 is the Building Mutual Trust ii project (2011-2013). This project is also concerned with training and development but, in this case, focusses on the judicial end-users of interpreters.

An often heard complaint among legal interpreters is the need for the individual legal interpreting practitioner to 'educate' judicial end users on how best to work through an interpreter. Despite the

⁴⁴ www.eulita.eu/LIT materials/EU projects

common incidence of cases at both investigative (police) and judicial (court) level where suspects, witnesses or defendants do not speak the language of the service or proceedings and an interpreter is required, understanding on the part of the service professionals on how best to work with an interpreter is often lacking or is not consistent across a national territory; whereas the metropolitan police or court staff may have training and experience in working through interpreters, outside the metropolis they may not. The need for increased awareness among judicial staff of how to work through an interpreter is also indicated in article 6 of the 2010 Directive (*op cit*)

‘request those responsible for the training of judges, prosecutors and judicial staff involved in criminal proceedings to pay special attention to the particularities of communicating with the assistance of an interpreter so as to ensure efficient and effective communication’⁴⁵.

Before completion of the *Building Mutual Trust i* project in 2010, I decided that, following the work in that project on training and development programmes for legal interpreters, a similar effort was required to address the training and development needs of judicial staff on working through interpreters.

In the BMT (II), I drew together a small advisory group and engaged an educational materials and video production specialist with whom I worked to film five streaming video films designed for the users of interpreters to illustrate different types of interpreting in different settings: in a business meeting setting, in a police interview with a suspect, in an open court hearing and via a video-link. Each film contains embedded learning points and links to learning activities and background materials, and allows a viewer to enter and leave specific areas of interest without having to view the entire sequence, as in a traditional linear format. This choice of format was informed by the principle that materials need to be accessible and user-friendly, in order to maximise their usage by judicial staff. My experience of interpreting in legal settings and of police and judicial personnel gave me a clear sense how material should be presented in a form that would optimise use by the intended audience. This was supplemented by the engagement of a serving senior detective with experience of working with interpreters in the project steering group, which also comprised legal and education and training specialists. These multiple inputs informed both the writing of scenarios and the production of the video films.

In each case, I wrote the video scripts for each with technical advice provided by the steering group. The actual filming was then carried out by the project technical specialist with me on set as an advisor.

In fig.2 below I include some sample screen shots from the video films to illustrate the format adopted. In each case, the range of embedded information, including summary of scenario, characters, and the learning focus of the film, and before and after activities can also be seen.

Figure 1

⁴⁵ (Article 6, Directive 2010/64/EU of the European Parliament and Council on the right to interpretation and translation in criminal proceedings, 2010:6)

Video 1

Summary Who's who Focus Before watching After watching

Two lawyers, **Tom** and **Robert**, meet in Robert's office. They discuss a forthcoming meeting of the 'Trial Issues Group' before being joined by **Inspector García** from the International Crime Unit. All three are working on the **Illiescu (Bo)** case. This meeting is conducted through an interpreter.

Chapter two: Meet Inspector García



Subtitles: EN - ES - RO - PO

Problems loading the video? Try the Flash version instead.

Interpreter's introduction

The interpreter makes a formal introduction of his role as an interpreter. This ensures that all participants in the meeting start on an equal (communicative) footing. It helps participants be clear about what the interpreter will do and how s/he will do it.

As an alternative, you may decide to meet the interpreter in advance and discuss the delivery of the interpretation. In this case, you might make an introduction of the interpreter's role yourself. The interpreter can then interpret this as part of the meeting.

Whichever option you choose, please ensure that a statement of the interpreter's role and their working practice is made; it will have a significant effect on the progress of the interpreted encounter.

► Click on the Play button on the video to continue

Additional Information

A clear interpreter's introduction is also an indicator that you have engaged professional, trained interpreter. What does the term 'registered' mean to you?

What is the difference between full registration and simply appearing on a list?

Building Mutual Trust Project Website - Video clip 3

www.buildingmutualtrust.eu/video-clips/video-clip-3

My Freecycle Network Patient Acce...atient login Home Building Mu...site - Home Interpreting...lation group QUALITAS | A...ertification MEDS European e-Justice Portal National Rai...timetables

Video 3

Summary Who's Who Focus Before watching After watching


This clip focuses on the role of the interpreter and the use of short consecutive interpreting in the interview. After her arrival at the Police Station the interpreter is briefed about the assignment. During the interview between **Inspector Gómez** and **Maria** various aspects of the interpreter's professional practice are highlighted, including interpreter interventions, responses to a direct request, dealing with self-corrections and hesitations and para-linguistic features of speech.

Chapter five: Finding an interpreter

A video player showing a close-up of a woman with dark hair tied back, wearing glasses and a blue top. She is looking down at a document or a screen. The video player interface shows a progress bar at 03:54 out of 19:59, a play button, and a volume icon.

Video 5

Please note Summary Who's Who Focus Before watching After watching




Alberto Garcia
Police Inspector

Rosa Valenti
Interpreters central

Monika Swatonowska
Interpreter

Bo
A Polish delinquent

Chapter eight: Video-mediated interpreting



05:37 -04:08

Subtitles: DN - PG - PG

Problems loading the video? Try the Flash version instead.

Ensuring communication

Can everyone see and hear?

Inspector Garcia makes sure that the interpreter and Bo can both see and hear each other and that the video-link is working. When using a video-link for an interpreted interview, you will need extra time to make these checks and to rectify any problems. Allow for this time in your planning.

► Click on the Play button on the video to continue

The project is an example of how I have developed new approaches to a familiar practice challenge (educating the end user) by bringing professional experience and academic insight to bear on the development of a practical outcome. The format of using web-streaming videos with embedded learning points has also been generative of further work in training of legal professionals. It was revisited in the Advocacy Training Project on Interpreting for which I was a consultant⁴⁶ and the materials are in use at interpreter training programmes (see Appendix 1: iii).

5 Qualitas (2012-14)

In the third piece of work I cite in my Review of Previous Learning at Level 8 claim, the Qualitas project, working collaboratively as part of a project team, I participated in the production of guidelines for the design of testing and certification procedures for Legal Interpreters in EU member states. The project was a response to article 2.8 and 5.1 of the 2010 Directive⁴⁷ stipulating that interpreting and translation provided in criminal proceedings should be of a sufficient quality to ensure the fairness of the proceedings (*ibid* art 2.8 & 3.9) and calling for the establishment of national registers of suitably qualified practitioners (*ibid*, art. 5.2).

Certification of legal interpreters is a central pillar of the creation of a stable and reliable judicial interpreting provision. Without reliable certification, judicial end-users of interpreters have no

⁴⁶ <http://www.advocacytrainingcouncil.org/interpreters>

⁴⁷ Council Directive 2010/64/EU on the right to translation and interpretation in criminal proceedings [2010] OJ L 280/1

benchmark to indicate what level of competence they can expect an interpreter to have, nor how to select interpreters for specific tasks. Certification brings with it the possibility of professional accountability via registration on a central register of qualified practitioners. Appearance on such a register gives some guarantee of minimum competency and allows for the implementation of a code of conduct and linked disciplinary procedures in the event that a complaint of professional malpractice is made. Certification, however, requires stable and reliable assessment procedures. The *Qualitas* project was designed to provide accessible guidelines and template materials for use in EU member states perhaps at an early stage of development of their LIT testing and accreditation arrangements, in response to the requirements of the 2010 Directive.

In the *Qualitas* project report I collaborated with other project members to co-author an introductory guide to the principles of testing (Van Deemter, Maxwell-Hyslop and Townsley, *Qualitas*: 27-41) and a guide to the use of information technology in interpreter testing (Braun, Sandrelli and Townsley, *Qualitas*: 109-141). In both of these chapters I drew on my experience of designing a large scale (approx. 2,000 candidates) Legal Interpreter competence assessment programme using online technologies⁴⁸ in connection with the Ministry of Justice 2011 Framework Agreement for Interpreting and Translation Services in the UK⁴⁹. The experience I gained in its design and delivery was central to my contribution to the *Qualitas* project, to which I also contributed the Country Profile for the United Kingdom (*Qualitas*: 176-178).

6 Understanding Justice (2014-16)

I now turn to the Understanding Justice project (2014-16), the fourth project in my claim and the basis for my proposed DProf project. Here I shifted my focus to the role of interpreting in Civil Justice proceedings.

6.1 Background to Understanding Justice

The Building Mutual Trust and *Qualitas* projects were focused on interpreting in Criminal Justice proceedings. This emphasis was conditioned in part by the emphasis in the legislative mandates cited above on suspects and defendants' rights rather than parties to a civil dispute. The creation of a common area of justice and security called for in the Amsterdam Treaty of 1997⁵⁰, however, includes, civil legal proceedings just as much as criminal. So far, however, there has been no research into the phenomenon of interpreting in Civil Justice proceedings similar to that undertaken for Criminal Justice.

6.2 The Project

My approach to the Understanding Justice project was built upon the following four proposals; these provide a contextual frame in which the project can be placed and each represents a work stream within the project itself.

⁴⁸ design of testing software including streaming video and interactive testing activities

⁴⁹ <https://data.gov.uk/data/contracts-finder-archive/contract/264052/>

⁵⁰ Treaty of Amsterdam (1997) European Union: Council of the European Union, *Treaty of Amsterdam Amending the Treaty on European Union, The Treaties Establishing the European Communities and Related Acts*, 10 November 1997

- i. While a significant corpus of work on the training, accreditation and supply of interpreters for work in Criminal Justice has been undertaken, largely funded by the European Commission, comparable work examining interpreting in Civil Justice has not yet taken place. In order to avoid unnecessary duplication, work completed on interpreting in Criminal Justice proceedings should be evaluated in order to identify where existing work on interpreting can be applied directly in Civil Justice proceedings, where adaptation is required, or whether entirely new approaches need to be adopted. By carrying out this evaluation, the work done in successive EU funded projects on interpreting in Criminal Justice s can be harnessed to achieve a significant and rapid impact on the provision of interpreting in Civil Justice.
- ii. There is a body of EU legislation concerning the right to interpreting and translation in Criminal Justice proceedings. It is less clear, however, how legislation in the EU *acquis* applies to interpreting and translation in Civil Justice proceedings. An analytical overview of the legal foundations for the provision of interpreting and translation in civil proceedings in the EU is required to provide a sound foundation for the development of legal interpreting in this domain.
- iii. Mediation as alternative to more traditional, judge-led forms of civil dispute resolution is a growing area of interest and activity in the EU, and the use of Mediation in family law and commercial proceedings is widespread. With the growth of cross-border civil litigation and migration into and out of the EU, cross-border mediations comprising differing languages are also predicted to increase, thus increasing the requirement for interpreting and translating support. Interpreting in Mediation, however, has very different linguistic and ethnographic dimensions to interpreting in Criminal Justice or court-based Civil Justice cases, to which the interpreter must adapt. Interpreters who are experienced in Criminal Justice will need to consider how to adapt their professional skills and praxis to the Mediation setting. Research into how this setting impacts on the practice of the interpreter and how the use of an interpreter impacts on the dynamics of a mediation encounter is required, so that guidelines on the use of interpreters by mediators can be written and the (re)-training needs of legal interpreters for this domain addressed.
- iv. Professional development guidelines for Criminal Justice interpreters intending to practice in Civil Justice and Mediation are also required. These should set out a timely and manageable procedure whereby practitioners can 're-skill' where necessary for work in these domains. The necessary first stage of the development of these guidelines is to identify the professional development requirements for interpreters to re-skill for work in Civil Justice and Mediation. This can be achieved via self-assessment methodologies developed for the use of individual professionals, who can then use the insight into their own practice gained to identify their CPD needs.

Based on these premises, I designed a project consisting of four discreet work streams (see sections i to iv above) and drew together a 14-person project team representing seven EU member states (Belgium, Holland, Italy, Poland, Romania, Spain and the UK). I assigned 'leadership' of each work stream to a designated specialist from this group with particular expertise in each area, reporting back to me as project coordinator. This allowed me to allocate specific expertise and the support available from other project members to each work stream, and to maintain an overview of the project as a whole, in order to maximise synergies between the different work streams as they developed.

The Understanding Justice project finished on 30th March 2016, following the final project activity, the one-day 'Mediation and Interpreting' symposium, held at the Chartered Institute of Arbitrators in London. The symposium drew together the 14 project members, professional interpreters, mediators and academics with an interest in Alternative Dispute Resolution and created an opportunity for dynamic cross-disciplinary exchange on the role of interpreting in Mediation. An early outcome of the symposium is the call for the creation of a working group on language difference in Mediation, for which I am developing a proposal. The exchanges in the symposium also illustrated the type of practice questions regarding the use of interpreters in mediation sessions on which I will base my DProf project.

Throughout this project, we have broken new ground in the examination of legal interpreting in Civil Justice settings, and in the Mediation work stream, I am working at the leading edge of professional practice in my field of legal interpreting. The impact of interpreting on Mediation procedures has never been examined or even problematized before, and the work is generating interest both among interpreters and the wider Mediation profession. To this end, I presented on the work of the project on interpreting in Mediation at the SOAS 'Translation for dialogue among cultures' symposium on 3rd October 2015 (see appendix 1: iii) and I will present on the same theme at the Critical Link 8 conference at Heriot Watt University in June 2016 (see appendix 1: v). I have also received an expression of interest in an article on the project findings from the Family Mediation Council (see appendix 1: vi).

7 Mediation and Interpreting

The Mediation work stream in the Understanding Justice project is a first step towards problematizing and understanding the phenomenon of language difference and the use of interpreters in Mediation.

Mediation proceedings present the interpreter with a different linguistic and interactional landscape to Criminal Justice proceedings. Whereas the former are based upon adversarial encounters, where language is used as an instrument to investigate, test and challenge the truth claims presented by prosecutors, defence advocates and witnesses, language in Mediation is used to facilitate consensual agreements arrived at by the disputing parties with the help of an external mediator. Confrontation based on argument about truth value is discouraged in favour of exploration of areas of common ground and consensus building, and any conclusions reached are not imposed by a judge, but reached by the disputing parties themselves.

This difference in the purposes of each encounter calls for a different approach to interpretation. The interpreter trained and experienced in the interpretation of the style of discourse used in examination-in-chief, cross-examination and legal argument in a criminal court may find themselves challenged in Mediation by a discourse that seeks to explore perceptions and understandings, rather than identify fact and assign culpability. Interpreters from a Criminal Justice background entering the domain of interpreting in Mediation need therefore to (re)-assess their role and reconsider how to employ their linguistic skills in the service of the goals of Mediation.

In the third work stream of the Understanding Justice project I investigated these and other, linked questions about the use of interpreters in Mediation or the use of bilingual mediators as an alternative to interpreters. The work stream sought first to collect data on the incidence of interpreting in Mediation both in the UK and in the other EU member states represented on the project. In order to do this, I designed in collaboration with the project team a two-stage process to gather evidence from the field on the practices of professional mediators when confronted with language difference. The first stage consisted of preliminary approaches to Mediation professionals and organisations in the seven project countries, using a set of six '1st tier' questions on the incidence of language difference in Mediations and the choice of methodology (interpreter or

bilingual mediator) chosen to deal with it. The questions also enabled project members to gather contextual information on the subject of language difference in Mediation with individual mediators and organisations, to highlight the existence of the project and to invite respondents to participate in the more detailed online survey to come.

The second stage was the design and implementation of an online questionnaire to collect quantitative information on Mediation across languages in the relevant member states. An initial set of questions were drawn up by the Italian project partners (Sandrelli A and Monacelli, C, forthcoming) which we refined and expanded to arrive at a final set of questions. I engaged the project partner with particular expertise in web-based technologies to incorporate these questions into a functioning online questionnaire, then translated into Dutch, Flemish, Romanian, Spanish, Italian and Polish and disseminated in the countries in question. These draft questionnaires were trialled with the project partners, any adaptations specific to other countries represented on the project incorporated into the design, and launched for a one month data collection period. The questionnaire collected data on the incidence of a range of factors, including the language profiles of mediators, the incidence of Mediations across languages, the use of interpreters or bilingual mediators, and the types of Mediation where language difference most commonly appeared. It provided a basis for the preparation of individual interviews with selected respondents, conducted by project members, to explore further questions raised by the results of the questionnaire. In this way, both quantitative and qualitative data were collected, allowing for triangulation of the data and the production of a picture of practice in the countries where the questionnaire was disseminated.

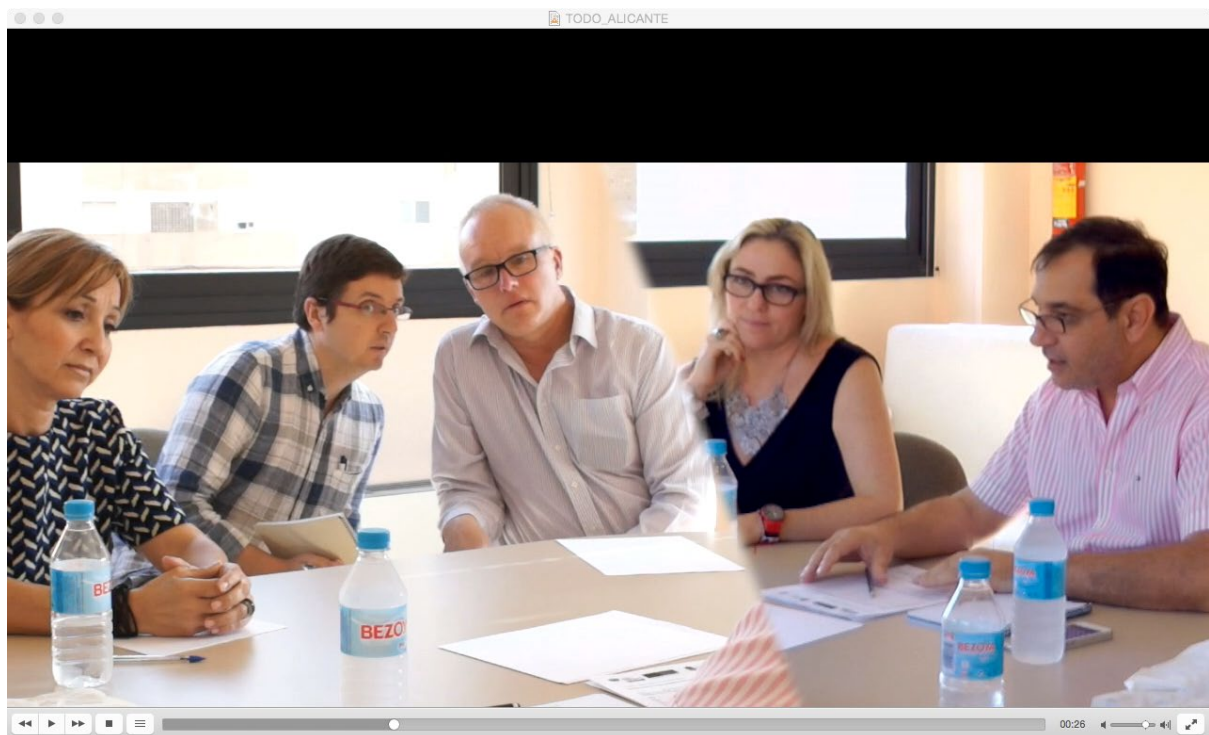
In addition to the collection of quantitative and qualitative data regarding Mediation across languages and the use of interpreters I wanted to analyse the dynamics of the interpreted mediated encounter. As direct observation of Mediation in practice was not feasible due to matters of confidentiality, working with professional mediators and experienced judicial interpreters, I set up two filmed Mediation simulations using professional mediators and interpreters, including interviews with the participants (mediators, interpreters and 'parties'), each generating several hours of footage for analysis.

I include below (fig 2) illustrative some illustrative screen shots taken from the two simulations⁵¹:

⁵¹ The first simulation took place over one day in Alicante, Spain, at a neighbourhood Mediation centre, using a Mediation scenario proposed by the mediators and generated between the mediators and myself. The Mediation was carried out by two Spanish-speaking mediators. The disputing parties were Spanish-speaking and English-speaking neighbours, (roles taken by a researcher into Mediation at the University of Alicante and myself respectively) regarding a range of matters in contention between the two residents. The interpreter was a Spanish-English interpreter with a high professional profile in Spain in the field of legal interpreting.

The second simulation was filmed in the UK, using two English-speaking mediators at a private Mediation practice, with two parties speaking English and Romanian respectively and a Romanian-English interpreter, again trained in legal interpreting. The scenario was based on a dispute between an English-speaking grand-parent and his Romanian ex-daughter-in-law over contact with a grand-child following the death of the father. Again, the simulation was filmed and followed by interviews questions with the parties involved, to collect feedback on their perceptions of the encounter.

Figure 2



The footage collected from these simulations provided a range of data for analysis. However, an early outcome of the simulation exercise was the production, following my analysis of the footage, of a set of clips highlighting key learning points for mediators and interpreters for use in the next stage of the work stream, reported on below.

Following the filming of the simulations, I convened a focus group consisting of professional mediators, academics with a research interest in Mediation and interpreters with experience in Mediation to view the simulation clips. The group provided an opportunity to gather reactions from these professional participants in Mediation to the simulations and to generate discussion of the points raised. The focus group meeting itself was filmed to collect evidence of the reactions of the parties to the simulations and the subsequent discussions. These will be further analysed to support the production of the professional guidelines on interpreting in Mediation to be presented in my DProf project.

Figure 3

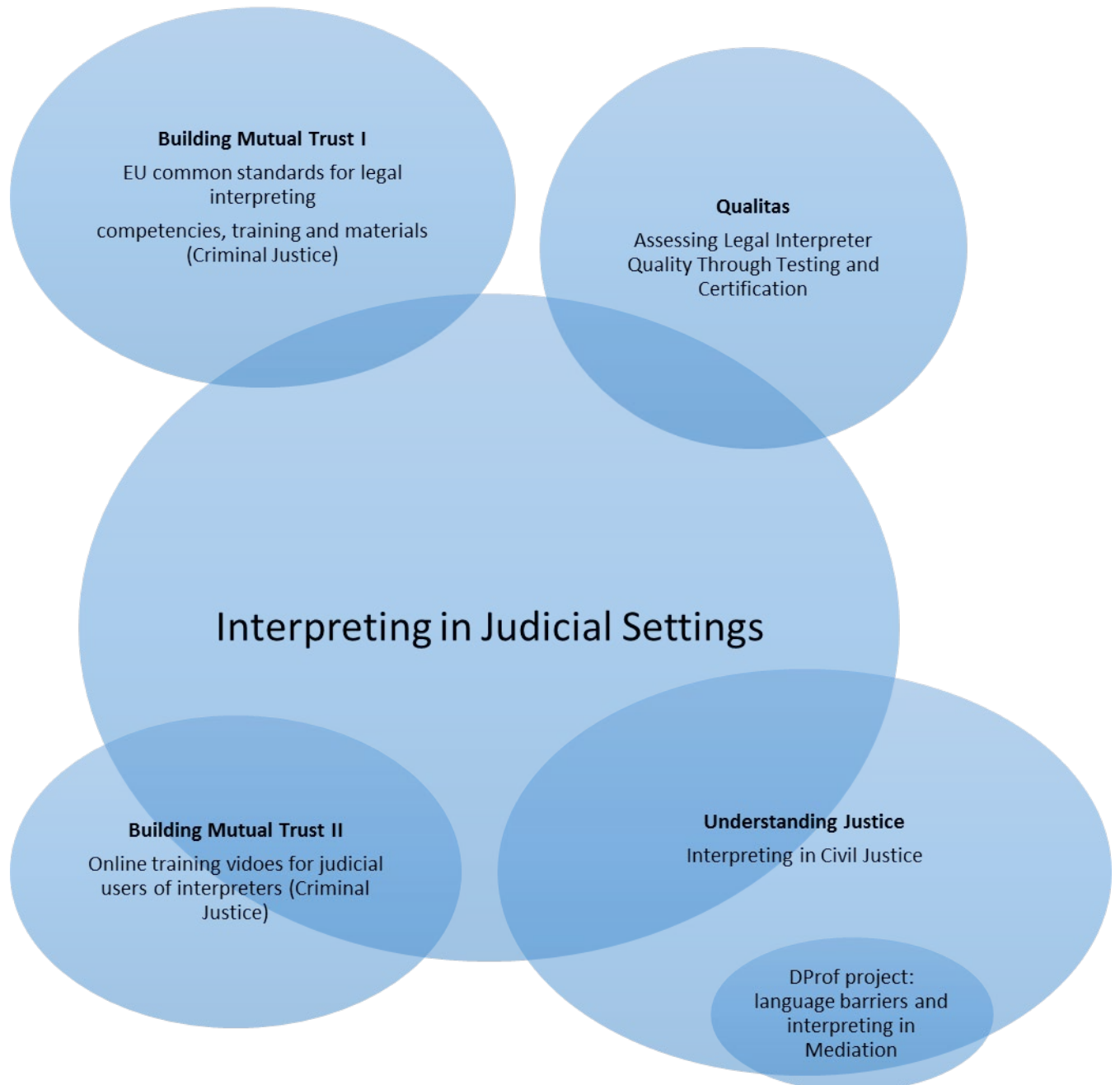
Focus Group (viewing selected clips from Mediation with interpreting simulations)



8 Conclusion

In Fig. 4 below I show how the projects I have cited in my Review of Previous Learning at Level 8 claim address different aspects of the one unified domain of work, interpreting in judicial settings. My work at the level evidenced in this claim has required the synthesis of professional knowledge in the abstract with understanding of practice across a range of stakeholders in the Legal Interpreting, and latterly Mediation, domains. With my proposed DProf project on language difference and interpreting in Mediation, I will widen and deepen work undertaken in the Understanding Justice project and work in an as-yet unproblematised area of professional practice.

Figure 4 Overview of Review of Previous Learning at Level 8 claim



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Appendix One
[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

Appendix Three

Questionnaire (versions for individuals and for mediation organisations) from *Understanding Justice* Project (Townsend *et al* (2016)

95

Questionnaire for organisations

The survey takes approximately ten minutes to complete, if all questions are answered. It will not time-out automatically. The survey closes on 2nd October 2015.

1. Which country do you practice mediation in?	
(a) Country:	
2. What is the name of your organisation?	
3. What is your role in the organisation?	
director	<input type="radio"/>
administrator	<input type="radio"/>
mediator	<input type="radio"/>
Other (Please specify)	<input type="radio"/>
4. If you are also a practising mediator, what is the language you use in professional practice?	
5. Do you speak any other languages?	
	Yes <input type="radio"/>
	No <input type="radio"/>
Please list and indicate your level of proficiency (according to the Common European Framework of Reference for Languages, http://www.coe.int/t/dg4/linguistic/cadre1_en.asp)	
6. Language	
(a) Language 1	
(b) Language 2	
(c) Language 3	

7. Level of proficiency	A1 (beginner)	A2 (beginner)	B1 (inter mediate)	B2 (inter mediate)	C1 (advanced)	C2 (advanced)
Language 1	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Language 2	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Language 3	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Next, we would like to ask about the number and type of mediations that your organisation undertakes. (If exact figures are not available, please provide an estimate).

8. What types of mediation does your organisation provide?

voluntary (the parties choose Mediation without being obliged to do so)	<input type="radio"/>
court-ordered (mandatory, the parties are obliged to attempt Mediation)	<input type="radio"/>
both	<input type="radio"/>

9. Please indicate how many of each type are provided per annum:

voluntary	
court-ordered (mandatory)	

10. How many of these mediations are successful (i.e. the dispute is resolved without going to court)? Please give a figure (per annum) for each type:

voluntary	
court-ordered (mandatory)	

11. How many of these mediations take place with the parties assisted by their lawyers? Please give a figure (per annum) for each type:

voluntary	
court-ordered (mandatory)	

12. Are all mediations carried out face-to-face?

Yes	<input type="radio"/>
No	<input type="radio"/>

If 'no', which of the following alternatives are employed? Please tick all that apply and indicate a figure per annum. [Answer this question only if answer to Q#12 is No]

13. Used?	Yes	No
Mediation by telephone	<input type="radio"/>	<input type="radio"/>
Mediation by video-conference	<input type="radio"/>	<input type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>

14. Per annum

(a) Mediation by telephone

(b) Mediation by video-conference

(c) Other

Next, we would like to ask about mediations undertaken by your organisation in which one or more of the parties and the mediator do not share a common language (mediations involving more than one language).

16. Do you carry out mediations involving more than one language?

Yes	<input type="radio"/>
No	<input type="radio"/>

Branching Instructions

IF ANSWER TO (QUESTION# 16 is (Yes)) THEN GO TO QUESTION# 17

IF ANSWER TO (QUESTION# 16 is (No)) THEN STOP, YOU HAVE FINISHED THIS SURVEY.

IF QUESTION# 16 is not answered THEN GO TO QUESTION# 17

17. Please indicate the frequency of mediations involving more than one language:	
daily	<input type="radio"/>
weekly	<input type="radio"/>
monthly	<input type="radio"/>
less often	<input type="radio"/>
18. Which types of mediation most often involve more than one language?	
voluntary	<input type="radio"/>
court-ordered	<input type="radio"/>
19. Please indicate the number of mediations per annum for each type involving more than one language:	
voluntary	
court-ordered (mandatory)	
20. In which types of dispute is more than one language most often used?	
Family (e.g. divorce, custody of children, child abduction)	<input type="checkbox"/>
Non-family civil (e.g. neighbour disputes, torts, personal injury)	<input type="checkbox"/>
Commercial (e.g. business and commercial contracts, banking, insurance)	<input type="checkbox"/>
Employment and labour (e.g. employer-employee)	<input type="checkbox"/>
Administrative (e.g. public policy, , environmental policy)	<input type="checkbox"/>
Other (Please specify)	<input type="checkbox"/>
21. Please indicate the number of cases for each type per annum:	
Family	
Non-family civil	
Commercial	

Employment and labour	
Administrative	
Other	
22. Which of the approaches shown below are used by your organisation when the mediator and one or more of the parties do not share a common language?	
a bilingual mediator is used	<input type="radio"/>
an interpreter is used	<input type="radio"/>
two mediators are used, one of whom is bilingual	<input type="radio"/>
any of the above, depending on circumstances.	<input type="radio"/>
Other (Please specify)	<input type="radio"/>

Branching Instructions

IF ANSWER TO (QUESTION# 22 is (any of the above, depending on circumstances.)) THEN GO TO QUESTION# 1

IF ANSWER TO (QUESTION# 22 is (a bilingual mediator is used OR two mediators are used, one of whom is bilingual)) THEN GO TO QUESTION# 23

IF ANSWER TO (QUESTION# 22 is (an interpreter is used)) THEN GO TO QUESTION# 28

IF ANSWER TO (QUESTION# 22 is (Other (Please specify))) THEN GO TO QUESTION# 1

IF QUESTION# 22 is not answered THEN GO TO QUESTION# 23

Next, we would like to ask about your use of bilingual mediators.	
23. Does your organisation use bilingual mediators in mediations involving more than one language?	
Yes	<input type="radio"/>
No	<input type="radio"/>

24. If yes, in how many cases? [Answer this question only if answer to Q#23 is Yes]

Per annum

25. Are bilingual mediators required to have formal language qualifications in their second or third languages?

Yes

No

26. If yes, what level of qualifications is required? Please tick all that apply: [Answer this question only if answer to Q#25 is Yes]

equivalent to CEFR A1/A2

equivalent to CEFR B1/B2

equivalent to CEFR C1/C2

27. Does your organisation provide best practice guidelines for bilingual mediators?

yes

no

Other (Please specify)

Next, we would like to ask about your use of interpreters.

28. Does your organisation use interpreters in mediations involving more than one language?

yes

no

Branching Instructions

IF ANSWER TO (QUESTION# 28 is (yes OR no)) THEN GO TO QUESTION# 29

IF QUESTION# 28 is not answered THEN GO TO QUESTION# 29

29. If yes, in how many cases?	
Per annum	
30. If interpreters are used, are they required to have completed formal training in interpreting?	
Yes	<input type="radio"/>
No	<input type="radio"/>
31. What minimum level of qualification is required? Please tick all that apply: [Answer this question only if answer to Q#30 is Yes]	
Basic/introductory	<input type="checkbox"/>
Undergraduate (BA degree or equivalent)	<input type="checkbox"/>
Postgraduate (MA or equivalent)	<input type="checkbox"/>
32. If interpreters are used, are they required to have completed formal training in mediation?	
Yes	<input type="radio"/>
No	<input type="radio"/>
33. What minimum level of qualification is required? Please tick all that apply: [Answer this question only if answer to Q#32 is Yes]	
Undergraduate (BA degree or equivalent)	<input type="checkbox"/>
Postgraduate (MA or equivalent)	<input type="checkbox"/>
Professional or in-service qualification	<input type="checkbox"/>
34. If interpreters are used in court-ordered mediation cases, from where are they selected?	
list of freelancers held by the court	<input type="checkbox"/>
list of freelancers held by the mediation organisation	<input type="checkbox"/>
list of freelancers held by an external translation agency	<input type="checkbox"/>
Other (Please specify)	<input type="checkbox"/>

35. If interpreters are used in voluntary mediation cases, from where are they selected?	
list of freelancers held by the court	<input type="checkbox"/>
list of freelancers held by the mediation organisation	<input type="checkbox"/>
list of freelancers held by an external translation agency	<input type="checkbox"/>
Other (Please specify)	<input type="checkbox"/>
36. In court-ordered mediation, who pays for the interpreter?	
the state	<input type="checkbox"/>
the party who requests an interpreter	<input type="checkbox"/>
both parties, who share the cost	<input type="checkbox"/>
Other (Please specify)	<input type="checkbox"/>
37. In voluntary mediation, who pays for the interpreter?	
the state	<input type="checkbox"/>
the party who requests an interpreter	<input type="checkbox"/>
both parties, who share the cost	<input type="checkbox"/>
Other (Please specify)	<input type="checkbox"/>
38. Is a briefing session held with the interpreter before the first mediation session?	
yes	<input type="radio"/>
no	<input type="radio"/>
39. If yes, who participates? [Answer this question only if answer to Q#38 is yes]	
the interpreter and the mediator	<input type="radio"/>
the interpreter, the mediator and both parties	<input type="radio"/>
the interpreter, the mediator and the Other Language speaking party	<input type="radio"/>
Other (Please specify)	<input type="radio"/>

40. Does your organisation provide interpreters with best practice guidelines?	
yes	<input type="radio"/>
no	<input type="radio"/>
41. Does your organisation instruct the interpreter on how they should interpret in a mediation session?	
yes	<input type="radio"/>
no	<input type="radio"/>
42. If 'yes', which mode of interpreting does your organisation prefer? Please tick all that apply: [Answer this question only if answer to Q#41 is yes]	
the interpreter listens and takes notes until one party has finished speaking and then interprets (consecutive with notes)	<input type="checkbox"/>
the interpreter listens until one party has finished speaking and then interprets, but does not take notes (consecutive without notes)	<input type="checkbox"/>
the interpreter whispers a simultaneous interpretation to one party as the other party is speaking (simultaneous)	<input type="checkbox"/>
43. Is a de-briefing session held with the interpreter at the end of an interpreted mediation session?	
yes	<input type="radio"/>
no	<input type="radio"/>
I don't know	<input type="radio"/>
44. If 'yes', in what form? (please specify): [Answer this question only if answer to Q#43 is yes]	
45. Is there anything else you would like to comment on the subject of mediation that we have not mentioned in this questionnaire?	

Questionnaire for individuals

The survey takes approximately ten minutes to complete, if all questions are answered. It will not time-out automatically. The survey closes on 2nd October 2015.

1. Which country do you practice mediation in?						
(a) Country:						
2. What is the language you use in professional practice?						
3. Do you speak any other languages?						
Yes						<input type="radio"/>
No						<input type="radio"/>
Please list and indicate your level of proficiency (according to the Common European Framework of Reference for Languages, http://www.coe.int/t/dg4/linguistic/cadre1_en.asp)						
4. Language						
(a) Language 1						
(b) Language 2						
(c) Language 3						
5. Level of proficiency	A1 <small>(beginner)</small>	A2 <small>(beginner)</small>	B1 <small>(intermediate)</small>	B2 <small>(intermediate)</small>	C1 <small>(advanced)</small>	C2 <small>(advanced)</small>
Language 1	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Language 2	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Language 3	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

6. What types of mediation do you provide?	
voluntary (the parties choose mediation without being obliged to do so)	<input type="radio"/>
court-ordered (mandatory, the parties are obliged to attempt mediation)	<input type="radio"/>
both	<input type="radio"/>
7. Please indicate how many of each type are provided per annum:	
voluntary	
court-ordered (mandatory)	
8. How many of these mediations are successful (i.e. the dispute is resolved without going to court)? Please give a figure (per annum) for each type:	
voluntary	
court-ordered (mandatory)	
9. How many of these mediations take place with the parties assisted by their lawyers? Please give a figure (per annum) for each type:	
voluntary	
court-ordered (mandatory)	
10. Are all mediations carried out face-to-face?	
Yes	<input type="radio"/>
No	<input type="radio"/>
If 'no', which of the following alternatives are employed? Please tick all that apply and indicate a figure per annum. [Answer this question only if answer to Q#10 is No]	

11. Used?	Yes	No
Mediation by telephone	<input type="radio"/>	<input type="radio"/>
Mediation by video-conference	<input type="radio"/>	<input type="radio"/>
Other	<input type="radio"/>	<input type="radio"/>

12. Per annum
(a) Mediation by telephone
(b) Mediation by video-conference
(c) Other

13. Please specify your "Other" alternative of Mediation: [Answer this question only if answer to Q#11(c) is Yes]

--

Next, we would like to ask about mediations in which one or more of the parties and you, the mediator, do not share a common language (mediations involving more than one language).

14. Do you carry out mediations involving more than one language?	
Yes	<input type="radio"/>
No	<input type="radio"/>

Branching Instructions

IF ANSWER TO (QUESTION# 14 is (Yes)) THEN GO TO QUESTION# 15

IF ANSWER TO (QUESTION# 14 is (No)) THEN STOP. YOU HAVE FINISHED THIS SURVEY.

IF QUESTION# 14 is not answered THEN GO TO QUESTION# 15

15. Please indicate the frequency of mediations involving more than one language	
daily	<input type="radio"/>
weekly	<input type="radio"/>
monthly	<input type="radio"/>
less often	<input type="radio"/>
16. Which types of mediation most often involve more than one language?	
voluntary	<input type="radio"/>
court-ordered	<input type="radio"/>
17. Please indicate the number of mediations per annum for each type involving more than one language:	
voluntary	
court-ordered (mandatory)	
18. In which types of dispute is more than one language most often used?	
Family (e.g. divorce, custody of children, child abduction)	<input type="checkbox"/>
Non-family civil (e.g. neighbour disputes, torts, personal injury)	<input type="checkbox"/>
Commercial (e.g. business and commercial contracts, banking, insurance)	<input type="checkbox"/>
Employment and labour (e.g. employer-employee)	<input type="checkbox"/>
Administrative (e.g. public policy, , environmental policy)	<input type="checkbox"/>
Other (Please specify)	<input type="checkbox"/>

19. Please indicate the number of cases for each type per annum:	
Family	
Non-family civil	
Commercial	
Employment and labour	
Administrative	
Other	
20. Which of the approaches shown below do you use when you and one or more of the parties do not share a common language?	
a bilingual co- mediator is used	<input type="radio"/>
an interpreter is used	<input type="radio"/>
either a bilingual mediator or an interpreter, depending on circumstances	<input type="radio"/>
Other (Please specify)	<input type="radio"/>

Branching Instructions

IF ANSWER TO (QUESTION# 20 is (either a bilingual mediator or an interpreter, depending on circumstances)) THEN GO TO QUESTION# 1

IF ANSWER TO (QUESTION# 20 is (a bilingual co- mediator is used)) THEN GO TO QUESTION# 21

IF ANSWER TO (QUESTION# 20 is (an interpreter is used)) THEN GO TO QUESTION# 24

IF ANSWER TO (QUESTION# 20 is (Other (Please specify))) THEN GO TO QUESTION# 1

IF QUESTION# 20 is not answered THEN GO TO QUESTION# 21

Next, we would like to ask about bilingual mediation.

21. Do you offer bilingual mediation, where you both mediate and interpret as required?

- | | |
|-----|-----------------------|
| Yes | <input type="radio"/> |
| No | <input type="radio"/> |

22. Do you have formal language qualifications in your second or third languages?

- | | |
|-----|-----------------------|
| Yes | <input type="radio"/> |
| No | <input type="radio"/> |

23. If yes, what level of qualifications? Please tick all that apply:
[Answer this question only if answer to Q#22 is Yes]

- | | |
|--------------------------|--------------------------|
| equivalent to CEFR A1/A2 | <input type="checkbox"/> |
| equivalent to CEFR B1/B2 | <input type="checkbox"/> |
| equivalent to CEFR C1/C2 | <input type="checkbox"/> |

Next, we would like to ask about your experience of using of interpreters in mediation.

24. Do you mediate using an interpreter in mediations involving more than one language?

- | | |
|-----|-----------------------|
| yes | <input type="radio"/> |
| no | <input type="radio"/> |

Branching Instructions

IF ANSWER TO (QUESTION# 24 is (yes)) THEN GO TO QUESTION# 25

IF ANSWER TO (QUESTION# 24 is (no)) THEN GO TO QUESTION# 41

IF QUESTION# 24 is not answered THEN GO TO QUESTION# 25

25. If yes, in how many cases?	
Per annum	
26. Are interpreters required to have completed formal training in interpreting?	
Yes	<input type="radio"/>
No	<input type="radio"/>
27. What minimum level of qualification is required? Please tick all that apply: [Answer this question only if answer to Q#26 is Yes]	
Basic/introductory	<input type="checkbox"/>
Undergraduate (BA degree or equivalent)	<input type="checkbox"/>
Postgraduate (MA or equivalent)	<input type="checkbox"/>
28. Are interpreters required to have completed formal training in mediation?	
Yes	<input type="radio"/>
No	<input type="radio"/>
29. What minimum level of qualification is required? Please tick all that apply: [Answer this question only if answer to Q#28 is Yes]	
Undergraduate (BA degree or equivalent)	<input type="checkbox"/>
Postgraduate (MA or equivalent)	<input type="checkbox"/>
Professional or in-service qualification	<input type="checkbox"/>
30. If you use interpreters in court-ordered mediation cases, from where are they selected?	
list of freelancers held by the court	<input type="checkbox"/>
list of freelancers held by the mediation organisation	<input type="checkbox"/>
list of freelancers held by an external translation agency	<input type="checkbox"/>
Other (Please specify)	<input type="checkbox"/>

31. If you use interpreters in voluntary mediation cases, from where are they selected?	
list of freelancers held by the court	<input type="checkbox"/>
list of freelancers held by the mediation organisation	<input type="checkbox"/>
list of freelancers held by an external translation agency	<input type="checkbox"/>
Other (Please specify)	<input type="checkbox"/>
32. In court-ordered mediation, who pays for the interpreter?	
the state	<input type="checkbox"/>
the party who requests an interpreter	<input type="checkbox"/>
both parties, who share the cost	<input type="checkbox"/>
Other (Please specify)	<input type="checkbox"/>
33. In voluntary mediation, who pays for the interpreter?	
the state	<input type="checkbox"/>
the party who requests an interpreter	<input type="checkbox"/>
both parties, who share the cost	<input type="checkbox"/>
Other (Please specify)	<input type="checkbox"/>
34. Do you hold a briefing session held with the interpreter before the first mediation session?	
yes	<input type="radio"/>
no	<input type="radio"/>
35. If yes, who participates? [Answer this question only if answer to Q#34 is yes]	
the interpreter and the mediator	<input type="radio"/>
the interpreter, the mediator and both parties	<input type="radio"/>
the interpreter, the mediator and the Other Language speaking party	<input type="radio"/>
Other (Please specify)	<input type="radio"/>

36. Do you provide interpreters with best practice guidelines?	
yes	<input type="radio"/>
no	<input type="radio"/>
37. Do you instruct the interpreter on how they should interpret in a mediation session?	
yes	<input type="radio"/>
no	<input type="radio"/>
38. If 'yes', which mode of interpreting do you prefer? Please tick all that apply: [Answer this question only if answer to Q#37 is yes]	
the interpreter listens and takes notes until one party has finished speaking and then interprets (consecutive with notes)	<input type="checkbox"/>
the interpreter listens until one party has finished speaking and then interprets, but does not take notes (consecutive without notes)	<input type="checkbox"/>
the interpreter whispers a simultaneous interpretation to one party as the other party is speaking (simultaneous)	<input type="checkbox"/>
39. Do you hold a de-briefing session with the interpreter at the end of an interpreted mediation session?	
yes	<input type="radio"/>
no	<input type="radio"/>
I don't know	<input type="radio"/>
40. If 'yes', in what form? (please specify): [Answer this question only if answer to Q#39 is yes]	
41. Is there anything else you would like to comment on the subject of mediation that we have not mentioned in this questionnaire?	
42. Would you be prepared to be interviewed about your experience of mediations involving more than one language?	
yes	<input type="radio"/>
no	<input type="radio"/>

Appendix Four

MIDDLESEX UNIVERSITY

PARTICIPANT SHEET (PIS) (Mediator)

Participant ID Code:...0001

1. Study title

'*Personae non gratae*: third-party interpreters in mediation. A reference work for mediators and interpreters'.

2. Invitation paragraph

You are being invited to take part in a research study. Before you decide it is important for you to understand why the research is being done and what it will involve. Please take time to read the following information carefully and discuss it with others if you wish. Ask us if there is anything that is not clear or if you would like more information. Take time to decide whether or not you wish to take part.

Thank you for reading this.

3. What is the purpose of the study?

The aim of this study is to investigate the impact of the introduction of an interpreter into a mediation sessions where language difference between disputants and/or the mediator is an issue. The research will seek to understand in more detail the scale of the phenomenon of language difference in mediation, the choices made by mediators to address this phenomenon, including the use of an interpreter and the impact this has upon both mediator and disputants. Data will be collected from mediators and from interpreters with experience of working in mediation, via personal interviews conducted by the researcher. This data will be used to generate a report on the phenomenon of language difference in mediation in the UK and practice guidelines for collaborative working between mediators and interpreters. This report and the linked guidelines will also be submitted for my Doctorate in Professional Studies research project.

4. Why have I been chosen?

In July to September 2015, you were kind enough to respond to an online questionnaire disseminated by the *Understanding Justice Project* (www.understandingjusticeproject.com) seeking information about your experience of language difference in mediations that you carry out. At the end of this questionnaire you indicated that you would be willing to be contacted further regarding this topic. You are being contacted based on your indication of willingness given at that time.

5. Do I have to take part?

It is up to you to decide whether or not to take part. If you do decide to take part you will be given this information sheet to keep and be asked to sign a consent form. If you decide to take part you are still free to withdraw at any time and without giving a reason. If you do decide to withdraw from the study then please inform the researcher as soon as possible, and they will facilitate your withdrawal. If, for any reason, you wish to withdraw your data please contact the researcher within a month of your participation. After this data it may not be possible to withdraw your individual data as the results may have already been published. However, as all data are anonymised, your individual data will not be identifiable in any way.

A decision to withdraw at any time, or a decision not to take part, will not affect your professional profile student in any way.

6. What will I have to do?

Your involvement in this study will be limited to the following:

- i. If you give your consent to being interviewed by the researcher in your capacity as a mediation practitioner, the researcher will contact you to arrange a suitable time and date for an interview to take place. The interview will last for no more than one hour. This interview may be in person with the researcher visiting you at your place of work or a suitable venue selected by you. Alternatively, the interview may be conducted by video-conference using Skype (or other suitable video-conferencing service). If you prefer not to be interviewed by video link, you can choose to be interviewed by audio link only. If you give your consent to being interviewed, the interview (live or remote) will be recorded by the researcher for research purposes. This recording will be used to prepare a transcription of the interview (all this said by you and by the researcher, recorded verbatim). These transcriptions will provide the raw data for analysis by the researcher later.
- ii. Your involvement in the research will be limited to this interview. With your permission, the researcher may contact you by e-mail or telephone with follow-up questions arising from the interview and/or the transcription.
- iii. The total time you will be actively involved in the research can be limited to the one hour you allocate to being interviewed and any time you allocate to follow up questions.

Please note that in order to ensure quality assurance and equity this project may be selected for audit by a designated member of the committee. This means that the designated member can request to see signed consent forms. However, if this is the case your signed consent form will only be accessed by the designated auditor or member of the audit team.

7. Will I have to provide any bodily samples (i.e. blood/saliva/urine)?

No

8. What are the possible disadvantages and risks of taking part?

There are no known or foreseeable risks to taking part in this study.

Appropriate risk assessments for all procedures have been conducted, and will be followed throughout the duration of the study.

9. What are the possible benefits of taking part?

We hope that participating in the study will help you. However, this cannot be guaranteed. The information we get from this study may help us to understand more clearly the impact of language difference and of the use of interpreters on mediation (disputing parties and mediators). The inter-professional practice guidelines produced from this research may also impact positively on your own work as a mediator in cases where you encounter language difference.

9. Will my taking part in this study be kept confidential?

The research team has put a number of procedures in place to protect the confidentiality of participants. You will be allocated a participant code that will always be used to identify any data you provide. Your name or other personal details will not be associated with your data, for example, the consent form that you sign will be kept separate from your data. All paper records will be stored in a locked filing cabinet, accessible only to the research team, and all electronic data will be stored on a password protected computer. All information you provide will be treated in accordance with the UK Data Protection Act.

10. What will happen to the results of the research study?

The results of the research study will be used as part of a Postgraduate dissertation. The results may also be presented at conferences or in journal articles. However, the data will only be used by members of the research team and at no point will your personal information or data be revealed.

11. Who has reviewed the study?

The study has received full ethical clearance from the Research ethics committee who reviewed the study. The committee is the Work based Learning Programme Approval Panel

12. Contact for further information

If you require further information, have any questions or would like to withdraw your data then please contact:

Brooke Townsley, Middlesex University, The Burroughs, London NW4 4BT
Tel: 020 8411 4336
b.townsley@mdx.ac.uk

Dr Mehmet Dikerdem, Middlesex University, The Burroughs, Hendon NW4 4BT
Tel: 0208 411 5000
M.Dikerdem@mdx.ac.uk

Thank you for taking part in this study. You should keep this participant information sheet as it contains your participant code, important information and the research teams contact details.

Appendix Five

Transcripts

Mediators

ALC on 2018-02-23 at 14.29.mp3

BT: [00:00:02] Go to. Hello. Thank you so much. Giving up your time to talk to me that's great.

BT: [00:00:10] Did you get the information sheet that I emailed over earlier about what I'm looking into?

ALC: [00:00:15] Yes I did. I must admit I haven't read it because, Friday, busy and stuff like that, I might you'll finally in Friday and things like that, was the highest hopefully that will suffice, I can ask any questions if there's anything that doesn't make sense to me, I'm sure.

BT: [00:00:35] Great. Okay well if it's okay with you is it okay if I record our conversation as well.

BT: [00:00:42] That's great. Thanks. What I'm looking into [] is the use of interpreters in mediation encounters and to try and tease out what some of the possible impacts of the use of interpreters maybe on the progress of mediations and at some point perhaps see if we can find some correlation between mediation outcomes and the use of interpreter.

BT: [00:01:10] So if I can start asking briefly what your experience is... So....do you work at the Southwark mediation centre, you're an independent mediator?

ALC: [00:01:23] No, no, I'm an independent mediator and my practice is in London and Cambridge, right. I also work in family law and mediation policy. So yes I've been involved in Mediation policy,

rules, governance over many years so I've got an interest both in terms of being a practitioner but also in looking at the profession as a whole and how it operates.

BT: [00:01:51] Right, right.

[00:01:55] You're right. I also worked for the Legal Services Commission which is now legal aid agency and was formally the Legal Aid Board. Yes and of course there was an interest and the reason I was working with them is because they were introducing Legal aid for Mediation. So they needed to understand how they could formulate contracts for working with mediators and as part of that clearly there were things called disbursements, for all kinds of expenses, but particularly for interpreters. So there was a particular interest then in how would that work in any disbursement arrangement for mediators who were contracted to deliver legally aided services.

BT: [00:02:46] Right. Now, are those disbursements still in place? I don't know now, I've lost track but I think there were some cuts, weren't there?

ALC: [00:02:51] Yes, there have been a lot of cuts. Yes it's still in place but what has happened is that it's become more formalised I've seen that there is there are now certain interpreters that they are required to use. I think they are the same interpreter group that are contracted for use in police stations and in courts.

BT: [00:03:17] Oh, I see, so it is the Big Word.

ALC: [00:03:18] I think the big word, right, so there is a sort of defined list of all interpreters available. So I think it's possible to use an interpreter who is not on that list if you could prove that, you know, that either they don't have one or they don't have one available. What I've lost touch with is what's happened about British sign language interpreters because that was of particular interest.

[00:03:41] It was one of the things that we managed, I managed to get established with the legal services commission at the time was that they would identify British Sign language as a language and therefore it was possible then to hire British sign language interpreters which hadn't been the case before.

BT: [00:04:01] All right. So I take it that the current situation is if you get a legal aid funded interpreter for a mediation it is going to go through this large company, the big word. I know the big word they have the MoJ contract for supplying interpreters to the entire criminal justice system in translation and so forth. Okay. Fine, well that's really useful to know. Could we focus on your experience as a mediator rather than a policymaker on actually working through an interpreter a language worker? What I wanted to do was...it would be best to focus... if you could bring to mind a particular mediation you've done where there has been a language barrier and you had an interpreter present in the mediation and we could perhaps go through it sequentially from the beginning. So. First of all, how often have you worked with interpreters, is it a fairly common occurrence or not very?

[00:05:11] Not very, certainly not recently, and that may be simply because of the client group that I have now. I don't do legal aid so that's another issue. You know if you're not doing it you don't get the rich seam of clients. And I think what tends to happen is that as a practitioner you get known and then you probably get... not the same type of client, or vaguely similar. And I certainly think that's what's happened to me. I haven't worked in recent years and when I, when I did it was, it was sort of unknown territory, we hadn't thought about it a great deal. We found ourselves in the situation that there were cases coming to us where it was clear that there was a need for an interpreter because initially ...it can be quite difficult in a Mediation because occasionally you get people who come along for whom English is not the first language. They will say things like 'oh it's okay, my husband doesn't speak very good English but I can explain'. Now, there are [inaudible] about that because you have no way of knowing what that person is saying to their partner if you do not speak that particular language. It isn't that, you know, you suspect that there might be something going on, but simply that you do not have management of that process if you aren't clear about what's being said in the room. Sometimes it's two people, you know, one partner will say they

will interpret for the other. Occasionally, you'll get someone who will bring someone else along, who will say this person can interpret and sometimes it is okay with the other partner, but the same issue arises. So it slows the process down in the beginning, and it can make it quite difficult to engage people because you are necessarily spending more time in the first instance because, in my practice, I see people individually first and I use that time for things like screening and assessment for issues or abuse or capacity or whatever it is. But I also want to spend time getting to know them, letting them get to know me so that I can find out what's going to be most comfortable for them if they're coming into the mediation process. They can ask questions that they might feel they couldn't ask in front of their partner. All of that sort of thing, so I use... I mean, in other methods, mediation is convening and I think it's quite important because I think that person is more prepared when they meet together. They feel they have a connection with you. They've been able to sort of get their heads round what we're coming to. If you're doing that with one person, or even both, who's English is poor or non-existent, then it's really difficult because you immediately probably have to find an interpreter before you can even do the first of those two meetings. And then the issue becomes one of who can be an interpreter, because.... things that didn't occur to me immediately, I learned very quickly... mediation, first of all it is a confidential process so you've got to have somebody who can come into that room who understands that they're being asked to work in what is a confidential forum and that they understand that and they are then contracted within that. They also understand what mediation is...

BT: [00:09:21] Yeah

ALC: [00:09:22] and how it works, because I find... what I did find with some interpreters is that they... there's a difference between getting them to interpret exactly what you say and getting them to interpret back to you, back to you what has been said...

BT: [00:09:39] Yeah

ALC: [00:09:41] and understanding it in the context of a mediation. Some interpreters. I think ... That they can get ahead of themselves so they start involving themselves in the process inappropriately, which is why I think it's incredibly important to get the quality of interpreter you need, to spend time with that interpreter so they understand what the mediation process is, what you're trying to achieve, what people in mediation may be trying to achieve, so there is a base understanding of the process, how you work and what you need from them.

BT: [00:10:29] Can I take you back a couple of steps? Some things you said are very interesting, you saw the difference, you drew a distinction between understanding what people said and reflecting that accurately in interpretation but also understanding it in the context of the mediation. Could you clarify a little bit more what you meant by that?

ALC: [00:10:53] Actually, I'm trying to think of an example as that would be the best way of describing it. I think when you're mediating you are effectively facilitating the discussion between the two people who are, you hope, finding a means to negotiate for themselves between each other.

BT: [00:11:17] Yeah.

BT: [00:11:20] And that's a sort of different conversation. You know so, as mediator there are specific times when you might come in to reflect something you've heard. Or to remind somebody of something that they have said.

BT: [00:11:39] Yes.

ALC: [00:11:39] If an interpreter comes in and what they understand themselves to be in is simply a three way conversation...

BT: [00:11:46] Right, I'm with you. I think I'm with you, yes.

ALC: [00:11:54] They don't pick up the nuance of that. They're not actually, they're not quite in the mediation frame, as it were. I think they vary a great deal as interpreters, some of them are terribly interested in what you are doing and others see it as a job or work and what they do is the same no matter where they're doing it. So it's quite difficult if you, if you're trying to work with someone who doesn't pick up those nuances, or have an interest in it.

BT: [00:12:28] Those nuances are expressed through your very careful choice of words, in the way your voice, your tone of voice, the phraseology. I know, I mean I've sat in simulated mediations and there's the framing of questions and the reflecting back and so forth, there's some very, there are sophisticated communicative tools being used by mediators. I think where that probably may come from is, I suspect if we could see and I'd have to get access to the records of the agency in this case, they probably may be sending you interpreters who have got a legal background. They've been doing sort of forensic language interpreting for police and courts where to a degree you are.... the ideal legal interpreter would in fact be a box, not the human being at all, there'd be a very, very accurate transfer of meaning without any engagement at all in the process of going what's going on. But what you're saying is that actually in the mediation, I hypothesize that this might be the case, for the mediation you want a different sort of interaction between the mediator the interpreter and the parties and for you. If I understood correctly, it's about recognising the nuances of why you're talking the way you do rather than simply... well it's not a simple process...transferring messages as they're said.

ALC: [00:14:00] Yeah. And that's quite important, because for example mediators don't often use straightforward questioning.

[00:14:08]. Yes

ALC: [00:14:11] And they certainly don't use 'why' very often, because it's quite an accusatory form. When you are dealing with people who are pretty sensitive to language and may be feeling pretty raw emotionally, it can feel quite attacking if you're talking... if somebody says to you: 'Why? Why would you have done that?' So people tend to say something like 'can you tell me a little bit more about?' An interpreter doesn't, you know, I think, you can almost see it, that's quite an interesting thing, you almost know when that interpreter has framed it differently...

BT: [00:14:52] Yeah.

ALC: [00:14:54] ...because you see the reaction in people.

BT: [00:14:56] Yeah, yeah.

ALC: [00:14:57] And then you've got the other problem of trying to say to the interpreter in the room 'could you just tell me how you've just phrased that?'

BT: [00:15:05] Right.

ALC: [00:15:07] So, you've got the conversation going on with the interpreter, of which the other two people aren't even part. So you've then got, you know, a situation where it's quite difficult to get that sort of easy communication. It's never as easy, of course, as if you were speaking the same language. But there are occasions when you can actually feel with an interpreter that that communication is as easy as it could be given that you're not speaking the same language.

BT: [00:15:40] And on these occasions you feel that because? What is it that... what signals are you picking up as a mediator that, on this occasion, it's almost as easy as if you were speaking in the same language?

ALC: [00:15:58] A lot of that is visual clues, because mediators are great observers, they have to be.

BT: [00:16:06] Yeah.

ALC: [00:16:06] So we watch, we're watching people's reactions, watching people's behaviour all the time. If you have an interpreter in the room, you are also seeing that interaction and it just feels as though the communication is working fairly well, it is a relaxed conversation. Which is great when it happens; it doesn't always.

BT: [00:16:32] No. I would, I would suspect, I mean I train interpreters for various settings and it the ones who begin to approach a really professional formation as interpreters who take on board the fact that communication in any setting is about far, far more than the words which are chosen, that messages are about the way the message is delivered, the way questions are formed and the sort of, they're about intentions and speech acts in fact more than the words themselves and in many ways that it's about reflecting the tone. So it sounds to me what your saying is that when it works well you've probably got someone who's made that professional jump as an interpreter, not somebody who still thinks it's a fairly pragmatic process of just passing words across from one language to another.

ALC: [00:17:27] That's very interesting because it did surprise me that there was a huge variation. You know, you get people who, as you say, did seem... I described it as a job, they claim it is a job of work and they were quite formal and their body language didn't aid anything. It was a quite sensitive conversation. I had assumed that an interpreter would be an active listener simply because, you know, they are having to listen in order to interpret. I was quite surprised to find that wasn't always the case. You could get somebody who fulfilled all that you'd hoped for in their stance as an active listener, the way in which they were engaging with people they were talking with and, I mean, because that makes... for a mediator that makes life a lot easier. Because I co-mediate as well as mediate on my own and, you know, that being able to have the right cohesive relationship between

you and your co-mediator was really important. And it's similar if you're working with an interpreter, you need to know that that person is able to work in a way that aids the process and doesn't have it backwards. If you're working with someone quite formal and who is looking at it simply as passing messages, as it were, it does not help the whole ambience of... of being in that room, because you've got someone who is... you're trying to settle three people into the conversation. One is, just not, you know, he's not taking part in a way that would help most, if I can put it like that

BT: [00:19:18] I think the message I'm getting, the picture I'm forming from what you said to me is that, in a mediation, there's... I've sort of got this mental image of three people who are quite physically close together in this small space. There's the actual exchange of words which is going on but around them, around the whole encounter, there's a cloud of other things, intentions and perceptions, and it's very important... in a sense a lot of the communication is going on through that penumbra of things around the meeting, about people's attitudes, their stance, their tone of voice, their attitudes, and you need an interpreter to be somehow capable of being aware of that, that it's not simply a question of voicing what people say.

ALC: [00:20:06] I think that's right, because even something like tone of voice.... tone of voice can be really important in the mediation process because people may be in, as I've said, a highly sensitive or emotional state; they may need to adopt a tone that is helpful to them, that doesn't... it isn't spiky, isn't difficult, isn't formal. So that they are able to relax a little bit more and maybe start to talk. The whole essence of it is that you want them to talk, initially to you, but within a reasonable length of time, to each other. Now I can appreciate that for an interpreter that is really difficult, they come into a situation where.... people at the beginning with mediation or even at the beginning of a mediation meeting, or if something has happened between them since you saw them last, the tension in the room can be huge and, of course, if you're an interpreter, you pick up those signals, you know 'what's going on here?' And that people are angry with each other. You know, we are asking lots of an interpreter to come in to what is a very intimate setting, and it could be a quite difficult complex angry setting, and do their job. It's not easy.

BT: [00:22:36] It's evident to me that the mediation encounter differs actually from all the various types of interpretive encounters that I looked at. I've done a lot of work and been a practitioner myself in legal interpreting, I've looked quite a lot at medical interpreting, but mediation is in fact a unique communicative setting, it presents demands on all interpreters and the people working with interpreters that are unique to this particular setting. It calls for a very high end set of skills and the unfortunate thing is that, in fact, you're probably not getting particularly high end interpreters to do it.

ALC: [00:23:07] Certainly when I started, talk about babes in the wood. I mean really I look back I do think.... we didn't think...we Learned a lot. I had a friend who trained as a social worker, she said to me, having done her training, she wanted to go and apologise to every parent she had ever seen as an unqualified social worker and say 'I'm so sorry, I had no idea how to do that' and I think mediators can feel a bit like that. When we look back... we're still a very young profession as family mediators in this jurisdiction. And we've had to learn, we've had to learn a lot, on the hoof really, and sometimes without very much resource, we've had to make it happen. So we, you know, what we've learned is that there are things you can't do. You can't just accept or bring in people to that process unless you have done the ground work. There are a number of things that you have to think really carefully about. So in the early days, for example, in particular communities, I think we didn't. You know sometimes we think is there someone in the local community, not an official interpreter, who may be able to assist here? When what we should have thought about is, in that community, what does that mean to these two individuals in the mediation, if someone from their own community is involved in this? Because you know people are unfailingly polite, I find. So if you say 'look I'm not able to find any interpreter except Y who is, I know, part of your community, would it be possible for us to do that? They'll say 'yes', when actually, really, what they really want to tell you is 'no, it wouldn't because I don't want Y, because Y...because Y will go and tell my family, my friends, the community, you know, it's one of those things. Which is why do we do have to think carefully about who's best to involve. Because, I think using community based interpreters, with the best will in the world, is difficult. It's really difficult and it may be actually quite dangerous, because in some communities you really...as an outsider you do not know who that person is, you can do whatever due diligence you want to do, but you can't know.

BT: [00:25:12] So how, given that most dialogue interpreters of the type you're using do belong to the linguistic communities that they represent as an interpreter, how are you...what are you doing now, based on what you as you say you've learnt over the years, how has that changed your practice about getting interpreters now?

ALC: [00:25:34] If I were asked to use an interpreter now. I think I would make really quite strenuous efforts as to who that interpreter was. I think I should be clearer about what I needed. I hope that I can spend time with an interpreter. So I think one of the first questions will be 'Can you tell me, do you know anything about family mediation? If that person said 'no' I would want to spend sufficient time with them to outline for them what the process is, what the codes, what is the ethical code by which we work. In short form, just so that they've got an idea. And really just to coach them I think, really, because they're not mediators. You're asking him to come ... It's a, it's a big thing to come into what is an intimate setting of this kind and a lot of the interpreters I've met, I can't say I've met many who have ever come into a setting quite like it. And I know that simply because they say 'I've never done anything like this before'. But at the end of the meeting you know there's quite often that bit where they say, that was a bit of a... or whatever it is. Yeah. And then of course we've got the problem of money because with the best in the world, you know, how are they going to make a living if they're having to spend an hour or so with you on the phone or whatever it is whilst you say look it's really important to you to understand some things before we start. You know I really appreciate it's not fair to be saying 'I want you to do all of this bit unpaid, just so that when you come and deliver the service, you are delivering it at a level that I want you to.

BT: [00:29:48] What it sounds like is, if mediation, as mediation develops, what you really want is a sort of a cadre of interpreters who have had some pre-briefing already, you know, to be able to draw on, whether that's located in the big agency or whoever is providing it, but that would be a good idea. Can I take you back to your comment about interpreters intervening inappropriately in the mediation? Could you tell me a little bit more, how did that play out when you had interpreters behaving inappropriately in the mediation?

[00:30:18] I think it's well it happens on two levels. The first is their ability to deal with conflict right in front of them and wanting to do what everyone wants to do, which is to stop it. Yes. Yeah, so they may do a range of things. They may just simply try to stop people, so they might, you know, look as though they are going to intervene in some way because they're worried, you know, they see something escalating and they worry, they might actually say 'Stop it'. Or you know, whatever polite term they can find to stop people from escalating into an argument, because clearly if they get into an argument, they are having it in their language. So I think the interpreter feels that they have to get in there and, you know, stop. Whereas, as mediators, we don't always immediately stop people. There are reasons why we don't do that. Our threshold as mediators watching that conflict is around, first of all, understanding... trying to get an understanding of people's communication style because for some people their communication style is argumentative. And you want to see what happens. Obviously you're going to step in and stop it before anything escalates to a point where either person is really going to be upset, hurt, damaged or anything else. But because interpreters are coming into a situation where they're not used to that level of conflict they tend to want to get in there and stop it. So you know, they will, they may be...it may be irresistible to them. Maybe it's their job if two people are shouting at each other or having an argument to get in and stop it. So it's their job to say 'stop it', when it isn't, you know, so that can be quite difficult. So it may be, you know, a physical cue to people that they shouldn't be doing that or a verbal instruction to stop it. The other thing is to add-on something to the conversation that you are having. So, you might be asking a question and often we ask reflexive questions so we want people to think before they answer. So we need that space and be silent, but what happens is an interpreter thinks they're not answering; you'd ask questions, don't get an immediate answer so they sort of edit it, but... just leave it, it's okay. But of course, I think it's quite difficult, because to a client or a set of clients, seeing you say to the interpreter 'can you just leave it for a moment?', they are then picking up 'well, what is going on here then?' you know, so these things are just...nuances, in a way.

BT: [00:32:10] The picture I'm getting, reflecting what you've been telling me, is that in a funny way you share a certain amount with barristers to the extent that you're saying, look I've got a very sophisticated and carefully planned plan of attack to what I have to do professionally. It's all based around language. It's all based on knowing exactly when to not say anything, when to intervene, when not to intervene. And it's all potentially been thrown out completely out of kilter by having to work with a third person who isn't in on the plan.

ALC: [00:32:48] Yeah, absolutely, which is why you learn really quickly. You have to try to persuade that interpreter to spend enough time with you that you can outline what you do and how you do it and the things that are quite important, and it's difficult, it is difficult. And I would think it must be very difficult in the legally aided cases because you know there are such limits on what time can be made available. Yes I'm sure that there are difficulties, yeah.

[00:33:25] So that's very useful. I don't want to take up too much more of your time. Could I ask you to sort of wind up, perhaps, if you had.... If you imagine that you were briefing me now and I was going to come and interpret for you, in my case I'd be interpreting between English and Turkish, what would you be telling me now, prior to me coming? So we can assume you've asked me 'have you ever interpreted in mediation before and I've said 'no, I haven't. I've interpreted in Crown Court and I've interpreted in hospitals but I've never worked with a mediator before'. What would you be asking me or telling me now?

[00:34:18] I think what I would ask you first of all is how you deal with conflict when it's very obvious; I think, you know, commonly when we're mediating you have to realize that the two people we're working with are going to be in some level of conflict and because I have, I don't know these two people and how they communicate together as yet, what I can tell you is what each of them has told me. So that might be, say, somebody might have said, you know, I do tend to lose it very easily or I shout a lot or whatever. But again it's limited, what you know, because if you try to do that in broken English, you know, it is really hard. So you've got very little and you're bringing that interpreter in and saying: 'look, you need to understand, so what I want to know is how easy you feel about being around conflict? Are you okay with it? Because in mediation people can be quite conflictual, they can be angry and they can be upset. So it's really important that I just explain that does happen in mediation. And you know all of us as human beings deal with conflicts and emotion differently. If it is really hard for you to sit with that could you just tell me that now. Because I think we need to think about how we are going to manage this'.

BT: [00:36:01] Okay, we are getting down to it now. I would probably say to you I am quite used to conflict as I interpret regularly in courts and police stations where people have gone completely bezerk and started to threaten to kill people or physically attack the judge. But there are lots of security guards and police officers there, so it is different. But, I've never run across....I guess it will be just three or four of us sitting together in a private room. What do you want me to do if things get very heated.

ALC: [00:36:52] People have said things like: 'I didn't think about that' or 'I think it's all right', and they might have said something like: 'I've been in courts' or 'I've been in a situation worse than that'. But, like you, it then dawns on them that it's not the same set up. It's just going to be the four of you in that room and you see, that prompts then to say: 'well what happens if it does kick off then? Which allows me to say something like 'Well, you know, it's my job make sure that long before it kicks off, you know, I've got management of it'. What I'd like from you is that you are able to, to remain as calm as you can in the room. Because it's really important that the four of us stay as calm as we can and if any two of us are going to get upset then it's the clients. It's the client's right, because they may have things they need to say to each other, right, and they may need to say it in an angry way and that's okay. I just need you to know that that's okay, because it's their forum, for them to have a discussion. My job is to make sure that it does not ever escalate to a point where there is any danger for anybody in the room. If I say to you 'I think we need to take a break' I need you to get that across to them quite quickly so that I can get at least one of them out of the room, if that's what needs to happen, and if I stand up, that means that we are going to take a break.

BT: [00:38:24] And if, if let's say you and I are sitting, there's a couple there who start having a heated exchange in Turkish, would you like me as an interpreter to give you a simultaneous running commentary interpretation of what they're saying? How would you like to manage that?

ALC: [00:38:44] Yes, there's two ways of handling that. I have had both. I've had an interpreter who, I don't know how you do it, it's amazing, who's telling me, you know, I can hear it going on, see it playing out, you know, and I'm getting from the interpreter, almost exactly, you know, a running dialogue of what's happening... that is really helpful when that happens. And again it's about how you set up your mediation at the beginning. So you can say to couples you know: 'X is here, as you know, as the interpreter today and he/she will be able to tell me exactly what you're saying'. That,

you know, if the occasion arises when you need to talk to each other at some length please be assured that I'm going to be able to hear that through the interpreter. If I need to stop that then I will do so. So it means he's someone who is doing that, if it starts escalating and you hear someone say, you know: 'I'm going to smack you one' or, you know, something that would make you think okay, this has got to stop now. The good thing about using body language is that you don't need the language in order for people to know you've said 'stop', so, you know, using hands to say 'stop', stand up, you know, changing whatever it is, and most people, they do, you know, if you say 'that's it' they will stop. Or I used phrases like 'I'm going to stop you there a moment', and an interpreter will immediately pick that up and say 'please stop', as I've said. And that usually works, it usually works. So I think it's about personal understanding about how comfortable you're going to be in that room, it's important to understand that it might feel a little difficult because you are in close quarters with conflict, which I know you are in Court, but it's sort of different.

BT: [00:40:49] It's a formalised environment...

ALC: [00:40:57] You know, there is security there and it doesn't often get to escalate terribly, a lot of shouting but usually confined, whereas, in a room, you know, it's just four people in a room. I will talk to them about the fact that what mediators try to do is to help the two people involved to sort out their issues together and it's for them to negotiate. So my role is to manage that process of conversation and to help them to try to make progress. There will be times when, you know, I would want to sit back and to hear what each of them or both of them have to say without interruption. In fact that's probably quite a lot of the time in the meeting. They are not to worry, therefore, if I'm not immediately jumping in with questions or comments. But at the time when I do want to say something, if they could interpret that exactly as I framed it... and it might sound odd, because we have a mediation language where we ask questions rather differently, if they would please interpret in exactly the way that I framed the question or the comments. And just generally to say, you know, the end point is that we hope that they can get to resolve whatever number of issues they have; that may take place over a number of meetings. Usually, I would expect meetings to be about 90 minutes, unless we've arranged it for a half day or day or whatever it is. And, you know, we will take breaks, so, if at any point you as interpreter need a break, I will explain to people that, you know, it's okay for any of us to ask for a break at any time, right. So that the interpreter can say 'Excuse me can

I have a minute?', and I've had that happen a couple of times with interpreters, who've just said 'could I have a break please?'. And it's usually been because it's been quite... if it's been a busy meeting and there's a lot of information exchanged, and there might have been a bit of conflict, a bit of anger... I can appreciate it's wearing if you're an interpreter. So, it's usually something around I just need to get my head back together, I just need five minutes, can I go and get some water or a cup of tea or something? And actually that's fine because, you know, it's quite good to have a natural break, because it allows me to say to the couple as well: 'well, that's good. Why don't we all just take a break?' Like tea, or whatever, and I don't think anybody worries too much about that. I've never had a couple say to the interpreter, you know, 'well, why do you think you should have a break?' It suits what I am doing.

BT: [00:43:56] Would you actually say anything specifically about how you would like the linguistic part of the process to be managed. What's interesting is... what you're telling me is, you are trying to get them up to speed on the reasons for the mediation, the outcomes that ideally you are looking for if it goes well, what you want, what you're trying to do in the mediation. What about the actual mechanics of the linguistic exchange, how you want them to interpret, for example...

ALC: [00:44:29] You know, that's really important. It's the same as me saying to them 'could you please interpret any question I ask or any comment I make exactly as I set that out? I know it might sound like slightly strange but that's how I need you to do it'. Very often I will say, 'it's really important that I hear exactly what they have said back. I don't need you to dress it up or change it in anyway. I need to know exactly what they have said to you back to me', and I had a very good example of this happen. I train mediators and I was asked to write a training program for mediators in Slovenia. And as part of that I wrote, obviously, a role play because this is experiential stuff. And I could not understand why this role play was just not playing out the way that we had imagined. And we were working with interpreters to deliver this course to justices in Slovenia because they have career judges. And when we took the interpreters aside and said 'what is happening here?' and what it was is that...the role play is always set up. This was a set up where there was quite a high level of conflict. But these justices, they wouldn't, they were not going to descend into a behaviour that Slovenian society would frown upon. So the interpreters had interpreted what they wanted, in such a way that they were all behaving culturally exactly as they would, which is to say, they were being

very well-behaved. So it was then about us thinking, actually, this is a really good case and I've had the same thing happen with a program for mediators in Japan, and even more in Japan, because it's a very managed culture, Japan. So they could not understand at all that people could misbehave in this way because it would be unacceptable in their culture. So I think there is that, it adds another nuance that you need to be aware of, depending on the language and culture you are working with, whether there are particular things that you'd be saying to that interpreter, for example: 'I realise that in your community it might be the case that.... however, linguistically I really need to hear exactly what they say. I don't want you to interpret the nuance of it or the meaning of it. I simply need to know exactly what is said'. And I think most interpreters are okay with that, it's almost like, it's like a human thing that's some interpreters, you know, they want to put some level of interpretation on what's been said. Either because they are trying to explain it to you or because they themselves want to...be involved in it in a way that's helpful. So they might just move something slightly to make it sound perhaps, maybe, less conflictual, perhaps. Or that sort of thing. That can be difficult because you'll miss something, you'll miss something really quite important.

BT: [00:48:18] I suspect that's to do with... mediation encounters for people who aren't mediators look deceptively informal. It looks... because you're trying to generate this sort of certain atmosphere, interpreters who have legal experience would unconsciously be lulled into the sensation that all the normal rules are off, that it's a terribly informal setting, where everyone wants to be nice to each other and help out. It's absolutely clear in other settings that there's a very clear set of boundaries and parameters. I think that's probably what's happening. I was having this conversation with my students yesterday and we were discussing this; how you actually developed two personas, the usual socially functioning person who feels things, you have empathy, you want help. But then there's a professional you who actually doesn't do any of these things that a normal human being would do in these situations.

[00:49:31] Yes, it's exactly the same when you are training mediators. Because, we all, as human beings, we all have our own beliefs and values and everything that goes with that. And one of the things that trainee mediators worry about is 'how are we going to conduct things in an impartial way when they, you know, they've taken an immediate dislike to one of the people who come into the room. People say ' how do I prevent that from being obvious? '. And you know that's hard because

it's, you know, you can't tell what somebody might prompt in you, because of your own beliefs or whatever it is, and it must be the same thing for your students, because this is exactly the same thing, this separation of that professional persona from the person who holds those values and beliefs and lives socially elsewhere, and all the rest of it. It is hard, it is very hard. And I think that's one of the things that for interpreters is probably very difficult because they may, just like any other human being, they may take an immediate dislike to one of the people in the room, or to the mediator, you know, that could happen. And then they are trying to do so many tasks at once because engaging your brain to interpret across language like that is enough without trying to manage all the other bits and interaction, you know.

BT: [00:57:19] Very good. That's very useful indeed. I've gained an awful lot from talking to you and sort of, even as we're speaking, reflecting on what you've been saying. I think that more or less winds up what I'd like to ask you. I am very grateful for your time, it's been very fruitful. What I am going to do is listen again to the recording of our conversation, write up field notes on it and think about it. I may email you with some further follow up questions.

ALC: [00:57:45] As we've been talking, I think we have struggled in this country to advance mediation into other cultures and particularly to be able to recruit mediators from those cultures. And that's why we have increasing problems in having interpreters, because, I'm afraid to say, mediation remains a social and white middle class occupation and that's rather sad.

BT: [00:58:07] You know I think on that note some of my reflection would be that, in some ways, mediation is in a place where the barristers were 20 years ago, which was exactly that. Realising that because of super diversity and so forth we have to figure out how to work with vulnerable witnesses or defendants, whatever it may be. Because they had to, they started the process of figuring it out. It's not... it doesn't require a huge amount of time, often it's just sort of pointing out to people and giving a basic toolkit for how to work through interpreters. It can be delivered fairly rapidly certainly over a day's training or so.... and you see the lights go on.

ALC: [00:58:59] Yeah, I think that's why us mediators, you know, babes in arms as we were, just coming in to this, we just sort of learned on the hoof, and you do look back think: 'how could I have been so stupid?'. But, you know, you are thinking in terms of how I can I help these people, because they really want to resolve these issues, but I can't do that in the language of their choice. So how best to help here? And again, sometimes, the wrong thing to do is to think that mediation is all things to all men, sometimes it's not just not right. Because even if you have a really good interpreter, it is just too hard. It just isn't possible. It's just too hard to make it work and they need to look at other ways of doing it. You know, we have got a lot more to learn and things like, you know, understanding cultural practices, it's very important. Because I mean, for example, I trained with colleagues a team of mediators at the Jewish Marriage Council. We had huge debates within that community about what is best, do we want mediators who are Jewish, do we want mediators who understand the Jewish community. And there was quite a lobby that all the mediators should be Jewish because why wouldn't they? But then you hit that community problem, the cultural problem, about how that community on a local level operates and whether people, if they knew it was members of their own community, whether they would feel okay coming to a mediation.

BT: [01:00:00] I'm not convinced about that argument, having gone through it in my own professional life, too. Certainly to some extent, having somebody who's not either ethnically or socially embedded in that particular community can actually be liberating for the parties involved and it can short circuit all sorts of intra-communal problems or tensions. So I think there is an argument that not every mediator should be from that community and completely embedded in that world view.

ALC: [01:00:26] I think in the early days of mediation there were attempts to recruit mediators or trainees from the community where we knew we didn't have any representation as mediators and, first of all that, proved difficult. I don't think we have a very diverse population of mediators at all, and secondly, I tend to agree with you, that in a lot of cultures the fact that you're talking to someone from outside of it can be,, as you say very liberating, and feels safer, I think...

BT: [01:00:46] I can imagine it would work that way.

ALC: [01:00:48] Yeah. And also, you know, it's interesting how it can encourage communication between the two people because if you as a mediator say 'I'm sorry, that's not something that I'm familiar with, could you explain that to me?' And what they do is they immediately look at each other and then they start talking to you.

[01:01:01] I'm unusual in that I work with Turkish but I'm manifestly not Turkish, I learnt it as a second language. And in conversations with my Turkish interpreter colleagues I realize they come under a whole set of pressures in settings like mediation or in courts which, simply, by virtue of not being Turkish, I don't. So, for example, I have a colleague who says: 'I get people saying, you know, help me, you must help me, we're both Turkish, you must understand', and then they say: 'well, I can't, I'm an interpreter'. And they then say: 'you're not a good Muslim, you've changed sides' etc. All these sort of pressures which are simply part and parcel of belonging to a particular community. It's not that they cease to exist but, somehow everyone's released from them. There's no one asking this that or the other because he's manifestly doesn't... you're removed, you're liberated from those things.

ALC: [01:01:47] Yes, and that can be both positive negative You know, I have had had occasions actually that made me think about it, where the interpreter actually said to me at one point...because there was a conversation going on and it wasn't coming back to me, and I wasn't sure what was happening, so I just touched the interpreter more or less just to say...could you...?. and they said: 'oh, it's fine, you wouldn't understand this!'. And I thought 'Whoah!' and it clearly, you know, that was something to do with community, with cultural issues, so they just thought well, you know, you're outside of that because you're not part of this culture, so what would you know?

LB on 2018-07-02 at 10.34.mp3

BT: [00:00:50] I was just reviewing a couple of days ago the video recordings that were taken that time in Wolverhampton with Robin, you know, remembering that and what I'm doing now is I'm picking up on the interviews which you and Robyn kindly did there, that were linked to a European funded project which concluded in 2016. The research I'm doing now is sort of building on that, but focusing specifically on mediation in the UK. But the questions are very similar or certainly cluster around the same phenomenon. Overall, I'm still trying to produce a clear account of the impact of having language interpreters on mediation sessions and so that's essentially what the research is about. There are five core questions that I wanted to ask just to get your experience of working with interpreters through mediation, however extensive or limited that may be, and your reflections on that. Is it okay if I record this conversation, it is just for research purposes?

LB: [00:02:20] Yes.

BT: [00:03:50] I wonder if we could start perhaps with... if you could think back to a mediation that you have been engaged in, either as a sole mediator or as a co-mediator, where there was a language barrier and where you were working with an interpreter, perhaps we could just go through that? Tell me what you can remember about that encounter and what it was like working with an interpreter.

LB: [00:04:27] It is something that I did at Lupus in Wolverhampton many years ago now, it's now been closed for what I think is 2 1/2 years or so. I have historic experiences of working mainly with Asian language interpreters. My more up to date experience, I am sometimes working with a firm of solicitors called Greens who are in central Birmingham. Clearly because of the demography in that area, there is a lot more use of interpreters, so my more recent experience now, this year, is of working... now let me just try to think... primarily interpreters in East African languages. I've worked with some very good interpreters. In fact, I can't think of any I've worked with who hasn't been extremely helpful and very professional. Obviously, it is essential to have an interpreter because the mediations that I'm thinking of, the parties had virtually no English, so the mediation couldn't proceed without the interpreter. The interpreter, I would say, was very sympathetic, very empathetic. The pace was important, and that was just right, and the parties also seemed very happy with the interpreter. The only thing that can make it a little bit difficult when we've got parties who have virtually no English is when they start to feel that they are beginning to make some progress in mediation. This particular one was to do with arrangements for a child. They can actually then go off into a conversation by themselves in their own language which, obviously, the mediator is then locked out of. It's quite challenging for the mediator to know when to hold their hands up and say 'Whoah, whoah, whoah. Interpreter, will you just fill me in on this conversation?' And I think it is also not so easy for the interpreter, because they understand the conversation that's being had and the progress that is being made and they don't know when or if to interrupt that progress. One can normally tell by body language and intonation that something is a constructive dialogue and the parties are making progress, and obviously you can't lock the mediator out of that. So the role of the interpreter there is particularly challenging, because not being a mediator, they are perhaps a bit unsure when to cut in and say to the parties: 'okay, that's enough, I need to interpret to the

mediator'. So I found that I was having to put up my hand and say 'well yes please will you stop, please may I have an interpretation of what's been said?' So, quite a big chunks, again, because actually the parties were making good progress. So it's a very interesting dynamic and I can't remember what your question was and whether I addressed it at all!

BT: [00:08:20] No, you did indeed. If I could pick up on something you said? So, you've got your two parties who begin to communicate directly in another language. The interpreter is there, and you the mediator are, as you say, shut out. How long do you think you could allow the parties to continue in dialogue, in another language, before you felt you had to ask the interpreter to interpret?

LB: [00:08:49] I'd say a few minutes. It would certainly depend on body language, just how it felt, no hard and fast rule. It may be the case, if they are obviously getting on so superbly, that I might throw in the towel and then possibly even ask the interpreter for a summary of what had been said, rather than a phrase by phrase direct interpretation, but I think I'd be able to tell by the parties' demeanour and the atmosphere in the room, really, whether this was something where I needed to intervene because, perhaps, somebody is being rude to somebody else or being accusatory or something. As a mediator, I wouldn't actually want to block any progress. So it would pretty much be gut instinct. I don't think I've been in that situation before. So no, perhaps it doesn't occur that often, but for me that would be quite an interesting position to be in. But I don't think I'd let anything go longer than say three or four minutes because a lot can be said in that time. So it's really about instinct, in a way, when you're not understanding the words.

BT: [00:10:11] Would I be right in saying that one of the criteria of success is that... if the mediation is going well, you would hope that the parties can begin to communicate directly each other?

LB: [00:10:24] Yes...

BT: [00:10:25] As I've understood it, that's a general observation, you know, what you want is to get people who can't communicate or won't talk to each other, ideally they would stop going to the mediator and talk to each other?

LB: [00:10:36] So yeah, there's times when we're working with English speaking people and sometimes it's really great because they're actually starting to have conversations they need to have, and the mediator is probably best advised to sit quiet for a bit while they're making progress, and then try to acknowledge the progress and congratulate them on it. Because, really, one of the main reasons that the court and, generally, the family law system, is encouraging people to mediate is because it's very good for improving communications. So, if in the room, they're really starting to communicate, I think the last thing the mediator is going to do is to stop that. So, you know, you need to guide people to keep them focusing on the issues, but, you know, there are some times, some lovely situations, where all of a sudden whatever the barrier is between the parties just seems to dissolve. I think sometimes because they are sitting in a neutral environment with a third party who is there to help them, they just somehow get their act together. It's not always that easy, but it does happen.

BT: [00:11:59]The problem you've got if it's not an English conversation between the two parties is that you can't mediate it, where the dialogue is going, what's what. So all the things you've described you would do with an English speaker in a mediation is, in a sense, unavailable and ideally therefore the interpreter, hopefully, could help you monitor what's been said. When you did... when you did intervene and say 'could you tell me what's been going on?' what did they tell you? Did they interpret each turn of speech in the dialogue or did they give you a sort of brief description of what they had been saying or ...

[00:12:51] Yes, yes. The latter. When there has been a lot of dialogue a summary is generally what's given. I think sometimes it's evident that the interpreter is using the phraseology of the parties, you know, remembering as best they can how things were said, and obviously, if it was a lot, they're not going to be able to give it verbatim, and then sometimes they'll interject phrases which you are aware that are actually verbatim, and then they'll link that with just a bit more narrative to really set the scene of what's just been said, rather than interpreting word by word. When things are going less constructively, perhaps slower, word by word interpretation is what would occur. So the mediator can really be in control of things and keep tabs on things. But frankly it's the parties' issues, and ultimately it's for them to have control of the decision making. So if that's what's occurring, that's to be encouraged.

BT: [00:14:07] Do you think it would work for you as a mediator if, at the point at which the two parties begin to communicate directly with each other in a non-English language, the interpreter was able to whisper or murmur a simultaneous interpretation as it was being said, so in practice the

interpreter would move next to the mediator and actually lean over and more or less murmur a continuous interpretation of everything has been said?

LB: [00:14:45] Yes. I've not experienced that and it would probably be very helpful. Yes, that would be almost like... I mean... I know at international conferences everybody is wearing a headset and they are getting it in their own language, it's a version of that really. So that could be very helpful.

BT: [00:15:05] But that's not happened in the past, I gather?

LB: [00:15:09] No, no, it hasn't done. I haven't felt awfully wrong footed because it hasn't happened... Because as human beings we can read body language and we can pick up atmospheres. So, yeah, I felt all right the way it has been done, but yeah, I'd be very willing to try that, that might be very helpful.

BT: [00:15:39] Just one other question, a more logistical question. You said at the outset that your experience with interpreters is generally positive, that you found them to be empathetic and sympathetic. Do you know where... the interpreters you've worked with, do you have any knowledge of where they were sourced from, where they were supplied from?

LB: [00:16:12] Actually, I don't, because at the moment I am only working with Greens in Central Birmingham, and because I am only covering occasionally for them, I am not involved in organising the interpreter in any way at all, it's the clerical staff who do that and, although I sign a form, you

know, that the interpreter gives me, I can't just... I haven't got a photographic memory, I can't remember what it says on top. It will be an interpretation service in Birmingham, no doubt, they do seem to be quite local. I can find that out for you if you'd like me to and I can put that information in an e-mail if you wish.

BT: [00:17:03] Let's...if I visualise your interpreter for the first time, do you meet with them prior to the mediation with the parties?

LB: [00:17:12] Yeah, yeah. I would do, just sort of out of professional courtesy, to introduce myself, probably just take them into the mediation room, make sure they are settled, offer them a drink, just to break the ice with them, before introducing the parties into the room. I think I would also meet the parties beforehand and say 'well, the interpreter has arrived and they are in the room and we're all ready to go. Just so everyone is feeling, well, their expectations have been positioned, i.e. everybody is here, are we ready to go.

BT: [00:17:58] How do you think the presence of an interpreter, this extra person sitting in the room, impacts on the progress of the mediation?

LB: [00:18:11] It's noticeably slower, because things need to be said twice. So you certainly need to make sure that you've booked your room and you've got sufficient time and everybody is aware, the parties are aware, that it will perhaps take an hour and a half whereas a session might usually be an hour. Obviously, if we don't need to take all of that time, we wouldn't. And I think it is important,

and this is something that the clerical staff sometimes aren't great on, is if you remember that the interpreter probably needs booking for an hour and a half, not just the standard hour, because, as I said, everything is said twice. In terms of having the interpreter in the room, I think obviously that is a very great help, in that the mediation couldn't happen without the interpreter, the parties recognise that. I think the parties are very, very relieved to be able to converse in their own language obviously. It just causes them to feel more relaxed and comfortable, which then ... the vast majority of times it would lead them to get on with the important matter of making some decisions about their family matters. So, you know, all the interpreters I have ever worked with are lovely and they just sort of blend in with everything that's going on.

BT: [00:19:40] In your experience, do they maintain a neutral position or do they get actively involved in the mediation process in some way?

LB: [00:19:50] Well. I think I've only ever had experience of the interpreter appearing to be partial once, many years ago, perhaps 10 years ago in a mediation that Robin and I did in Birmingham for Lupus Mediation and we were quite clear with the agency through which that interpreter had been sent to us that we never wanted to work with them ever again. But that is so rare. The overriding experience has been of complete neutrality and professionalism, thankfully. And I work with male and female mediators and there doesn't seem to be any side taking according to gender or anything like that.

BT: [00:20:44] Is it your impression that they're experienced with working in mediation, or not?

LB: [00:20:53] Not, usually, I think. If we're... I know all the interpreters I've worked with at Greens are great, so we really try and have them again when that language crops up again. In that way they would be gaining a lot more experience of mediation. Some will have worked with other mediation organisations. I've worked with gentlemen quite recently who normally works in a scientific background. He himself was doing his PhD in a science subject, so he's doing this to bolster his income but he was perfectly adaptable and able to deal with mediation, you know, although when we had a chat between ourselves afterwards, he said that it was something that was new to him. So I've found that interpreters have been able to deal with mediation. And importantly, at the beginning of the first mediation session, we run through with the parties the terms of the agreement to mediate, which are identical with the information they would have had when they came individually to their Mediation Information and Assessment Meeting. So they're hearing it for the second time. It's good to remind them, you know, the rules by which we do mediation but also the benefit to the interpreter is that they are hearing, in a very simple explanation, the fact that, you know, the mediation is impartial, it is a voluntary process, the decision making is with the parties and it's confidential, apart from the exceptions. So the interpreter gets all that and we also get the interpreter to sign the agreement to mediate to confirm that they are playing by the same rules, because that is very important as well.

BT: [00:23:02] Would they have been present at the MIAM as well?

LB: [00:23:08] If it's somebody who has no English, then yes. And if it's somebody who didn't have any relative or friend to interpret, then, yes, they would. But in reality what most often happens is that they're able to bring a friend or relative to the MIAM and that is absolutely fine. That relative

isn't allowed to come to the mediation itself. That's where we engage a professional interpreter. So, yes, I'm just wondering, I'm not sure of the decision, actually, with public funding for an interpreter for the MIAM. I think it must exist, because... but you know, again, I am not actually involved with the financial side of dealing with the legal aid area of thing. But you know I think it all the MIAMS I have done, they've brought along somebody to interpret at that for them.

BT: [00:24:21] If you... if we were to set mono lingual English-English mediations, family mediation sessions, side by side with mediations where you've been working through an interpreter, do you think there has been a significant difference in the outcomes between the different types of mediation?

LB: [00:24:48] Not at all, no. If there was, the mediator wouldn't be doing their job properly, frankly, because our job is to facilitate the parties wherever possible, reaching an accord, so the only difference is that it takes longer. So everyone has to be a bit more patient and a bit more polite to each other. You know, I would be very unhappy as a mediator if I thought I was doing it differently or the outcomes weren't as good if people were working with an interpreter.

BT: [00:25:24] So that's interesting. So, if I understood you correctly, you can say that the presence of an interpreter hasn't had a negative impact on outcomes in mediation.

LB: [00:25:41] Not at all, no.

BT: [00:25:42] Another question is, how competent do you yourself feel as a mediator about working through interpreter? How comfortable are you having to work through an interpreter to carry out your professional role?

LB: [00:26:03] Completely! Because I recognise that it wouldn't be possible for some people to mediate without an interpreter and that would be unfair. And if there is one thing that mediators dislike, it's unfairness. You might remember that I'm also a solicitor, and I went into Law in the first place because I hate unfairness. So, from a personal perspective, it is absolutely essential that we have interpreters if people need them. I'm not suggesting that there's any real comparison but it's just like anybody who wants to come in to the office, they have to be able to do so. If they can't manage stairs, there is a lift for them. Everything needs to be facilitated so that people can mediate.

BT: [00:26:56] It's a fundamental question of natural justice, isn't it?

LB: [00:27:04] I also, I think, in a way my personal background, being brought up in the countryside but close to Wolverhampton, it's always been a very multicultural area, then going off to University in London. My husband's family is from the Caribbean, I have absolutely travelled the world. So for me, people talking different languages, well, that's how the world is, I have no bother about that. Indeed, I lived in Wales for 12 years and was completely accepted in some areas that were, you know, pretty patriotic, so I hope I am sensitive to nuances and making people feel comfortable.

BT: [00:27:54] I think what I'm hearing you say is, you personally are sensitized to language, and the significance of language difference and the multiplicity of languages, in a way which, perhaps, is not necessarily universal.

LB: [00:28:14] Maybe. This is a slight aside and it is an amusing story and Robin might have mentioned it. Robin and I worked with a Jamaican couple and he was terribly backward at coming forwards in giving financial disclosure. He was obviously hiding something, frankly, that was the gut instinct of both Robin and I, and the crux was some land in Jamaica which...he was very vague about whether or not he had any interest in. He was saying that all his brothers, excluding him, were the titleholders of this land. When he was, I think, feeling very defensive he went into Patois. Well thankfully, I understand patois. And I think Robin dined out on this story for many years because he's went into patois and I followed him with no difficulty and absolutely called his bluff! Because I said to him 'where exactly is this land? Which parish it is in?', praying that it was St.Elizabeth, because that's where my husband's father lives and I knew where the land registry was for St.Elizabeth. And, praise the Lord, he said the land was in St.Elizabeth. So I just sort of looked at him and said 'well, isn't the Land Registry in Black River? Couldn't you go along to the Land Registry and determine who are the title holders?', and the poor gentlemen nearly fell off his chair. And, had I not understood Patois, I don't think we'd have been able to make the progress that we did eventually make. So let's say Robin dined out that story for a very long time. .

BT: [00:30:11] Access to language made a huge difference in that case.

The fifth question I think you have answered in passing already, about your confidence in the interpreters themselves. You've given a very positive account.

LB: [00:30:33] Yeah, yeah. Apart from one, I've never had a bad experience. If I thought the interpreter wasn't going about this... if it wasn't correct in any way I think I would probably end the mediation for that session, perhaps have a word individually with the interpreter and think about either getting things back on track with that interpreter and or perhaps engaging a different interpreter, if things were looking as though they weren't working in the best interests of the clients. But I haven't had to do that.

BT: [00:31:09] It would be very interesting to know where Green's, your current partners in mediation, are sourcing interpreters from, because your very positive account of them is atypical, in fact, from my research.

LB: [00:31:41] I'm sorry about that! I don't know whether you might also want to talk to Julian, he's head of mediation at Greens, he is my former colleague. He worked together with Robin; Julian Rendall, when Lupus closed, Julian had to go off and find something...so it's Julian that I cover for when he needs cover, but he has got, probably now, more experience of working with interpreters, being in central Birmingham. We've been doing family for 10 years or more, something like that, he and I have worked very closely together over a long period. He wasn't able to have too much experience with Robin because normally you don't have two male co mediators, usually you have a male and a female. So it was me that he did his co-mediation with principally, when he was doing his

portfolio, when he was training. So, you know, I feel it in a way he's got more up to date experience of working with interpreters now than I do.

SW on 2018-07-02 at 12.40 002.mp3

BT: [00:00:08] I was coordinating a European funded project where we were looking at the provision of mediation in seven European countries including the UK and in particular the impact of language difference, and either the use of interpreters or, like yourself, bilingual mediators and any other methodologies that came up for conducting mediation over language barriers. Now I'm following that up with some further doctoral research into specifically the UK. Lugaith Mulkerin suggested your name actually, he's a colleague of mine at Middlesex. And I've also seen you interviewed, I think, some time ago by the...

SW: [00:00:59] Mediator Academy.

[00:00:59] That's right, yes. Now, I gather from speaking to you before that you actually are a bilingual mediator.

SW: [00:01:15] Yeah, I'm half German so I, kind of, I don't specifically market my services as a bilingual mediator but it kind happens that way. So yes, the main work I've done with an interpreter has been in training actually, and we did a role play session at a conference in Berlin one year where we were working in two languages and then we had a mediator...a translator, and half the people in the audience had their own interpreter.

BT: [00:01:57] So, very complicated!

SW: [00:02:01] Well, I think it will be useful for me if it's okay to first ask you to reflect in general just to recall perhaps that role play, and then it will be particularly interesting to, I suppose I could say, triangulate that against your experience as a mediator who is actually bilingual, and any bilingual mediation you have done and see what comes out of it. So, if I go through the sort of the headline questions, there's only five of them, that I set for mediators who, so far, unlike you, have all been monolingual English, and have worked across language but always through an interpreter; I'll use those questions. But as we progress perhaps we can tease out what the significant differences and what your perception is as a bilingual mediator.

SW: [00:02:55] Yeah, sure.

BT: [00:02:57] So, if we start with your experience in the role play of interpreting through mediator, what do you recall about that in terms of its efficacy or....

SW: [00:03:10] Yeah, that was interesting one. I suppose I found it quite...stilted, um, challenging, obviously, you know it was a demonstration role play so there was a fair bit of artificiality around it anyway. But it certainly slowed the process right down, obviously. And because, yeah everything had to be filtered through the translator, if you like, so you know the first thing I noticed was that. You know, process time isn't necessarily a bad thing sometimes, because it can be harder for people to get into a full-on tit for tat row if they have to do it through a translator. And, this is kind of complex because the...I'm trying to remember exactly who was involved, and the sort of common language was English. I can't even remember the language I was speaking, I think I was speaking German, I

was the wife in this case and the husband was.....trying to think who it was now... anyway he was speaking English, so there was a native element to it as well, there was another layer, you know.

BT: [00:04:45] So you're actually not in the role of the mediator but as one of them, one of the parties.

SW: [00:04:50] Yeah, yeah right. Somebody else is mediating. So that was quite interesting.

BT: [00:04:56] Did you find... did the interpreter... OK, if you were you are notionally a party in that encounter, you've reflected that it slowed the whole process down considerably. What was your first impression of the interpreter? Would you say that they appeared to be professionally competent in the role they were undertaking or....?

SW: [00:05:19] Well, in this case, it was somebody who was trained as a mediator as well as doing the translating, which of course isn't likely to be the case in reality. And certainly there was a definite advantage in that, that the translator knew the language of mediation. So I suppose that would be the first sort of, the first recommendation if anything I would make, is that any translator that is used would at least have an outline of the process, that sort of thing. That would be very important.

BT: [00:06:10] Okay, if we look at your experience as a bilingual mediator which is, which is also very interesting, how far do you think...could you think back to a case, the most recent one you've worked as a bilingual mediator? I'm guessing it would be English-German. So the parties involved...

both parties... did you conduct the whole mediation in German or was it was one of them speaking English and as one of them...?

SW: [00:06:46] Yes, most of the time, and it depends because I've worked in that context in both family mediation but also in commercial mediation cases, which of course have a different dynamic. Because in family mediation you're working with the parties in the same room, whereas you're shuttling in the others. So in a family mediation, what actually happened was, and I suppose in this case particularly I'm thinking of now, language and education for the children was a big issue. So the mother of two children wanted the children to go to the German school, so they would learn German, and the father wanted the children to go the local girl's school, which is the Irish-speaking school, which is a different language from English, so that made it even more complicated. On that one I actually ended up...the father spoke a little bit of German, so I ended up... sort of speaking a little bit like I do with my own family, a mixture...predominantly In English, and then lapsing into German every now and then when it was relevant and speaking a sort of mish-mash. Which just kind of evolved that way and worked for the parties.

BT: [00:08:08] Can I ask, were the parties themselves speaking between German and English or...?

SW: [00:08:11] Yeah, the mother particularly. The father was kind of sticking to English, you know you could tell when he understood but the mother was switching back and forth quite a bit herself.

BT: [00:08:24] And did you find yourself in the position of both...of adopting two roles both as a mediator and as an interpreter?

SW: [00:08:41] A little bit, yeah, I suppose you do a little bit, even in the simple shuttling, yes, and you're working in German in one room and English in the other and you're transitioning from one room to the other. And you're switching languages, as well.

BT: [00:08:53] So you've got...let's say you'd be in the English speaking room. You'd then cross over to the German speaking room. Would you then be providing a verbatim interpretation of what was said or reporting what had been said?

SW: [00:09:14] Reporting. I suppose the big advantage is that I'm ...German was my first language, I can think in both languages, so I'm not translating in my own head.

[00:09:28] Yes, there are two Sabines, a German one and an English one.

SW: [00:09:34] So I mean sometimes it does, you know, your head hurts a little. Yeah. Because I mediate much more in English, you know, I'd have to sometimes just think a little bit more about framing something appropriately in German and that sort of thing.

BT: [00:09:51] In the commercial mediation the issue of interpretation, if I've understood you correctly, doesn't actually arise because, as you say, you're one mediator, you don't have to interpret what other people say i.e. you don't interpret verbatim, you reflect on and mould what they say and...

SW: [00:10:12] ...and report it in the language. Whereas, when the two are in front of you, you're doing a little bit more of that, you know, that kind of...so say the German wife is trying to express something and just couldn't really express it in English, and said it in German and I would assist in going 'Oh yes, that's an expression that means something something.... I should probably say I've a qualification in translation as well, in legal translation.

BT: [00:10:41] So, we've got, with family mediation we've got the two people in the same room...you've described this very fluid communication dynamic where you're all switching between English and German, and occasionally you're doing a bit of interpreting and also mediating so you've got a dual role there. I get the impression, as far as you're concerned, that that worked quite well.

SW: [00:11:06] Yeah definitely. And the other layer to all of that was that, what I usually find in Family cases particularly, is that it's not just about the language, there's a strong element of cultural interpretation as well, and cultural translation, you know? And particularly the negotiations in that case were very much around how they were going to manage to raise their children so that the children would be able to identify with both their cultures.

BT: [00:11:38] Could I touch on your phrase 'cultural translation' again? How would you say that played out in practice in mediation? I mean what were...what was cultural translation and what happened?

SW: [00:11:53] Yeah, I think I think the way it happened, what happened was that both of the parties, and I know it's a kind of unique situation but because I've grown up in both countries as well, both of the parties felt that when they said, you know, 'I want my kids to be able to play GAA' or, you know, 'I want my children to celebrate St.Martine' or something like that, I knew what both of them were talking about. So neither of them felt they had to launch into a big explanation of a cultural hallmark, they both felt they were understood.

BT: [00:12:37] So wearing your mediator's hat, you could use that cultural information to be able to.....

SW: [00:12:47] Yeah, I mean I don't know to what extent you have of looked at or talked to any of the people in the cross-border family mediation organizations?

BT: [00:12:58] I've spoken quite a bit with Reunite and I know the people at MIKK in Berlin.

SW: [00:13:04] That's the context in which most of my multilingual mediation would happen. And normally what happens is that I tend to work with a German mediator there. And the language of the mediation tends to be English but if we have a German-English or German- American or German-

Irish couple, there again, depending on what language is between the parties, that can get mixed a little bit.

BT: [00:13:33] Yes and I suppose my last question on this is: do you think that the language difference has a significant impact on the outcome of mediation?

SW: [00:13:47] I think so...well... I mean I suppose it depends on how you define outcomes.

BT: [00:13:56] Well, successful outcomes in terms of, very narrow terms of whether you successfully arrive at some form of agreed settlement or not.

SW: [00:14:07] Yeah I mean I think it's certainly... having I suppose the best option in terms of languages so somebody who really speaks both languages and understands the cultural ramifications overcomes the big barriers around, you know.... feeling like you have a voice at the table, if you like, feeling understood, which then in turn makes it easier to negotiate and reach a settlement, you know. Because I think definitely, you know, if, sort of, everybody here speaks English fluently except me, as one of the parties, that is a big barrier, I think. And I think in terms of the translator, you know, again for a translator to be effective, they would have to have a really good... because mediation is such a linguistic process, I think they have to have very, very good language skills and quite sophisticated understanding of ...the mediation process anyway, but the kind of tools, you know, that mediators use, things like, you know, reframing and mutualising and, you know

reflecting; asking the right kind of questions. So you know, different from legal translation, in legal translation you need to know the terms but other than that...

BT: [00:15:35] It's very much a forensic processes, isn't it?

SW: [00:15:36] Yes, exactly. I mean, whereas we have had mediations where, even without there being any language barriers, we've repeated something wrongly or reframed something wrongly and it's led to setbacks, you know: "I didn't say that! That's not what I said!"

SF on 2018-29-01 at 11.00.mp3

BT: What I'm doing is picking up on the work that we did on that European project back in 2016 and using some the data we picked up for my own doctoral these. Looking again at the impact of the presence of interpreters on the mediation encounter.

SF: Yes, yeah....

BT: Based on that I'll be using quite a lot of the data that I collected from the European project plus fresh data from talking to people like yourself, and go on from there. So, what I wanted to start with is...if we could sort of think about a mediation that you were engaged in where there was a language barrier, a language difference, an interpreter of someone doing something as a language mediator was engaged in the process, could you start by telling me what you can remember about it, about an example like that?

SF: Ok. To start with, um, we only use interpreters from an agency.

BT: Okay.

SF: We don't use friends or family or anyone like that. For the actual mediation...

BT: Why would you say you do that?

SF: Well, for a start, we hope that if they belong to an agency that they know what they are doing. We need to be able to have some degree of faith that they are interpreting correctly. And also, I'm not quite sure but I imagine our stuff is nearly all legally aided so I'm not certain how the Legal Aid Board would take it we used a non-professional interpreter. They pay the interpreters, through us, I mean.

BT: Okay, so...can I touch on that? So, you get your interpreters, source them through an agency, and as you said yourself, you do this because the thinking is that that we can have some assurance that, you used the phrase: 'they know what they are doing'. If I press on that a little bit, they know what they are doing, do you mean doing linguistically, or as intermediaries?

SF: I mean linguistically but I also mean as an intermediary. That they are actually translating correctly and not putting their own spin on what we're saying when they repeat it back.

BT: Okay, so these interpreters that you get from the agency, do you give the agency any specifications? I mean is it...what I'm driving at is do you simply say 'we need an

Interpreter?' Or are there any additional specifications that you place on it?

SF: No. We just tell them that we need an interpreter for so long in such and such a language.

BT: Okay, do they provide you with any contextual information about the interpreters they send?

SF: No.

BT: So, it is very much handed over...it's sort of a professional contract?

SF: Send an Italian interpreter next Tuesday and Wednesday. And that's what we get. And their name. And they come with an ID card. And that's it.

BT: Do you always use the same agency?

SF: There's two or three. We largely use the same one but they don't always have someone available, or someone who speaks that language. I can only remember one where we had real difficulty getting an interpreter and that was...an Israeli. We couldn't find one in Leicester. We do it in two parts. The first part we did, I did, in London, with an Israeli interpreter from London. He was dreadful, absolutely awful. An elderly man, and he just...spoke to this Israeli father, and it was awful. I said when we do the mediation...what I wanted, when we did the mediation, there was no way...we were working in Leicester for the actual mediation and in the end we had to get on to the local Rabbi, who sent a medical student! She was great, she was absolutely fantastic! And Legal Aid didn't query it! But we were ready with our arguments.

BT: So, that was one case where you had difficulty because of the language pair, sourcing an interpreting, you had a bad experience with somebody in London. Just out of curiosity, the guy you were working with, who was not a good experience, in London, where did he come from?

SF: He came from an agency.

BT: He was sent by an agency as well?

SF: Yes, yes.

BT: So that is very useful. So, you've got the interpreters coming from an agency, do they stick with a particular...let's think through a mediation. Choose one of these ones where you used an interpreter. So, the picture I'm getting, it starts off, you get a case referred to you; do you have a, what are they called, MIAM, in these cases, a Mediation Information and Assessment Meeting?

SF: Yes, you have an interpreter for the MIAMS. And depending on where that is done, we don't always need an interpreter for both of the MIAMS, because more often than not one party speaks

English or is English. Um...say they are both Polish, generally speaking the one who lives here speaks English. Occasionally we get ones where neither of them speaks English but it's very rare, very rare.

BT: Yes, right. So you have different configurations. It's either English and non-English speaking or...

SF: Uh-huh

BT: Or you get couples who are both OL speakers, but one speaks English. Yes? That would be interesting to know more about, who choose to speak English and who doesn't, but I'll put that to one side for another time. And very rarely you've got a mediator with no...and a couple who don't speak any English?

SF: Yes, that is rare, but it happens occasionally.

B: Right, that's interesting.

SF: Because by the very nature of it, one of them is here. They live here, so...

BT: So, the key issue is location here in the UK. By definition...it is called 'Reunite'.

SF: Yes.

BT: So, could we choose one example of one of these? So, they come to the MIAM, there are two MIAMs, one with each party, one of them may require an interpreter, one may not. So, you source an interpreter if required through the agency? So, let's think of the day of the MIAM itself, of the morning or afternoon it takes place, wherever it is located.

SF: The MIAMs are always by telephone or Skype. They are never face-to-face.

BT: Right! Okay, that is interesting. Always remote. So, does your interpreter join you in a room and the client is at remote?

SF: Yes.

BT: So you and the interpreter are always together? Because there are various configurations in remote interpreting. That's a particular configuration, mediator and interpreter, and client at remote. And that is quite likely to be abroad, presumably, if they need an interpreter?

SF: Very often, yes, very often.

BT: And your preferred method is Skype? Do you use Face Time or any of the other...?

SF: Yes. Well, no, we don't tend to, we tend to use Skype. There is no particular reason...we're looking at Zoom at the moment, but, yeah, it tends to be Skype or the telephone. Very often it's the telephone because whoever is remote sometimes doesn't have Skype at that point.

BT: Or, indeed, a reliable connection. So, let's think about those for a moment if I might? If it's Skype, do you do what we're doing now, with a video link? Or do you just have audio?

SF: Yes.

BT: Skype is with video, uh huh?

SF: WE do usually use video, but because of the links sometimes we just have to turn the video off.

BT: And the interpreter would sit...if I were the client, if I was the non-English speaker, the interpreter would be sitting next to you, on a computer?

SF: Yes.

BT: So, I would be able to see you and your interpreter?

SF: And the interpreter, yes.

BT: How do you address this...if you were talking to me and I had to be mediated through an interpreter, how do you communicate? Would you talk directly to me as you are now, in English and your interpreter would...

SF: Yes...

BT: ...voice that, or would you say: 'Please ask Brooke the following things'?

SF: No, I would talk to you, I would say: 'could you tell me a little bit about the history, you know, what's brought you here?'. The interpreter would say that and usually that opens the floodgates, and I generally again have to stop them and start saying: 'what was that?'

BT: OK...

SF: And then I ask them a lot of questions, I give them a lot of information.

BT: Right, that's very interesting [SF]. So, this what you describe as 'opening the floodgates', you have to manage that. So, does the interpreter, they don't do it simultaneously, presumably?

SF: No, no. They don't.

BT: Okay that's fine...

SF: We have occasionally had an interpreter who does it simultaneously, but...listening to the interpreters at your conference, I think they are...I'm not sure I should be saying this, but I think they were more qualified in their own fields than some of the ones we get. The agencies aren't so...um...so fussy about qualifications of their interpreters.

BT: Sorry, they are fussy, or they aren't so fussy?

SF: I don't think they are.

BT: No, I think they're probably...they're commercially driven entities but there are questions around that, certainly. Okay. So, we've got a consecutive interpretation, and then a process of question and answer where you are going to probe further based on what you hear, and you're getting a first-person interpretation, and that's good. So, how does the MIAM wind up? How long would a MIAM normally last, or is there such a thing as a normal time scale?

SF: Our MIAMS are slightly different to MIAMS that are done in domestic cases. I reckon about 30 minutes-ish. Now having said that, it's sometimes 15 minutes, or sometimes people have got such a lot to say and I don't want to lose them, it is nearly an hour. But, I reckon, average thirty minutes.

BT: Okay, great. And the MIAM winds up with...how does the meeting draw to a close? I mean, are you aiming to get an agreement to go on to the next stage?

SF: Yes, at the end of it they should have all the information, it's a Mediation and Information Assessment, Meeting, that's what MIAM means. So, it's a Mediation, Information and Assessment

Meeting...so...I tell them stuff, I ask them stuff, we see if there is anything else they want to tell me,

anything else I need to tell them, and then I ask them, because mediation is voluntary, if they feel they want to go ahead in mediation and also, I will also tell them whether I think it is suitable to go ahead.

BT: Right, okay, good.

SF: And usually at that point I will say to them: 'well, I'm happy, if you're happy, I'm happy. But I need to speak to your ex. If it works alright with the partner...sometimes I've already spoken to them

and sometimes I haven't...you know, the one who is here that speaks English. Sometimes I've spoken to them, sometimes I haven't. I can say yes we can go ahead or not. But it has to be voluntary from both sides. And I have to make a judgement about whether they are ever going to get anywhere or it is just going to be make things worse.

BT: Just out of curiosity, when you are making that judgement call and you have to assess as mediator exactly that, do you seek any input from the interpreter to help you make that decision, or not?

SF: No...

BT: No, okay...

SF: No. No.

BT: So, they are not invited on the basis that they are bicultural to give any input on that?

SF: No, no.

BT: Good, okay. So the next question is, this interpreter you've used for the MIAM...well, you've given me one example where the interpreter in the first meeting was so poor that you consciously wouldn't use him again. How often do you use the same interpreter again for the actual mediation?

SF: We like to use the same one again. We prefer to. And if they're free...they do seem, they do seem to turn up again, but then they're not always free. We like to use them again 99% of the time they have not interpreted in mediation. So, they have a vague idea, possibly, of what mediation is, possibly...um...they very often done Care cases. They have very often done Care conferences with Social Services, which is a bit of a help, although it's nothing...it's not the same but at least they have got an idea. It's not commercial and...yeah...when they arrive to do the MIAM we have to explain...you know, take 20 minutes explaining to them what it's all about, about the Court and about what will happen if it doesn't...so they know, one of the parents might throw something in, so they've got an idea what is going on.

BT: Sorry to interrupt you, that 20 minutes is spent explaining the system, the process of mediation?

SF: The system, and a bit about the parents. So, we might say, look, you know, this is mediation, this woman...it usually works that way round, this woman has left this country and brought her children here. And father has gone to the Court...there is a thing called the Hague and he has applied for the

children to be sent back to Poland. So, what we are trying to do is to see if they can meet, get a better arrangement for the children between themselves, to give to the Court to make an order.

BT: Right...

SF: Yes, so we explain that. I might explain a little bit...I might say...oh, the children are...um...he's only a baby, so we won't be talking to this child, or the child is thirteen and someone else has already spoken to the child, so we've got a report from the child, and I'll tell them anything I think will help them grasp what is going on. So, we do that at the MIAM.

BT: It's interesting, the interpreter gets a sort of run-down...you start on the basis that the interpreter probably has no prior exposure to what mediation as an alternative form of dispute resolution is, so you are going to run through...you familiarise them with the terms of art, mediation, MIAM and so on. Do you specify...how much of a conversation do you have with them about what your expectations of them as an interpreter are at that stage?

SF: Well, we tell them to keep to the short sentences, you know, and that we need you to tell them exactly what it is we're telling them and we want to hear from you exactly what that reply is.

BT: Right...

SF: Now, I'm sure that they rephrase. I'm sure they do. Ahh...and I'm sure sometimes they cut bits out. Because sometimes we hear...um...the parents say quite a bit and then we say, look, what's that? Stop a minute, what's that? And they say: 'oh he [*inaudible*] so and so' but, he said more than that! So we know that [*inaudible*] a little bit, sometimes.

BT: Yes, so there is a sense there that sometimes the interpreter is...evidently interposed between you and your client and you're getting what we call a 'reduced rendition'. Somebody says something at great length in Polish, very animated, and what comes out in English is: 'he says it's okay'.

SF: Yes, yes.

BT: Okay. Fine, interesting. And having gone through that process with the interpreter at the beginning of the MIAM, it makes perfect sense that you prefer to use the same interpreter again for the actual mediation if you can.

SF: Exactly.

BT: When you meet them again, let's say you get the same interpreter again, this might be several weeks or a month later, couldn't it?

SF: No, it's not. It could be a couple of weeks because the Court, from the time that...I'm talking about Hague cases now, and they are not all Hague cases...but the Hague cases, the left behind parent will put the papers in, they are received in the Child Abduction Unit in the MOJ, and the aim for all the Hague signatories is that, from that date to the hearing and the judgement is no longer than six weeks.

BT: Right, okay, so you've got to...there is a time frame you have to work within?

SF: There is a big time frame because it doesn't come to use until after they've seen the lawyers, until the papers have been...and usually we've got to do it and get it back to the lawyers to look at to go into Court, so we don't often get more than two weeks...and sometimes it is only two days.

BT: Right, okay, so that's good. So, this interpreter, let's say they come back at some point within two days and two weeks to carry on with the same thing. If it is the same interpreter, do you feel you have to re-brief them or do you just more or less pick up where you left off previously?

SF: Yeah, yeah.

BT: What about if you can't get the same interpreter, you go through a briefing process...?

SF: Yes, we re-brief them.

BT: And then the actual...roughly what sort of...the actual mediation, is that going to be face-to-face or is that also conducted remotely?

SF: Um...it...more and more it's conducted remotely. Because we won't get into a situation where we have got...it is hard to keep a balance in mediation, it is very difficult because 9 times out of 10 most family mediators are female. So you've...we've got a couple of male solicitors, a couple of male barristers who will occasionally work with us, but it is occasional because they get nothing out of it and it takes two days...so they are nearly all women. So we've got two English women, usually...um...very often the abducting parent, if abducting here, is another woman, now, she may be British, she may be English, she may be the same nationality as the father. But anyway, here we are, all three women, all cosied up with his kids...not with us but there. And he's stuck away without being able to get a visa in Turkey, or somewhere.

BT: Right...

SF: So, what we do is to keep them...the mother remote and the father remote. So at least he can see that we aren't making friends.

BT: Oh, okay. Right.

SF: So, it's trying to keep the balance. When you do face-to-face, it is one of the big hurdles we have to get over, with any man. We know there is a gender imbalance, so we say: 'do you mind?' I've never had anyone say they did mind. And the funny thing is, a lot of the Muslim men like it.

BT: They like having a female mediator?

SF: They like having the women there. We say we're sorry we haven't got, you know, and they say that's alright, they take it better than the rest of them, sometimes. Sorry...that doesn't have anything to do with interpreting.

BT: No, it does. This leads me to on to my next question. What about the gender of the interpreter? I'm guessing, I mean, I'm going to stick my neck out as a researcher, I'm guessing that you're going to answer that most of the interpreters are women as well, is that right?

SF: Yes.

BT: Do you think that the gender of the interpreter plays into the dynamics, successful or otherwise, of the mediation, in the same way that you are saying that the fact that most mediators are female, does?

SF: I haven't got much experience of it. Certainly, the Israeli chap got on like a house on fire with the Israeli father, even though he was old enough to be his grandfather. And also, I had a young...Hungarian? I can't remember. We had a very...quite a young man, he was a student who came to do...he got on extremely well, again, with the father. Had a completely different dynamic going on between that male interpreter and the father than the women seemed to have with the father. And I can only think of those two...two men.

BT: Do you think it is important that the interpreter does, in a sense, 'get on' with the party they are interpreting for? Would it actually be ideal...what I'm driving at is, if we were talking about a Criminal Law barrister, they would probably say: 'actually the ideal scenario is that I wouldn't have a human being, I'd have a completely impartial machine, which doesn't interact socially in any way with any of the witnesses'. I'm guessing that mediation, because it is fundamentally different, it's not an inquisitorial process, it is supposed to be, ideally, collaborative, so how are is it important that

the interpreter, sort of appears to... I don't know how to put it...to identify or at least get on with at some level or at least...

SF: It isn't important. It isn't, no...it's nice to have a nice atmosphere. We're not a criminal court, so we like to have an open, friendly atmosphere if we can. So long as the interpreter is not not getting on with one of the parents. That would be awful, that would be terrible. If the, if for whatever reason, particularly the remote parent, took a dislike to the interpreter because of something that was said, that would be terrible. But no, they don't have to be best friends. And actually, if we could afford it, I would like a simultaneous interpretation going on, with headphones, with the interpreter sitting in a box somewhere.

BT: Yes, that would foreground the disconnection of the interpreter.

SF: Yes...

BT: And the actual mediation lasts up to two days, or comprises a number of remote sessions?

SF: Yes, we set it up for...this is largely, we set it up 99%...it depends where in the world, where it is, but then usually we don't have interpreters...we set it up for two o'clock in the afternoon, we work for two hours...

BT: Could you go over that bit again for me?

SF: So they explore the issues that afternoon. Next morning, come back at ten and that's decision time, really. Between ten and one....where are we going with this? We try and get...we kind of get the agreement, really, to say, well, yeah...I didn't mean this or I've thought about that, we change it...that takes all afternoon, the interpreter will then read the final agreement to them, I mean, the interpreter is there all the time anyway, she'll read the final agreement and off they'll go with it. We send it to...who get it translated legally.

BT: Oh right, so the interpreter will...whatever agreement you thrash out...and that's a non binding agreement, is it? Or perhaps that isn't particularly relevant, the interpreter will give a spoken translation of that on the spot during the remote and then it is translated formally later on. Do you often get discrepancy between what the person understood from the interpreter's sight translation, oral rendition of the translation and the final written version of the translation?

SF: No more than if we have got a translator.

BT: Interesting. When you say 'the translator', do you...may be I misunderstood, so, you have your remote session, the interpreter reads into Polish or into Turkish from English the agreement that you have drawn up, that's a spoken translation, is there then a written translation produced as well?

SF: Written in English, yes.

BT: Ah, so there isn't a second, formal translation into the target...

SF: I think there may be one produced in court, but I have never seen it.

BT: Ah, right. So, who would prepare that?

SF: Well, the court will order...

BT: Order it to be translated?

SF: Yeah.

BT: Okay, interesting. So, that will be The Hague who will get it translated?

SF: I don't know. It's probably the solicitors, because the solicitors have had to have, to send off everything for translating. They're dealing with that. So, at the point that they come to us, they have to have everything translated or interpreted. Probably not interpreted, translated.

BT: Yes, it would be interesting to find out if whether they, at the end of the process, before the non-English speaking party, finally, theoretically, signs on the dotted line, whether they have a version of what they believe they've agreed to translated in written form into the language, or not, in addition to what has been orally translated.

SF: I would jolly well hope so. I would think it would be very dangerous if not.

BT: But in your experience, you haven't had people coming back and saying: 'Hang on, I've now read a written version at my leisure of what I thought I was agreeing to, and actually that is not what I thought I heard during the MIAM...during the mediation'?

SF: No, no. We've never had anything like that coming back to us.

BT: Right, interesting. Okay, good. So, after you get to the actual end of the mediation, the parties log off, your interpreter is with you...have I got that right...you've got...everyone is at remote, but the interpreter is physically co-located with you, the mediator.

SF: Yes, yes.

BT: The two parties log off, and how do you leave things with the interpreter?

SF: We just say: 'thank you very much', and we sign the document, you know, their, yes, that they were excellent...

BT: Yes, right. Okay. So, that's the end of that.

SF: We'd choose them again!

BT: Good. Well, that's useful to know. Um...are you alright for time? I've got a few more sort of general questions around your experience of working with interpreters. We've gone through the process. You've given me a very finely detailed picture of the structure, which is very useful. On that, I wanted to ask you...those are very open-ended questions, which may be a bit of a puzzler, but it would be interesting to...

SF: You're breaking up...

BT: Say again?

SF: You're breaking up a little bit...

BT: Okay, shall I ring you back, because sometimes if you clear the connection and start again...

2nd part

BT: Okay, so overall, either the MIAMs or the actual mediations, if you compare an interpreted mediation...first of all I should ask you, do you...have you also practiced as a mediator mono-lingually, is that right?

SF: Yes, oh, yes.

BT: So, if you sort of compare the two types of mediation, one where you are working through a third party, a language mediator for the sake of argument, and one where you don't require them, where you are sharing a language with both your parties, how does the presence of an interpreter impact on the mediation or on the progress of the mediation?

SF: It kind of doesn't help it. It takes a lot longer. And it tends to break the, how can I say, atmosphere. It puts a different dynamic on it and we tend not to be able to be

so....friendly is probably not the right word, but it is easier if you have a sort of light, unofficial atmosphere, and having an interpreter there it takes a lot longer and you're not absolutely sure, you can't make a sort of little joke to break the tension...

BT: Right, that's interesting. So, I'm getting the message that somehow having an interpreter makes it more formal...it's less...light or natural. It's something around that, is it?

SF: You can't just ...chatter.

BT: That's interesting. So, you can't just chatter...

SF: That sounds...

BT: The message I think I'm getting from you is that the presence of an interpreter, you sort of lose that channel, as you say, the light jokes, the interaction, the things that, all that phatic dimension, which puts people at ease, which moves the two people who are speaking into a more comfortable place to communicate in.

BT: Sorry, [SF], I lost you completely there for about 30 seconds, so could we just rewind slightly on that? What were you saying just now?

SF: Yesterday, I had a phone call saying we've got a Hungarian English one coming up, a British one, next week, and I said: 'oh, fine. Do we need an interpreter?' and they said: 'yes, we'll find one'. And I thought: 'oh, blow!'

BT: Right, so it's not...you definitely perceive it as an extra obstacle, is that right?

SF: Yeah.

BT: And recapping in a way, you've already told me quite a lot about...the reason you perceive it as an obstacle, if I've understood correctly, is a sense that it shifts the dynamic of the interview, things don't go as smoothly, things take a lot longer and you can't relax into the interaction in the same way as you can if you are using the same language. Is that right?

SF: Yes. And you have to be careful not to relax, because it would be much too easy to relax with a British, English speaking abductor, than it would with the poor chap left behind who doesn't speak English. He's the one, the barrier is there already with an interpreter.

BT: Right, right, okay, do you think that the fact, if you compare your monolingual mediations, the ones where you conduct the whole thing in English and the ones where you use an interpreter, do you think there are significantly different outcomes?

SF: No, no. They're not...the outcomes are much the same. Due to the situations where we use interpreters... so if I say to you something that is all conducted in English, they're going to probably be American, or Australian or New Zealanders... who are do believe that their child is a long way from home, and this is difficult, and do believe that the children are better back in New Zealand or America or where ever it is. Very often the ones that we use interpreters on, the vast majority are Eastern European and actually believe that their children are better off in England.

BT: Oh, right.....so, how would that work? Say, it's an Eastern European couple and the child is in England in with the mother or the father, usually the mother...

SF: The mother...

BT: Are you saying that both parents believe that the child would be better off in England?

SF: Yeah, the mother has brought it here because she thinks they'll be better off here. And the father [inaudible] if I can get good contact, I know it is a better school, I know that his medical needs are better, I know things will be better for him in England, so I don't want to drag him back here. So we do get good results from [inaudible]

BT: Um ...so in that case the mediation is not so much about relocation for the child but its about contact, is that right?

SF: Yeah, yes, most of ours are, in the end, they are about contact. So, if dad lives in Australia [inaudible] in which case we have to talk about how the child is going back and who it's going to live, or it's going to be about contact. And women will very, very seldom agree to return, if they think there is a chance they may win in court.

BT: Right, right. So, I'm getting the message that in fact the presence of an interpreter doesn't in itself mean that you get better or worse outcomes to the process but the process of arriving at those outcomes is harder work for you as a mediator, through an interpreter.

SF: Right, right.

BT: Is that a fair characterisation?

SF: Yes.

BT: There are just one or two other things...the last two core questions...you, as a mediator, how confident do you feel about working through an interpreter? Do you feel...when you started this type of work...we talk a lot about how competent the interpreter is and about your confidence in the interpreter, but do you feel reasonably confident that you could mediate through an interpreter?

SF: I suppose, yes, because I wouldn't have tried it otherwise. I mean I did have maybe a little more faith in the interpreters, I'd never worked with interpreters before, I'd never had to work with interpreters. The interpretations I had come across had been at conferences where they are in boxes and you've got headphones. So, different things. So, yes, when we first...we didn't work with interpreters for a long time, but then we thought we'd try it and it wasn't as I imagined but I was pretty confident it would work.

BT: You mentioned earlier working at conferences with interpreters in booths, the simultaneous interpreters, and you mentioned in passing, you said actually in an ideal world you would have a similar model for the interpreting that you do in MIAMS and mediations. In other words, a simultaneous interpreter providing a continuous voice over in the other language of everything that was said. Is that, and I know that is probably not achievable as a resource issue, but would that be the ideal model for you?

SF: Yes, it would, yes, it would. But it would never be achievable.

BT: Right. And, why would that be ideal? What would, if you could achieve that ideal interpretation, what about that model of getting the interpretation done, what would be ideal?

SF: It doesn't stop the flow. We don't have to stop and start again.

BT: Right. How interesting. So, your feeling is that it would go some way towards restoring that interaction that you talked about, that...that is quite hard to achieve quality of close natural interaction which having an interpreter tends to interfere with.

SF: And, you know that they are translating word for word. You're not missing anything.

BT: Well, can we touch on that briefly, again? I know in conversations we've had

previously [SF], you've recounted...how far are you confident with your interpreters that you get from the agencies that they are reflecting accurately exactly the message that you are sending and the messages that your parties are sending? How far do you sometimes wonder if stuff is being filtered out or stuff is being added in?

SF: I know stuff is being [inaudible]. I'm not sure if [inaudible] a lot of rephrasing going on.

BT: when you say 're-phrasing', I mean, I know as a mediator you have to choose very carefully, working with language and choosing your words and forming your questions, your observations is a very important process. What do you mean by 'they're rephrasing it', I mean, how does that manifest itself, do you think?

SF: I can hear [inaudible] ... and then the interpreter says, you know, he says so and so, and they say it quite reasonably and I'm thinking well, that is not quite how it sounded by his tone of voice. I don't think they make it up, but they, yeah, I do think they rephrase. It's the only word I can think of.

BT: It sounds like there is a process of filtering or editing. You're not getting a...

SF: Yes, I think there is. But, may be, may be that helps! I don't know...but it's not their job.

BT: No, no it isn't. In the interpreting business we...what we're aiming for in a good interpretation is a reflection of exactly what the person is saying and doing when they speak. You want as close a reflection of that, and that includes the tone of voice and the implication of what they are saying. And the way they behave, to a degree. And what it sounds like what you are describing is, you've got interpreters who see it purely as a process of collecting the information and then transferring the information as they understand it to you. Which would feed into your comment about you lose...you know, it changes the dynamic, I can't read what is going on in the same way as if you were all speaking English.

BT: Good! That fabulous information, [SF]. I've got loads of really valuable data...

Interpreters

OD (interpreter), CC (interpreter)

INT: So, in your experience from today, how does court interpreting or legal interpreting differ from interpreting in a mediation situation?

OD: I suppose it hasn't...I find it more...it demands a different set of skills in my opinion, but I think any interpreter can cope in time and with experience. Court interpreting...it seems to be more precise in the literal interpretation, has to be more precise, the terminology is very specific, it demands a different level of concentration. I'm not saying that mediation would require less...like a smaller degree of concentration, but it demands a different set of skills. What was challenging for me was not so much the terminology but the length and keeping up with the lengthy chunks, whereas in court interpreting, you can't have a word that...of course, there are synonyms, but you have to be very, very precise.

INT: Can I ask you more? What is your feeling when you are carrying out the interpretation in the mediation? Do you feel more relaxed, do you feel you can approach it in a more informal manner than your experience in Court interpreting?

CO: I find it more relaxing because it is a bit more social, rather than the strictness of the Court and the...kind of like... everything [*inaudible*]. It's not that the eyes aren't on you here, as well, but...yes, you do need a different set of skills, I agree with that. But I like the social part of it, the more... the closeness of it, rather than the Court interpreting. I feel, not more safe, but more relaxed here rather than in front of a Court, in a very weird way. And the terminology is not very difficult, just day-to-day speech that you would have to translate. Of course, there are emotions that you have to kind of try to convey, you have to deal with them as well, but, yes, I find it more relaxed, for me, personally.

INT: WE have two lines of thought, here, first that we can train interpreters directly for mediation and second, and most important for this project, to see whether legal and court interpreters can switch into mediation. You say maybe you have to have, to be more of a social personality for mediation, whereas for the other one you have to be very strict, very precise. Does it take two different kinds of people?

CO: I would go for legal and general interpreting, I think you should do them both. But you just need to realise that here, you need to be a bit more relaxed and forget that every word needs to be translated, otherwise I let myself and everybody else down. You need to make sure... I mean, of course, you need to translate the message as clearly and precisely as possible and as faithfully as possible, but...I think, because there are lengthy passages that you do have to translate, you can't cut someone off in the middle of their...when they are expressing themselves, you can convey the message, exactly like they put it but without repeating five times: 'oh, dear! Oh, dear!' I would go for training in legal, I don't think that there needs to be specialisation in mediation interpreting.

OD: it just appears to me that here it is more like the solicitors. And we actually started at a point where this was already...where the parties had already known each other...whereas in the Court, in

court interpreting you have to be very clear and to introduce yourself...I'm sure here, as well...you're a professional interpreter, you're objective, impartial, confidential...will keep confidentiality. All those are the same in both but in the Court there could be perhaps some negative effects for the interpreter...I mean, if you are not very clear, you could be easily accused on not being impartial.

CO: Yeah, your role is a lot more defined in Court, isn't it? You know, kind of, like, set out...

INT: I noticed in the mediation that the mediators are also...telling everyone what the turns of speech should be and enforcing turn taking. Do you think this reduces the pressure on you, the interpreter at all?

CO: Yes, because it's just force of habit, you just speak and it's like...it's funny, you forget, but you kind of try to express all your ideas and when ideas come, they just kind of link up. You just keep on going when you are speaking and you don't realise you have gone on for quite a long time. So, of course, as an interpreter...I'm not saying it is more than I can translate but I need to convey the idea and, kind of like, the message, exactly like you said and I do need a bit of a pause in the middle, then you will kind of draw attention and say...you know. But other than that, I think our role is the same, to interpret and stay neutral and to kind of like make sure we do it to the best of our abilities, so the person we have to interpret for understands at the same time and conveys their message to everybody else in exactly the same way. To help everybody! That is why we are here, I think, it is our role to help.

OD: Yes, I think it is essential that, you know, we are facilitating communication and being objective and impartial, that's key.

INT: Would you repeat this experience? I mean, if you were called tomorrow and offered a job interpreting in a family mediation, would you take it?

CO: I would! Yeah, I enjoyed this. It's not, you know, a piece of cake, but this is how you learn, by doing stuff, not by saying no. Otherwise you're never going to get better.

OD: Yes, I think, definitely. It's an experience that...I think every interpreter should have the experience of doing it.

Wolverhampton Interviews 23rd June 2015

OD (interpreter), CC (interpreter), R A-C (mediator), LB (mediator) 23 June 2015

OD: I think it's...I hope it's helpful for the project, it's not about me at all...so I'm going to bring this up...I think I have developed asset of skills as an interpreter for Court, for criminal matters, which requires you to be extremely precise. It's better to...you can't miss one word, one word...if it's slightly one word...you might think it's a synonym but if it's not the precise word, it can make all the difference, you can send people to prison, you know.

RAC: Yes, it's a slight different...different approach here...

OD: It could be that...I'm not saying that you are better...you've got a better judgement on that...somebody with either a different set of skills, or they have to develop them...or somebody a bit more neutral...I don't want to say neutral because I am neutral and impartial...but as you said because of not being able to follow this...lengthy, you know...

CO: You do short ones because in criminal you have to do it, whereas I haven't been subjected to that, so for me doing lengthier translating, that's fine, because I can concentrate differently, because I don't concentrate like you on every single word...

RAC: It's a bit more impressionistic. Rather than very precise, yes, and if I ask a very precise question, and sometimes I do, I want exactly that question translated, especially when I'm saying: 'hang on a minute, you've gone off topic, you must stay on topic'. Whereas as little...a little more condescending or distilling of what is said being said is not too much of a problem in mediation, as long as there is a very real sense of what is being communicated and not, sort of, a minute of conversation being reduced to three words.

OD: One person, yes, it's...I'm not saying it's a matter of skills you can develop in time. It's just that...keeping it accurate, all of it, the dialogue...I find it challenging.

CO: Because when we interpret, we can't tell the story to the person we are interpreting to, we have to say...exactly as Jim said...we can't say: 'Jim said that', we have to say: 'I' like 'I am Jim'. I'm the interpreter and I am Jim as well.

RAC: And of course in the criminal field, you'd say...um...'you went into the shop', yes? What did you see when you went into the shop?' So you have a series of short questions with very straightforward answers, which are purely factual. Whereas in mediation it is much more about feeling, emotions, telling the story in a narrative sense, rather than...and that, I think, is the challenge.

INT: Is there a specific set of words, preferred verbs, that the interpreter may be should be using? Like you, you are using a lot of language trying to build common ground.

LB: More neutral ones. I mean, it took me ages to learn to use the word 'might'. 'Might you consider such and such...?' Because, as a lawyer in my letters, I would be writing 'you will'. And so and so 'must, within seven days, unless' ...you know 'if you don't, such and such will happen...'

RAC: So you have heard me use language like: 'so, would that work for you?' 'Might that be okay?' 'Would that be better?' It's creating a space for people to say 'yes, that's fine. Yes, that's fine'. But also creating space to say: 'well, no, I don't think I do want to do that'. So, you can never assume, but you can work on the basis that there is going to be a positive outcome. You're expecting a positive outcome, you are creating the atmosphere that there is going to be a consensus. You don't expect people to say: 'No! I'm not going to do that!'

LB: And to ask open questions, no close-down questions. 'How might you arrange that?' rather than me coming up with: 'well, how about doing that after six o'clock when the child has had her tea and you're all relaxed'. The first thing a mediator would do is ask for suggestions.

RAC: So when...when if you're being really difficult to pin down about it...so perhaps: 'which would you prefer, the weekend or the week?'...'oh I don't know: 'well, how about this weekend?'...'yes, I think it could be the week'...

LB: Our starting point is not be directive, it is to give the participants the opportunities to make decisions for themselves, but if it appears that they are just not going to play ball, we can become increasingly directive. We have all the tools in our armoury.

SL (interpreter)

BT: [00:00:30] If it's okay can I record this conversation for my research purposes.

SL: [00:00:35] Yes, certainly

BT: [00:00:36] I'll just use it. What I will do with the recording is I'll transcribe it when it's finished. I won't keep the actual sound recordings but I'll keep the transcription. Great thanks. Thank you so much for giving up your time to be interviewed about this. Briefly, I'm following up now on that work that you helped with earlier as well, the European funded project the Understanding Justice Project, which was looking primarily at interpreting in mediation proceedings and I'm extending the investigation we undertook there in seven countries, specifically into mediation in the UK. And what I'm interested in doing, would like to do, is generate a deeper insight into how mediators confront language differences when they mediate or when they find that they they're working across language barriers, UK mediators I should say. And if and when they use interpreters, how they use those interpreters and how it affects the outcome of the mediation. So I'm really trying to make a close grained analysis of the impact of language difference in mediation and also evaluate the different methodologies which mediators used to try and manage it, whether it be bilingual mediators themselves or engaging an interpreter or all other options they may come up with. Before we go any further I'm not sure whether... I know that you're a trained legal professional as well as an interpreter. Should I be interviewing you as a legal professional or as an interpreter who's worked with mediators.?

SL: [00:02:28] No, as the latter, as an interpreter who has interpreted for mediators.

BT: [00:02:37] Oh that's great and that's particularly good because I have quite a lot of data from mediators but I do very much need to hear from the other side of this equation as well, so we'll go along that line. All right. I think we can, just I've got a set sort of primary questions. But we can just sort of chat through those and see what comes up, it is a semi structured interview really and as I say well we'll see what comes up as we progress.

SL: [00:03:23] Can I just clarify that I have interpreted in mediation but in one field of mediation, one specific field, which is Family Law.

BT: [00:03:24] Nearly all the work I'm doing is with family mediators and although I didn't specify at the outset of the researcher, it is becoming increasingly evident that that's where the bulk of the work, the most interesting work in this field is, so that's fine, Family Mediation is very good. Going back to the last time you worked as an interpreter with a mediator (you told me already that it's primarily with family mediation), what language were you working with?

SL: [00:03:54] French.

BT: [00:03:54] You're doing English French right. Yes. Can you tell me a little bit, about the parties and the mediator. The mediator I presume was completely monolingual in English, is that right?

SL: [00:04:08] Not necessarily, because I've worked with different mediators in family law proceedings on different occasions and I've only worked in the UK on family law as well and I would say that the majority of the mediators have been monolingual English, people, English speaking people. Probably mainly of British origin. Perhaps less than 10 percent have had varying degrees of French, from a few words to what we call school boy French, to a couple who've had reasonable command of French, to one I can remember who actually had lived in France and spoke French himself pretty fluently.

BT: [00:05:15] Right. Interesting. Okay. What about the parties they were mediating for? Was there a pattern of the type of people who were seeking mediation? Obviously a family mediation. But were they predominantly, was one party an English speaker and the other party a Francophone

African or French speaker, or were they both French speakers? How did it work out with the parties to the mediation?

SL: [00:05:44] Well one party didn't speak French or only spoke limited French, whereas, the other Party... French was the first or certainly the second language.

BT: [00:05:54] Right. Okay. And so I'm sort of forming a mental picture here of how it proceeded, so one party, the mediator and one party, would that be the mother who's usually an English speaker or the other way around I wonder?

SL: [00:06:12] Good question.

[00:06:16] I say the mother, I'm assuming the mother, but it may not have been the child case anyway.

SL: [00:06:19] Most of them were within the framework of an ongoing divorce and subsequent disputes about children and which parent they should live with, having contact with the non-resident parent. I'm going to have to say I can't really recall whether one parent was a the French speaker, the mother or not. I don't think it particularly struck me as one way or the other. So it's probably 50/50 or something like that. Yeah, I've got no recollection of predominantly one rather than the other.

BT: [00:07:15] Were mainly both parties in the mediation physically located in the mediation room? Did you do any mediations where there was one party with you and the mediator, and the other party at remote on Skype ?

SL: [00:07:35] I have done a few of those, probably less than 25 percent. where the other party has actually been in another town in the UK or has actually been abroad outside of the UK.

BT: [00:07:54] So could we separate your mediations into two categories one where everyone's present physically in the same room and the ones where one party is at remote? We'll look at the second group, the remote ones later on. So thinking back to the mediation, as an interpreter how were you contacted? How did they find you?

SL: [00:08:21] I would say the majority found me via an agency or found me on one of the registers, usually CIOL or ITI or NRPSI.

BT: [00:08:38] Okay. And in the case where you went through an agency or..... maybe perhaps put that question aside for a moment. When they contacted you, what sort of degree of questions did they ask you about your background as an interpreter or your experience and what did they do to decide that you could work together? Did they, in fact, ask anything in particular?

SL: [00:09:08] Varied response to that. Some just took it on trust because I was on various registers, because sometimes the agencies haven't sourced me through the registers but just because I was on their books, but, if I wasn't on their books and they'd found me through those registers as I just mentioned, sometimes they'd take it on trust because I was on one of those registers, or, in fact, in my case on all three.... that therefore I was going to be competent. Some of them would specifically ask 'have you done this sort of thing before?' That was probably the most common question here. And I think quite a few of them from memory asked me that, actually, yes.

BT: [00:10:02] So if I have understood correctly was that really their main question, if they questioned at all? Was it have you done, have you been involved or experienced mediation before or interpreted in mediation? Did they ask any questions about your bona fides as an interpreter, your qualifications or your specific skills set, or was it just that one question?

SL: [00:10:34] I think from memory they were quite interested in the fact that I am qualified as a lawyer and an interpreter; that is always a big plus for me. Because you know I'm going to know about mediation before we even get going.

BT: [00:10:54] Yes. That makes good sense And, the other group where you were contacted via an agency, let's say an agency rings you up and says '[], are you available to go and do this job?' What do they ask you? What does the agency ask you, apart from 'Are you available?'

SL: [00:11:20] Some have literally asked me 'Are you available?' And the majority have asked 'have you done this before?'

BT: [00:11:29] And that's as far as it goes. Okay. Good. Well that's useful to know, that sort of fits with my responses from the mediators about how they engage interpreters. Essentially they don't really have any idea what to ask, as far as I can tell, what to ask about or if they need to ask any

questions at all; they do take it entirely on trust and especially when they're working through agencies. When you arrive at the mediation location, what sort of briefings did the mediators give you, or what discussion did the mediators have with you personally before the mediation proper started?

SL: [00:12:15] On the whole nothing was offered, or very little was offered before I've arrived at the venue, and in most cases I have to say, Brooke, I have taken the initiative myself. I think based on experience, you know, after all these years, of asking, myself, for information about the booking, you know, who are the parties? Who is the professional? How long is it likely to last? Can you send me any, you know, advance material, so I can prepare properly? You know, all the kind of normal interpreter, experienced interpreter type questions. And I've had varying responses, you know, which again are fairly standard in the interpreting world, ranging from 'no it's all confidential, you'll find out when you get here' to, you know, quite helpful responses, actually providing me with website addresses and details about mediators I'm going to meet or the sole mediator, it depends... yeah, varied, really.

BT: [00:13:38] When you mentioned sole mediator, the mediations you've done, were any of them two mediators working together?

SL: [00:13:53] Yes, I've worked with two mediators, but 98% with one, one sole, you know. .

BT: [00:13:57] All right. Well good. Excellent. So I've got a very clear picture of this, you arrive at the mediation, that's the usual experience in most cases. I'm presuming it's the agencies who are most likely to say saying 'no, we can't tell you anything it's all confidential', or...?

SL: [00:14:20] Yes, some times I've thought it was because they were quite lazy and they can't be bothered to ask the client for it. We get that quite often generally in interpreting. Sometimes I think I do believe them when they say 'well we have tried to ask the end client but the end client is saying it's confidential. You'll find out when you get here'. So it's quite hard to know where the truth lies.

BT: [00:14:56] In your discussions with the mediator before the mediation what sort of things do you discuss with them or what do you offer them in terms of information about your professional practice and what you can do as an interpreter?

SL: [00:15:23] Usually I'll introduce myself and ask for a briefing before we get going and that meets with varying degrees of cooperation, shall we say. I will tell them the truth. Either, I have had some information via the agency or I haven't. I'll tell them what I've had, if any. Yeah, I usually come with something prepared by way of questions that I want to ask them before we start. You know, quite basic, like, you know, general information, how long do you think this is going to last? Is there anything you need to tell me about where to sit in the room? You know, should I sit near the husband, nearer the wife, nearer you? You know, those kind of usual questions and... varying degrees of cooperation really. Some of them are quite good and I think because they've been trained in mediation, you know, they realized that it's important to set the scene with us on board before we even go in. But some will just try to get you in and ' Oh you'll see what happens when we get there'.

BT: [00:16:43] Well I'm very interested in that different degrees of cooperation. What is your sense of who is more cooperative or more responsive perhaps to your professional questions about how it should be managed? Is there a pattern to who is more responsive and who is less responsive?

SL: [00:17:09] Well all I can say is that I think they realize they are dealing with somebody, you know, professional, who have been in the profession for quite a number of years. And I think it'd be really interesting to do research on, you know, if you're an experienced professional, and you go in and ask all these questions, ask for a detailed briefing... compared to perhaps, one of your students just newly qualified...very little practical experience and so on, who goes and asks the same questions. So you know, maybe because they kind of thought about it and thought 'Oh yeah I need to know all this before I start'. But, you know, maybe the experienced interpreters are getting better more information, better treatment. I don't know but I know myself now I've got a lot more confidence after all these years, compared to many years ago when I started out, when I just probably never even had the confidence to ask what I actually needed to know. I think a lot depends on, you know, the level of experience or lack of it in terms of what you actually can get.

BT: [00:18:32] And tell me... this is a difficult one to gauge... how would you characterize overall the attitude of the mediators to working with an interpreter? Do you think the fact that they have to use an interpreter is viewed with some suspicion or are they quite ... how would you characterize their response, positive or negative, to working through an interpreter?

SL: [00:19:02] I would say, on the whole, quite negative. I find that they are very uninformed generally. Almost all of them, about working with an interpreter.

BT: [00:19:21] And this manifests itself as... how?

SL: [00:19:29] It's very obvious that they don't quite know where we fit in the scenario.

BT: [00:19:36] Right. So from what you're saying to me... are you guiding them a lot on how they might best use you as an interpreter?

SL: [00:19:55] I think I have to spend a lot more time with them at the outset, explaining you know professional guidelines and so on that we are supposed to work in accordance with. For example I will be saying 'I'm going to interpret everything that any of the parties or the mediator says unless you ask me not to. I find that a really important statement to make right at the outset. Not every interpreter will do that, I know, but I do as a matter of good practice and I find that mediators are often quite surprised when I say that. They might even ask me to explain what you mean by that and then I say well you might say to me that you don't want me to interpret to perhaps the husband and perhaps the wife or perhaps both of them, you know. I find I have to explain a lot about the interpreter's role, They don't seem to know about it.

BT: [00:21:02] Do you discuss with them in these early stages before the mediation starts properly? Do you touch on the sort of the interpreting modes that you can use? For example do you broach ...

SL: [00:21:19] Yes, I will actually say to them 'which mode do you want me to interpret in? And that will almost 99 percent of the time trigger: 'What do you mean? What do you mean by mode?' I have to explain that.

BT: [00:21:39] And so then, I'm surmising, then you say 'well I can interpret you know short consecutive or I can use simultaneous...?'

[00:21:48] And I say 'oh I can use both' you know at different points depending on what you want to do.

BT: [00:21:56] What's their response to that, given that they're getting brand new information here?

SL: [00:22:01] Baffled! Well some of them will just try to ride that one and just say 'do what you think best' you know, or some of them will just say 'well, I'll let you know'. I just get this general impression they don't really know how to answer that one, what to do with that.

BT: [00:22:23] Well, with my interpreter's hat on like you, nothing new there.

SL: [00:22:32] It is, you know, it is quite depressing really because it just means, even after all these years a lot of us are treading the same old ground really. I don't think it's the mediators' fault as individuals, I think they're just not getting the right training. I think there are other groups, you know, like police officers for example, and judges and magistrates and rest who we should be having joint training with. At the very least, get interpreter trainers to go to the mediation organizations and say you know 'we can train you'. Yeah. I mean I think interpreters could do with training actually from mediators. I mean, I've never had any training from mediator organisations and I would welcome it.

BT: [00:23:29] Yes that's a very good suggestion. So now let's sort of move chronologically a step forward. You've had your tete a tete with the mediator alone, or the two mediators in the event there are two mediators. And then they sort of blow the starting whistle on the mediation itself and you arrive. You now meet one or both of the parties to the mediation; how you characterize their reaction to having an interpreter present?

SL: [00:24:12] They, likewise, generally have not worked with an interpreter before or perhaps a little, some initial hearings or whatever; varying degrees of acceptance, really. And I think who the interpreter is, is a huge question because if that interpreter is already known to one or both, because that interpreter has previously interpreted at various hearings or solicitors appointments for one of them...I personally see that as a problem and I have come across that many times with colleagues telling me about this sort of thing, and I think it's a no-no. I think that the interpreter working with the mediators should be a completely fresh and new interpreter, not known to the parties. Because if you're not, I think one party is going to see you as the friend of the other and biased.

BT: [00:25:18] Yes...

SL: [00:25:20] But I know in practice it happens, I know it does.

BT: [00:25:26] That's very interesting. Another question that springs to mind: what does the mediator do... does the mediator make any effort at the outset to sort of, introduce you to the party or to try and set the party's mind at rest about your role in the mediation, or not?

SL: [00:25:59] Well, I won't say that that doesn't happen... 'this is the interpreter who is going to interpret for everybody during this mediation session'. Don't often get much more introduction than that. They'll say my name. That's about it really. And some of them also say 'everybody is going to be speaking in French, aren't they?' Or, you know 'everybody's going to be speaking in French and....' because I have actually, I should tell you, I have mediated occasionally for both parties speaking French and the mediator only spoke English or you know perhaps a tiny bit of French.

BT: [00:26:56] Right. So the two parties are talking to each other and to the mediator in French.

SL: [00:27:05] Well, the two parties are both French speaking but the mediator has very limited French, sort of school French.

BT: [00:27:11] Do you think in your professional opinion that in this scenario you just described, the mediators is English, both parties are speaking French... Is it actually possible to mediate successfully? With an interpreter?

SL: [00:27:29] Probably not, because I think you're going to miss a lot of cultural nuance and I think the mediator is definitely going to be at an immediate disadvantage, because everybody else is sharing the same language.

BT: [00:27:48] Right. How do you... so what is special, for you as an interpreter, what would you characterize as sort of the big headline differences about interpreting in that type of encounter, a mediation encounter, and the other areas of interpreting you do? I know you do a lot of court and police work, probably business and so forth. What's special about mediation from the point of view of an interpreter, would you say?

SL: [00:28:20] I think it's very emotional, much more so than most of the other scenarios in which I interpret, because it is often a last ditch attempt to resolve disputes, you know ,before they end up in court. I have a big feeling that not all of the cases that are sent to mediation are actually suitable for mediation, I'm often very surprised that some of them have ended up in mediation, because clearly, you know ... I wouldn't think they are suitable for mediation because you can actually see the distress, you can see one party is much stronger than the other ... is possibly bullying the other. You can see that perhaps one is a very reluctant party, they've been pushed into it. But then, as the interpreter, It's not my role to say anything but I can see all those issues quite clearly.

BT: [00:29:27] I'm guessing in your case in particular because you're also wearing your other hat, you are also a trained solicitors so...

SL: [00:29:37] Yeah. But again I mean that gives me heightened awareness. But you know it's also very frustrating because I can't say or do anything about it, unless it's so extreme, you know, that I'm sort of having to stop to ask for the interpretation to be halted or the meeting to be stopped. You know, I have interpreted occasionally for immigration matters in Police stations, for example, very early in the morning... early hours... and a couple of those have been so horrendous, where they're flogging, not physically, you know, an illegal immigrant, for want of a better term, you know, to the point of exhaustion and they won't let go. And I have asked for some of those to be stopped because they've just been beyond humane.

BT: [00:30:35] Presumably you haven't faced situation with mediation.

SL: [00:30:42] Never in mediation. I think, you know, the mediators are much more trained in terms of dealing with very vulnerable emotionally upset people.

BT: [00:30:54] So your initial response to that question was that they are much more emotionally charged. And how what about in terms of your interpreting techniques or the challenges... what were the main linguistic and interpreting challenges for you, which are peculiar to the mediation context, would you say?

SL: [00:31:19] I think because of the high degree of emotion, you often get a situation for the whole of the session where there isn't only one party speaking at the same time. You know, they'll often try and talk over each other, end up in tears, people crying, shouting occasionally. Probably they've not been in a mediation situation ever before. So it's really a new ball game to them as well. So they really don't know how to handle it. And I think a lot depends on how skilful the mediators are.

BT: [00:32:08] I was interested in your reference to overlapping talk because of course you can't... it's impossible to interpret it when people overlap or start speaking at the same time. Although I suppose a monolingual mediator with a couple speaking the same language could just sit back and let them get on with it for a while and see what happens. Of course with an interpreter somebody has to intervene. So my question is, do the mediators themselves help you deal with the phenomenon of overlapping talk when things become too heated, or how far is it left to you to try and manage that problem yourself?

SL: [00:32:52] As an experienced interpreter, what I now do is say right at the outset alongside my spiel about, you know 'I'm going to interpret everything everybody says', one of my statements is, 'can everybody, the parties and the mediator' please respect everybody else and not talk at the same time, because if people do that...' (and I just explain it really simply) I just am going to be unable to do my job. You know, if necessary I will have to interrupt and ask, whoever is speaking over whoever else, just to allow one person to speak.

BT: [00:33:43] And does this... As the mediation progresses, I'm guessing that people will nod their head in agreement at the beginning and promptly forget half an hour later?

SL: [00:33:57] Yes of course it may be the case that I do have to intervene and usually say to the mediator 'excuse me, can we halt this part of the session because the husband's talking over the wife?' Or the wife is so distressed and I can't understand what she's saying, you know, that sort of thing.

BT: [00:34:20] And how do the mediators react to that request?

SL: [00:34:29] Mostly favourably, I would say, yes, and they will sort of go over the ground rules again, or perhaps wait for one party to calm down, sometimes might suggest a break. It's been quite rare where I have mediators sort of say 'oh well we'll just have to manage, we'll have to carry on, the hours nearly up' or something like that.

BT: [00:34:55] Good. And my last main question is, if I ask you to estimate the impact of having an interpreter on a mediation, do you think from your experience, do you sense that having an interpreter there has a significant impact on the outcome of the mediation, or not?

SL: [00:35:18] Yes, because I think the whole idea of interpreters being so-called 'invisible' is a complete fallacy in any interpreting situation. Of course the presence, even without speaking, the presence of the interpreter is going to have an impact. The gender of the interpreter is going to have an impact, how the interpreter is dressed will have an impact, where the interpreter positions himself or herself in the room will have any impact and when the interpreter opens his or her mouth, his or her accent, you know, is going to be immediately picked up by one or both of the parties... 'oh,. she's from mainland France, oh she's from Brazzaville, Congo', you know. It's all impacting, maybe not visibly, but it is impacting. Hugely. The mediator may not be aware of all that but, you know, the parties certainly will be. The interpreter is looking at the parties and thinking 'Oh

yeah I'm sure he's from, you know, Montpellier, because I recognize the accent' and blah blah...or 'I'm sure she's Rwandan, you know I can tell from the head'. Because Rwandans often have very distinctive sort of shaped heads.

BT: [00:36:50] Actually, I didn't know that. That's interesting. So, yes, we can... We know that it's a given that the myth of the invisible interpreter is a myth...and of course as you suggest, even the most stratified situations, like a court room, the fact that you're introducing an interpreter does have an affect; and in the very emotionally charged and close atmosphere of a mediation that's probably accentuated. But... do you think... is it possible to get a sense for whether this negatively impacts on the outcome of the mediations or not?

SL: [00:37:30] Well, yes, I think you can get a very clear sense if one of the parties or even the mediator is hostile, either hostile to the interpreter, either verbally or just sort of body language.

BT: [00:37:47] And you have had that experience, that you can actually feel a certain hostility from...

SL: [00:37:52] Yes, well, not in the mediation, but in an in one interpreting actually appointment I'll never forget, the client refused to speak to me, and to this day I have no idea why! So I had to walk away and say 'I'm sorry, I can't do my job'.

BT: [00:38:12] But you're saying that hasn't happened in mediation?

SL: [00:38:24] I've sensed hostility. Sometimes from the parties, or one of them, you know. I've even had a party say 'well, you're not from Africa' or 'what do you know, because you're not from Africa'.

BT: [00:38:46] Which leads me onto a subsidiary question, have you experienced attempts by a party to co-opt you? Or an expectation, perhaps, because you're female that you would somehow understand a particular point of view? Or the flipside of that, the sense that you...it's assumed that you can't understand.. what I'm driving at is, do they accept the idea that you are as neutral as you can be, or do they assume that you're going to take a position in the mediation one way or the other.?

SL: [00:39:27] I've certainly noticed... you've mentioned the gender issue. If one of the parties, well, usually one of the parties, is female, the mother or the wife, you know... yes, certainly, a lot of eye

contact with me from the female partner, or party, even what looked like, you know, an appeal in the eyes, you know, 'help me, be my friend!' sort of look, you know. Yeah, without a doubt and often even physically turning towards me when speaking, sort of almost like woman to woman, perhaps that feeling that I'm there to support her, to give her some kind of comfort, you know. And then it can work the other way round, from the male party sort of trying to co-opt me almost onto his side, sometimes even sort of flirty behaviour. Trying, you know, to score one back against the wife or something.

BT: [00:40:43] And you think in your experience in mediation, were the mediators aware of that going on, and if they were aware of it, did they take any steps in their strategy to sort of rebalance that or did it go over their heads completely?

SL: [00:41:03] I think in some cases where it's just been verbal, you know, through French language and the mediator has not understood it, then it has gone over the mediator's head, but where it's been quite obvious physically... even the female moving a chair nearer me, always looking at me, always, you know, seeing what I say, you know, very big eyes, kind of appealing at me for help... some very good mediators have intervened and, sort of re-read the ground rules about the reason why we're all there and what our roles are.

BT: [00:41:44] Yeah. You're a perceptive and experienced interpreter completely in control of your professional persona. If you weren't or if you were an agency interpreter with little or no background in interpreting, you would be completely lost in this situation.

SL: [00:42:10] Oh, yes! And an inexperienced interpreter and, I mean, without going too much into what happened in PSI over recent years, I mean, this is happening, Brooke, all the time. These totally inexperienced interpreters, or not even, you know... people going out doing interpreting jobs because various agencies will take them. I mean, I just dread to think it, of the damage they could be doing. I'm not painting them, all of them, with the same brush, but ... certainly a lot of them. Doesn't bear thinking of, really.

BT: [00:42:52] It's such a complicated communicative situation, requires handling so carefully and with so much insight into all the things we've been talking about, you've been talking about.

SL: [00:43:04] Yeah I think it's right across the board, actually, not just in mediation, but generally in many, many different types of PSI appointments. Untrained inexperienced interpreters can do a lot of damage.

MR 11/02/2019

Context: these notes are based on a telephone conversation with MR that took place on 11th February 2019. MR is known to me from previous collaboration during the Understanding Justice project and was an invited expert speaker at the project final symposium on Interpreting in Mediation, held in April 2016. MR is also a published author on Mediation.

MR recalled in particular a Child Abduction case she had worked on as a mediator, requiring a Somali-English interpreter. Based on her recollection of the case, she noted the following factors:

i. There was a significant gender imbalance in the encounter, with mediator, interpreter, link social workers and others all being female. The only male participant in the encounter was the father.	
ii. She noted also that the mediators had no information on the background of the interpreter in terms of qualification, competence or length of experience.	
iii. Her observation on the impact of the interpreter on the encounter was that the mediation process was significantly slowed down.	
iv. MR noted how, as a mediator, she was aware that she relied entirely on the ethical and professional integrity of the interpreter. This was experienced as a loss of control over the encounter on the part of the mediator.	
v. In another mediation with an interpreter managed by MR, she recounted the interpreter attempting to usurp her role in management of the encounter. She noted that mediators needed to prepare carefully for working through an interpreter to mitigate the possibility of this happening.	
vi. MR also noted that there is no discussion or training on working through interpreters included in the mediator training curriculum.	

R A-C reported working mainly with interpreters of Bengali, Urdu, and Polish in his practice.

These types of mediation encounter took place in two formats, one where both clients need an interpreter (the minority) or the majority of settings (about two thirds of the total) where one client needs an interpreter, the other one doesn't.

In these settings, it is usually the case that the client who needs an interpreter is not, in fact, completely non-English speaking. Indeed, that client may be competent in day to day usage but is not comfortable dealing with the type of topics that come up in mediation meetings, i.e. talking about feelings, attitudes, and opinions.

R A-C responded to the question: 'what makes a good interpreter from the point of view of the mediator?' as follows:

What makes a good interpreter from R A-C's point of view of when the interpreter 'interprets exactly what I say'. Problems arise when he is aware that he has said something in English, there is then a long exchange between the interpreter and the client, followed by a short report back to him, the mediator. In such cases of unratified communication between interpreter and client, R A-C will intervene and ask for a full report of what was said. A good interpreter therefore is one who interprets fully exactly what people say and then the mediator can carry out the mediation role based on a full understanding of who said what and when.

R A-C responded to the question: 'do you hold a pre-mediation meeting with the interpreter prior to the clients arriving where you brief the interpreter on what you want to happen?' as follows: R A-C reported that there is typically no pre-meeting briefing or meeting with the interpreter. They meet for the first time in the mediation setting with both clients present. Similarly no brief is given to interpreters of expectations of them on the part of the mediator.

R A-C responded to the question: 'where do you get your interpreters from?' as follows: R A-C reported that the interpreters he used were sourced from commercial agencies paid for by Legal Aid Board, although in some cases joint payment is made, where one client is self-financing and one is client paid for by Legal Aid Board. Some other clients are entirely self-financing

R A-C responded to the question: 'do you have any information about the background or experience of the interpreters you are supplied with?' as follows: R A-C had no information on the background or training of interpreters sent, but generally they were quite sufficient. He does try to ensure continuity of using the same interpreter with the same couple on repeated occasions.

R A-C responded to the question: 'do you ever use your interpreter as an *ad hoc* cultural consultant to gain insight into background of a NLEP client?' as follows:

R A-C stated that he rarely sought such cultural background information from an interpreter. For him, the role of the interpreter was to interpret fully and to allow him, the mediator, to ask any questions as he sees fit.

R A-C did report one instance where he used the interpreter as a cultural consultant. The discussion in the mediation was revolving around the rules on the inheritance of a parcel of land, and the relevant rules on this in Sharia law. It turned out that the interpreter knew more about the Sharia Law on this subject than either of the clients and was therefore able to offer some information on the topic.

Overall, however, R A-C insisted that, as a rule, he does not attempt to use the interpreter as a cultural consultant nor would he wish to do so. He made the point that, as long as a client from whatever background is able to express what they think and what they want to say in whatever language they were using, and as long as this is fully interpreted for him, he was able to work with that. He highlighted as an example that he was an Oxford-educated, Welsh speaking and Welsh background mediator. However, as long as people from whatever cultural background were able to speak freely and be heard through an interpreter, he, as a professional mediator, was able to mediate successfully.

R A-C responded to question as the modes of interpreting used as follows

All mediation is done using consecutive mode and there is no simultaneous interpretation. He did flag up a topic of that he considers of importance, which is the management by the mediator of turn-taking in the encounter. He reported that ensuring that turn-taking protocols are respected and that both parties get equal opportunity to speak and that their contributions are offered equal weight is very important to the encounter, and ensuring that this happens is a key part of the mediator's role. He reported that It was often the case that in an interpreted mediation, there may be an interjection in the other language by one or other party to what the other party has said. The mediator has to manage this carefully.

R A-C responded to the question: 'do you have any preference for the use of a single mediators or two co-mediators in a mediation requiring an interpreter?' as follows:

When mediation needs to be done through an interpreter, he expressed a preference for co-mediation. This was because, when there are three people in the room, the mediator can become overwhelmed by the complexity of the task of listening and monitoring two clients and the interpreter, while coordinating turn taking and also dealing with flip charts, notes, etc. In this case, it is preferable to have a co-mediator, so the two mediators can undertake 'time-sharing', or 'task-sharing', where one mediator is a specialist in one area of the subject of mediation, the other in another, and they can deal with different bits of the mediation. R A-C also noted that the whole process of the mediation is much slower through an interpreter.

R A-C responded to the question: 'Do you undertake remote (telephone) or video-linked mediation?' as follows:

R A-C raised what he sees as a fundamental objection to the use of remote or video-linked technology for mediation, interpreted or otherwise. As he phrased it, remote technology can "solve the problem of proximity but not the problem of distance". For example, if two clients simply cannot stand to be in the same room together, you can use video linked technology to mediate between them and seat them in different rooms. However, when distance is involved, you have the

fundamental problem of the mediator having no control over the environment at the other end of the mediation. Is the mediation being secretly recorded by one or other party or listened in on by an unseen party? Are they going to use that recording? Is someone going to walk in to the room, are the kids going to wander in? What about the environment at the other end? Contracts undertaking not to make or record mediation encounters are, in his opinion, of no use. In short, the lack of control over the security of the mediation make the use of remote technologies for mediation impossible. This would apply equally whether the mediation is interpreted or not.