

Conceptualising Mediation for Domestic Abuse Survivors

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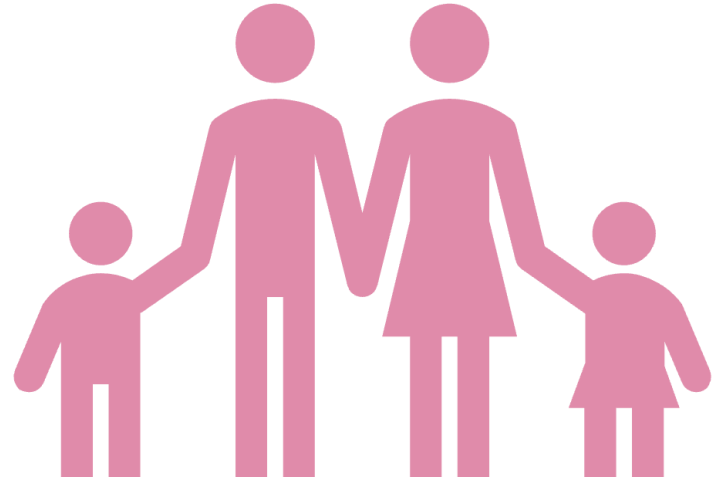
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Outline

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- Background and Context
- To mediate or not to mediate?
- The 'neutral' mediator?
- Mediator training
- Further reform



Context

- The Legal Aid, Sentencing and Punishment of Offenders Act, introduced in 2012, significantly changed the legal aid system in England and Wales.
- It **removed legal aid for most private family court proceedings**, while **retaining** such funding for **family mediation**.
- Whilst survivors of domestic abuse are still able to obtain legal aid for court proceedings under the legislation, many are forced into mediation due to the inaccessibility of evidentiary requirements and inefficient screening practices.



Legal aid is provided by the government for those who cannot afford a lawyer. It can help meet the costs of legal advice, family mediation and representation in a court or tribunal.

Is mediation a safe route for her?

... this is precisely what my research explores...

Underlying theme: How can the family justice system better support domestic abuse survivors?

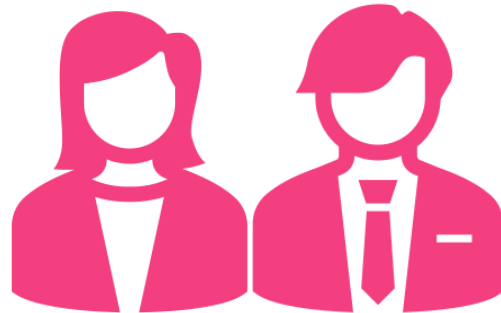
Broader theme: How can structures be altered and improved to protect the vulnerable in society?



To mediate or not to mediate?

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- I first considered a crucial question that lies at the root of this dissertation: is mediation a suitable and appropriate forum for domestic abuse cases?
- I examined arguments both in favour of and against mediation for domestic abuse cases, while keeping in mind the dynamics of communication and power within abusive marriages that impact the mediation process.
- **I revisited these arguments in the post-LASPO context, which irrevocably transformed the family justice system.**



To mediate or not to mediate?

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Arguments against mediation:

- Conflict v Control
- Privatising the Political
- Negotiating as ‘equals’?
- Safety Concerns

Arguments for mediation:

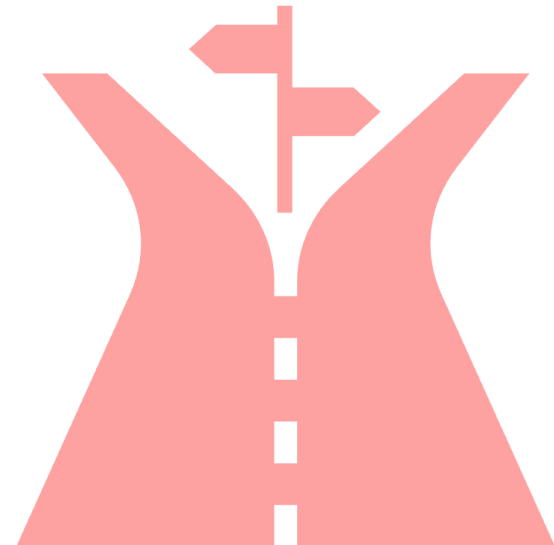
- An unfair comparison?
- A better alternative?



To mediate or not to mediate?

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My Analysis:

- The debate around family mediation in domestic abuse disputes has become highly binary. It has, essentially, become a debate of whether to mediate or not to mediate.
- In the contemporary context, **framing such a dichotomous question is outdated**, particularly when considering the realities of the post-LASPO family justice landscape, where survivors are actively engaging in mediation.
- The **binary question should transcend a mere comparison of the superior process and shift towards exploring how mediation should evolve to ensure the safe and equitable resolution of disputes.**



Shifting focus to the mediator...

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- A **‘neutral’** facilitator
- Even-handedness
- Neutral as to the outcome (but not necessarily process)
 - Not biased
- This neutrality is problematic in negotiations between an abuser and a survivor, where power imbalances are ingrained
 - Should neutrality be removed?
 - Should neutrality be adapted and altered to support survivors?



Mediator training



Current Training: Family Mediation Foundation Training

- Runs for 8 days.
- Criticised for being ‘too short.’ (Kelani)
- Without sufficient training, a mediator may create a dangerous environment for survivors during the mediation process. A relationship characterised by abuse is a complex one, with layered power imbalances and psychological forces at play.
- **An 8-day course is inadequate for a trainee to understand these complexities.**

Improving training

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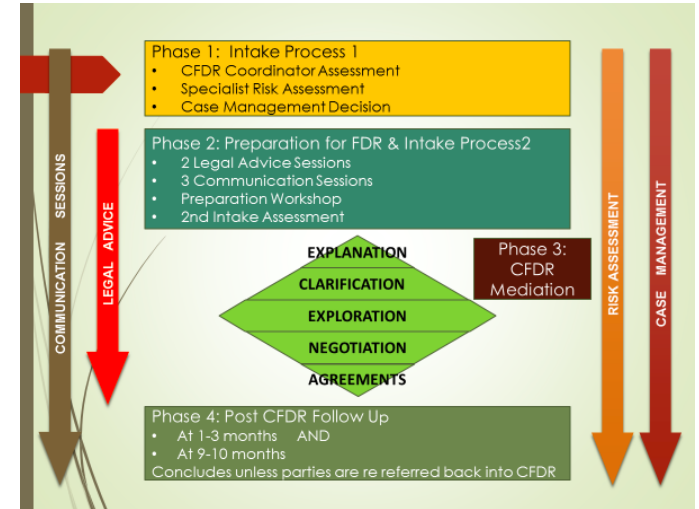
Constructing recommendations:

- Training programmes must be devised in collaboration with domestic abuse experts. Experts would include individuals with experience in working with abuse survivors or those with expertise in the psychological aspects of abuse.
- **The 8-day foundational training should be extended.**
- **Role play** has been suggested to improve mediator training (Parkinson). For domestic abuse, specific role play scenarios should be constructed. They should be informed by psychological research on abusive relationships and relevant interactions within such contexts.
- **Introduction of optional specialist abuse training:** Mediators obtain a ‘badge’ after completing specific training modules, which would indicate the mediator’s expertise in the field.
- **Training should be culturally diverse:** trainees must be informed of how abuse manifests across different cultural and social contexts.

Further reform

I refer to the Coordinated Family Dispute Resolution (CFDR), piloted in 2010-2012 in Australia, as the basis for further reform measures that could be envisaged in the UK context.

- It was developed by Rachael Field and Angela Lynch. It is a tested model which is grounded in theory and scholarship.



Fate of the model

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- Ideally, the entire model should be introduced...
- Despite the model's effectiveness, it was not implemented in Australia due to **'political, resource and funding issues'**.
- It is not unreasonable to infer that it might face the same fate in the United Kingdom due to the resource-intensive nature of its governance.



A UK adaptation?

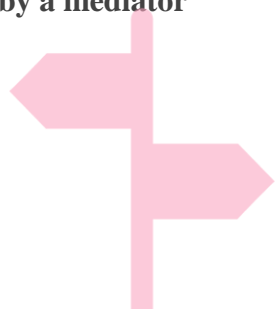
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Elements of the model must be imbibed in the UK system if implementing the entire model is not feasible...

Collaborative effort: A multidisciplinary approach is at the root of CFDR. This collaborative approach, where mediation joins forces with domestic abuse experts, legal advocates, organisations and even psychologists, is fundamental to the model.

The ‘experienced’ mediator: Could be combined with the badge training suggestion. Identifying a cohort of skilled mediators distinguished by the abuse 'badge' can be a useful step. These professionals will have additional training and experience in mediating relationships with abuse.

- **In instances where a mediator perceives themselves as less experienced or unprepared to navigate the complexities of abuse, they can hand over the case to a more experienced mediator. Consequently, survivors are guided by a mediator who possesses an in-depth understanding of the complexities associated with abuse.**



Concluding thoughts

How can the mediation process be critiqued and restructured to improve safety for survivors of domestic abuse?

I focused on **incremental measures instead of sweeping large-scale reforms**, cognisant of the realities of the current family justice system.

Altogether, I critiqued mediation for being an unsafe and traumatic place for survivors. **This critique, and an understanding of abuse dynamics, were then used to construct reforms and envisage change.**

I concluded that mediation must be restructured in two key ways to improve survivor safety.

- **Training is the first avenue for reform** – a mediator must be sufficiently trained before she is expected to navigate the complexities of an abusive relationship, especially while maintaining neutrality.
- Beyond training, the **mediation profession must collaborate with domestic abuse experts**, to ensure the safety of survivors during and after a session.

These reforms are not exhaustive or perfect and require increased resource allocation. However, they are pertinent measures that must be introduced.

Only by doing so can mediation become a safe space for survivors.

Thank you!

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