

## **Mediation and Domestic Violence**

An Exploration Of How The Family Mediation Service of Ireland Facilitates People  
Who Have Experienced Domestic Violence Negotiate Separation Agreements.

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A dissertation submitted to University College Dublin in part fulfilment of the degree of

Master of Arts

(Mediation and Conflict Resolution)

August 2006

School of Applied Social Science

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## Summary

The research aim was to examine whether or not the Family Mediation Service facilitated those who have suffered Domestic Violence to negotiate an agreement when separating from their partner.

The literature on the issue of the appropriateness of mediation in cases with domestic violence, and about the incidence of domestic violence, was examined. The policy and procedures of the Family Mediation Service concerning domestic abuse were also studied.

The examination of cases in this study was limited to those where physical violence occurred, or had been threatened, and had been disclosed by both parties

A sample of 114 cases involving separating couples was examined. The outcomes from cases involving domestic violence were compared to the outcomes from those where domestic violence was not an issue.

The first conclusion of the research was that some couples who experienced violence in their relationships chose to attend mediation when ending their relationships.

There appeared to be a great similarity in the outcomes between those cases involving domestic violence and those not involving violence. Possible outcomes were the decision not to enter into mediation, to discontinue mediation without coming to agreement or to reach agreement.

Likewise, when the contents of the agreements between those who suffered domestic violence and those who did not were compared there was no evidence that victims of violence fared any better or worse than people who had not experienced domestic violence in their relationship.

It was concluded, based on the examination of these cases, that the Family Mediation Service did facilitate people who had suffered domestic violence to negotiate their own agreements when separating. Furthermore it can be stated that the Family Mediation Service facilitated couples in whose relationship there was violence in other ways. The reaching of agreement at mediation is not the only favourable or useful outcome for a client

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## **Acknowledgments**

I express my sincere thanks to Delma Sweeney for her help, guidance, and encouragement throughout the entire course and specifically when acting as supervisor with this dissertation.

I thank the staff of the Galway office of the Family Mediation Service for their co-operation and patience while I was working on this project.

I am grateful also to the management of the Family Mediation Service for permission to conduct this research.

## **Chapter 1**

### **Introduction**

The aim of this research is to examine whether or not the Family Mediation Service of Ireland facilitates those who have suffered Domestic Violence to negotiate an agreement when separating from their partner. Specifically, it will ask if clients who have experienced Domestic Violence in their relationship can negotiate agreement in the Family Mediation Service.

It is hoped that any conclusions drawn from this research might help inform the author's own practice as a mediator and that of the Family Mediation Service on how the problem of domestic violence might be approached when it is raised as an issue by clients seeking mediation.

That domestic violence is experienced by many who are ending intimate relationships needs to be acknowledged by all who provide services to separating people. Mediating cases where domestic violence has occurred raises issues for a mediator and the clients about the capacity of victims to enter into mediation; about power imbalance between victim and abuser; about safety, and about the impartiality of the mediator.

Much has been written in relation to the problem of domestic violence. Chapter Two, the literature review, will seek to cover a wide range of the literature available in this field concerning the appropriateness or otherwise of mediating in cases where domestic violence has occurred.

Much of this literature is available in journals in the area of Mediation. e.g. *Conflict Resolution Quarterly*. Increasingly many articles are now being published on internet sites dedicated to the area of conflict resolution and mediation, e.g. [www.mediate.com](http://www.mediate.com) Many of the major published text books on Mediation also cover this topic and the related topics of power imbalance, neutrality and empowerment.

The literature will be explored in the first instance, briefly, in relation to what it tells of the extent of the problem of domestic violence in society, particularly Irish society.

Watson D. (2005: 69) tells us that; ‘In three quarters of the cases where a former partner was abusive, the respondent ended the relationship. In about one case in eight the relationship was ended by the partner.’

Other studies concerning domestic violence such as McKeown, K. et al (2002), Watson D. (2005) will be examined in an attempt to ascertain the extent of the problem in Irish society.

Secondly and more importantly the literature will be examined in relation to what various authors have to say on the issue of the appropriateness of mediation in cases where domestic violence has occurred.

The literature is varied regarding the appropriateness of mediation in cases of domestic violence. According to Maxwell, (1998) ‘Some proponents of mediation support the view that mediation can appropriately be used in domestic violence cases if the type of domestic violence involved is taken into account and mechanisms to ensure a safe and fair settlement for the victim are provided (Chandler, 1990; Erickson & McKnight, 1990; Johnston & Campbell, 1993; Yellott, 1990).’

Others clearly disagree, Maxwell (1998) states, because opponents think domestic violence ‘makes a fair, safe, or mutually acceptable settlement an impossibility. (Byran, 1992; Gagnon, 1992; Germane, Johnston, & Leman, 1985; Grillo, 1991; Hart, 1990; Lerman, 1984; Sun & Woods, 1989).’ The array of studies quoted indicates that there are divergent views about this topic.

Along with this literature the policies of the Family Mediation Service with regard to domestic violence will be outlined in Chapter Three. The Family Mediation Service offers mediation to clients on a voluntary basis. It emphasises the fact that it is the client’s decision whether or not they enter mediation. This is in contrast to the situation in some countries, and in most states of the United States, where clients can be mandated by courts to attend mediation.

Clients of the Family Mediation service of Ireland have the right to decide for themselves about the suitability and appropriateness of mediation for their particular circumstances. The policy of the Family Mediation Service which stresses the voluntary nature of mediation rules out the very idea of people being mandated to attend. It is always the clients’ decision.

Throughout the mediation process the Family Mediation Service stresses that each client has the right to choose for themselves whether to continue with mediation or to end it. From the moment of initial contact with the service this right is being highlighted by the fact that both parties have to give independent confirmation of their willingness to attend. At the first meeting between clients and mediator, which includes screening for domestic violence, the voluntary nature of mediation is again emphasised. Each client has the right to make agreements or not and that right is respected.

The voluntary nature of mediation is vital to ensure that clients who have suffered domestic violence are attending mediation of their own volition and are in no way being

coerced. This research will contrast the outcomes between those who experienced domestic violence and those who did not. The reported outcomes will be examined also to see if there is any indication as to how the voluntary nature of mediation is honoured in practice.

The mediators who were involved with the cases in the study operate within the guidelines of the Family Mediation Service in relation to cases involving domestic violence.

### **Research Question**

Can clients who have raised the issue of Domestic Violence negotiate agreement in the Family Mediation Service?

### **Definition of Terms**

Domestic Violence is the term used in most Irish Legislation. Domestic Violence is also referred to by many other titles, e.g. domestic abuse, family violence, spousal abuse.

This can lead to some different interpretations of what exactly is meant.

In the report written for the National Crime Council of Ireland Watson D. (2005: 166) states that 'domestic abuse is not defined solely in terms of particular behaviours or acts, but as *a pattern of physical, emotional or sexual behaviour between partners in an intimate relationship that causes, or risks causing, significant negative consequences for the person affected.*'

This definition shows how broad an area the term domestic violence encompasses. For the purpose of this study, while accepting the broad nature of domestic violence, the examination of cases will be limited to those where physical violence occurred, or has been threatened, and had been disclosed by both parties

Reference to outcome agreements, in this research, will include only those instances where written agreements, full, partial or interim, have been produced by the clients following mediation.

It is acknowledged that there can be positive outcomes other than written agreements from mediation, and that for some people a decision not to enter into mediation can be a positive outcome for them in their particular circumstances.

In this research those who have been physically violent in their relationship will most often be referred to as the perpetrator or abuser. Those who suffered physical violence will be referred to as the victim. The use of these terms is solely for the purposes of clarity and brevity.

The term victim can sometimes have connotations of people being left in a permanent state of incapacity as a result of their experiences. The danger with such terminology is that people are then treated in ways that further incapacitate and dis-empower.

In this research the terms victim and perpetrator or abuser are to be read in the context of the mediation process which encourages empowerment and acceptance of responsibility for one's actions and decisions.

Apart from clarifying who was violent, and who suffered from the violent acts, in a relationship these terms have no other significance in this research.

### **Rationale for this research**

The author's role as a mediator with the Family Mediation Service of Ireland and the reported experience of clients lead to a questioning of how people who have experienced domestic violence can be best assisted when separating from their partner.

A limited involvement by the researcher with an outreach of women's refuge has led to the perception that many people working in this area believe that mediation is never appropriate where domestic violence has occurred.

Also, there is a volume of literature questioning the appropriateness of mediation where domestic violence has occurred. These views will be examined in the light of the literature available and the experience of the Family Mediation Service.

### **Methodology**

To research how the Family Mediation Service deals with instances of domestic violence a sample of cases of clients, from one office of the service, covering a one year time frame was examined.

While there is information available on a database kept by the Family Mediation Service this was not readily assessable to the researcher. Instead, a manual search of the files associated with the relevant cases over a one year time frame, 01 January to 31 December, was undertaken. An added benefit to conducting a manual search of the files was that mediators' notes were available to the researcher in the files for each of the cases and these would not form part of the database material.

The methodology employed in this research will be covered fully in Chapter Four.

### **Ethical Considerations:**

The use of information gathered for this research will not reveal the identities of those involved. The permission of the Area Co-ordinator, on behalf of the Family Mediation

Service, was first sought and verbally granted. This permission was formally requested in writing and granted.

All people attending the Family Mediation Service are asked for their permission to have the information supplied by them used for statistical purposes on a strictly anonymous basis.

### **Feasibility**

The data required was available and could be accessed by the researcher, with permission. There was a limited time frame available for this research and while this may have seemed to be a drawback it helped to keep the examination of this vast area tightly focused.

### **Limitations**

The vastness of the area of domestic violence and related subjects indicate that it cannot be adequately covered in any one study. As already stated only cases where acts of physical violence had occurred, or had been threatened, and had been disclosed by both parties were taken into account in this research. The study was limited to one office of the Family Mediation Service.

A more comprehensive study, beyond the scope of this research, would include the need for clients to be interviewed before and after mediation and possibly to have further interviews months and even years following their experience of mediation.

A draw back to the study is the limited nature of the sample and the fact that there are other variables at work in all cases.

## **Chapter Two**

### **Literature Review**

In recent years there have been many studies into the extent of the problem of domestic violence in society. Authors with very different perspectives have written about the appropriateness of mediation in cases where domestic violence has occurred.

Domestic violence is experienced by many who are ending intimate relationships.

Mediating cases where domestic violence has occurred raises issues for a mediator and the clients about the capacity of victims to enter into mediation due to power imbalance between victim and abuser; about safety, and about the voluntary nature of mediation.

The literature in this review will be explored in the first instance in relation to what it can tell of the extent of the problem of domestic violence in society, particularly Irish society, and secondly and more importantly in relation to what various authors have to say on the issue of the appropriateness of mediation in cases where domestic violence has occurred.

#### **Literature on the Extent of the Problem**

Even a cursory look at varying reports about the extent of the problem of domestic violence immediately draws one into a debate about who is victim and who is perpetrator and how the topic is researched.

There seems to be two very distinct schools of thought. Buckley et al, (2006: 4) state that ‘The gendered nature of this crime is indicated by the fact that world wide research in many areas has shown that between 70 - 97% of abusive incidents within intimate relationships are perpetrated by men against women.’

Other studies draw a different picture. McKeown et al (2002) in a study of couples attending relationship counselling with Accord found that 53% of those attending had experienced violence with 46% saying the violence was mutual and in 30% of cases the female was the sole perpetrator and in 24% it was the male who was violent.

Each viewpoint is able to draw on a number of studies to back up their claims; those claiming that women constitute the majority of victims have ample studies to quote from, (Cronin & O Connor, 1993; Kelleher & O Connor, 1995; Bradley et al, 2002)

Likewise many studies concur with the idea of gender symmetry in relation to the prevalence of domestic violence. (McKeown and Kidd, 2002; Mirrlees-Black, 1999; McKeown et al, 2004)

This raises the question about how there can be such divergent views and leads one to examine more critically what was researched and who was interviewed that led to these findings.

Watson (2005:32) refers to the fact that different methodological approaches lead to different findings about the prevalence of domestic violence. Watson (2005) refers to two main approaches. The first, 'family conflict' approach is based on the Conflict Tactics Scale. This distinguishes eight types of force and counts every act of violence and this method usually finds that men and women are roughly equal in the use of violence. The second approach, 'violence against women' approach holds that the consequences and impact of violent acts are relevant, and does not accept that acts of men and women are equal, when assessing the prevalence of domestic violence. These studies find that women are predominantly the victims of domestic violence. Research in this area has tended to be among women who have come into contact with varying services for those suffering domestic abuse and as a result are not truly representative.

Equally research findings such as carried out by McKeown et al (2002) for Accord and the Marriage and Relationship Counselling Service, McKeown et al (2004) do not necessarily generalise from their specific samples and contexts.

A third method, the 'crime survey' lies somewhere between these two approaches in that they are representative and the consequence of the violence is implicit in that it is dealing with crime.

Another area of difference concerns whether or not the research is gender neutral or whether only women are asked about their experience of domestic violence. Again there is a remarked difference in the outcome depending on the method chosen, with most gender neutral studies finding that men and women are almost equally the victims and perpetrators of domestic violence.

That violence is pervasive in society is all too obvious. There is no one accepted definition for domestic violence and there is no one accepted methodology of measuring its prevalence. A resulting difficulty is the risk of comparing different research projects which are researching different definitions of domestic violence and using research bases that cannot be generalised and extrapolated from into the general population. Perhaps attempting to do so is one reason for the apparent conflicting conclusions reached by different groups who attempt to interpret these studies and use them for their own purposes.

The conclusions reached by the different research projects could, and perhaps should, be read as complimentary to each other rather than as competing. It is unfortunate that when seen as competing there can be an almost implicit acceptance of violence by people who are attempting to curb, if not end, violence between intimate partners.

Because men are abused does not negate in any way the wrong done to women who are abused and in no way excuses those men who are violent towards their partners. Equally because women tend to suffer more serious physical injuries than men who are abused should in no way be used to deny the existence of female perpetrators of domestic violence or to imply that such violence is of no consequence.

Reviewing the literature leads to a conclusion that domestic violence is a serious problem for society and one that needs to be acknowledged regardless of who the perpetrator or victim is. It would be helpful for all sides of the debate to focus again on the problem, violence, and not end up in competition about who perpetrates most or suffers most.

It is a problem that obviously has implications for the field of family mediation where an attempt is made to reach a mutually acceptable agreement between intimate partners who are separating.

Watson (2005:26) found that ‘Among those who are separated or divorced, almost 60 per cent of women and 30 per cent of men have experienced severe abuse at some point in their lives.’

### **Literature re Appropriateness of Mediation**

There seems to be an equally divisive debate concerning the appropriateness of mediation in cases where domestic violence is an issue as there is about the prevalence of domestic violence.

According to Maxwell, (1998) ‘Some proponents of mediation support the view that mediation can appropriately be used in domestic violence cases if the type of domestic

violence involved is taken into account and mechanisms to ensure a safe and fair settlement for the victim are provided.’

Others clearly disagree, Maxwell (1998) states, because opponents think domestic violence ‘makes a fair, safe, or mutually acceptable settlement an impossibility.’

It needs to be stated that the literature which questions the appropriateness of mediation where there has been violence in the relationship does so exclusively from the point of view where a woman has been the victim. Little or nothing seems to have been written about the appropriateness of mediation when the male is the victim or indeed where the victim is one of a same sex relationship.

Much of the questioning of the appropriateness of mediation appears to be based on a feminist perspective that women are in such a disadvantaged position in society that mediation merely compounds the disadvantage. Goundry (1998:94) states that ‘family mediation may be beneficial for a small number of exceptional women clients, but that there are serious concerns which mitigate against using it for most ... whose bargaining power is not equal to that of their ex-partners.’

Their argument that women’s interests might be better served in the legal system is somewhat questionable as it can be presumed that whatever disadvantage that exists in mediation as a result of women’s position in society would equally affect solicitor based negotiation or judicial judgements.

It has to be acknowledged that violence does create a power imbalance. The debate is whether or not this renders mediation an impossibility or if with appropriate safeguards mediation can be successfully used.

Some writers question whether victims can even articulate their own needs and interests as victims of domestic violence are so disempowered that that are not capable of making decisions because they cannot negotiate from an equal footing as the abuser.

(Rimelspach, 2001)

Proponents of mediation put forward the argument that the same imbalance of power exists in the legal process. Many would hold that power itself is not a commodity and should not be treated as such; it is not stagnant in the interaction between the parties (Gewurz, 2001:136) and, according to Gewurz (2001:137), Deutsch says it is relational and contextual. Those who totally rule out mediation would appear to regard power as being in the possession of one party rather than the complex entity that it is.

A blanket ban on mediation can be seen as disempowering, and according to Milne (2004:315) reproduces the dynamics of an abusive relationship. It can infantilise women by making decisions for them. Thoennes et al (1995)

Others object because they see mediation as not treating domestic violence as a crime and as removing the issue of violence to a private forum where there is no accountability and no sanction for the abuser. They also feel that it removes a woman's right to use the legal process to protect her rights. There is also an objection to the use of mediation on the grounds that instead of being part of the public record mediation settlements are private and don't impact on social policy.

Again there are very mixed views about these subjects with contrary findings from different studies. Saunders (1998:4) cites Rosnes' study which found that Canadian courts consider domestic violence as irrelevant in custody and access cases. This might indicate that the court system is not guaranteed to achieve what the opponents of

mediation require. The expectation that mediation should be involved in applying sanctions implies a total misunderstanding of the true nature of mediation.

Much of the North American writing raises the issue of mandatory mediation with clients obliged by law to attend mediation.

Most writers including Moore (1996:8) would have defined mediation as essentially a voluntary process. Mandatory mediation raises serious questions for the voluntary role of mediation and, although the Irish position is somewhat different, it is an issue that needs to be addressed. However, according to Ricci (2004: 407) attitudes of clients following mandatory mediation suggest a large majority are favourably disposed to it.

Safety is another of the issues raised concerning mediation where domestic violence is an issue. Obviously it is of huge importance and has to be treated very seriously. Many of the safety concerns raised can apply equally to the legal process. All writers would agree that it is imperative that proper precautions are taken to ensure the safety of clients and staff. Kelly (1996:381) says that to exclude mediation on these grounds comes from concern and activism and is counter to research that can show that mediation and he cites Ellis as finding that mediation in comparison to lawyer negotiation reduces abuse following the process. All studies refer to the mechanisms used by mediation to enhance safety, namely the screening of clients and adequate training of mediators.

The literature indicates that there is a lively debate on the subject of appropriateness of mediation. This is to be welcomed and encouraged. However, it is important that both sides of the debate engage in an open and enquiring manner with each other and base all discussion on sound research rather than conjecture and ideology. Much can be gained by both sides from an honest debate on this topic.

## **Chapter Three**

### **Policy of the Family Mediation Service**

The problems associated with mediating cases where domestic violence has occurred are acknowledged by the Family Mediation Service in their policies and procedures for dealing with such cases. A copy of the policy is attached as Appendix 2.

Safety issues are the primary concern according to this policy. 'When working with clients who have experienced domestic abuse, safety issues are pre-ordinate.' Family Mediation Service (1999:2)

The policy and procedures of the Family Mediation Service clearly state the need for the screening of clients. The policy is to interview each client separately and the policy document offers suggested questions that might be asked of each person in order to ascertain whether or not domestic abuse has occurred.

A check list of verbal and non-verbal cues as well as references to the different types of attitudes and behaviours where there is domestic abuse are provided to guide the mediator in making a decision about the appropriateness of mediation in a specific case.

The policy lists categories where mediation may not take place and also lists the categories where mediation can be conducted following the screening of clients. It outlines safety strategies to be adhered to where mediation is to take place.

All writers and interested parties maintain that it is of the utmost importance to protect the safety of people who avail of mediation services. The Family Mediation Service of Ireland shares this concern about client safety and also implies concern for the safety of the mediator in that 'everyone should be safe from harm'. Family Mediation Service

(1999:2). The safety of the mediator is not always included in the protocols and procedures of services dealing with safety at mediation.

However the policy of the Family Mediation Service requires the mediator to take the responsibility for not proceeding with mediation and lists the steps to be taken if it is the decision to terminate mediation. Family Mediation Service (1999:14). While this possibly reduces risk to the person who has been abused it appears to place the mediator at an increased risk. This is a concern and the policy does require that certain safety procedures are put in place in each of its offices.

The policy and procedures of the Family Mediation Service appear to be similar to those of other agencies that provide mediation in cases where domestic violence has occurred. Many articles describe very comparable procedures being employed in other services. (Pollet, 2005; Kelly, 1996; Milne, 2004) The Australian Family Court Mediation Service also adopts not dissimilar policies where domestic violence is an issue. (Haynes and Charlesworth, 1996)

The policy and procedures as laid down by the Family Mediation Service indicate that it takes very seriously the dangers associated with domestic violence. The policy attempts to safeguard clients from these dangers.

## **Chapter Four**

### **Methodology**

The method for this research was the documentary analysis of mediation case files to establish similarities or differences between outcomes in cases where there was domestic violence and where there was not.

Ideally a longitudinal study would be undertaken where clients and mediators would be interviewed in relation to their perceptions about whether or not the Family Mediation Service facilitates those who have experienced domestic violence to make separation agreements. For this present research the time scale and resources available ruled out this more extensive type of study. Instead it was thought that an examination of case records would elicit useful information that would give clear indicators whether or not clients who had experienced domestic violence were facilitated by the Family Mediation Service in making separation agreements. Documentary analysis of records can be a valuable source of data. Johnston (1984:23)

It was decided to choose the cases from a year where it was most likely that all would have reached completion by the present. This ruled out 2005 as some of those cases could be ongoing. Allowing for this, a year prior to 2005 was chosen at random. In the chosen year 115 cases involving separating couples were dealt with by the relevant office. Any particular region of the Family Mediation Service deals with a relatively small number of people each year. In order to provide maximum protection of the anonymity of clients neither the office in question nor the year chosen will be identified in this research.

One of the cases transferred to another office in the course of mediation and there was no information available about it. For the purpose of this research a total of 114 cases were examined in order to discover if the Family Mediation Service facilitated those for whom domestic violence was an issue to reach agreement.

The Family Mediation Service stores the files securely and so it can be established that the files are genuine and were created by the staff of the Family Mediation Service and that all notes included in them were contemporaneous.

The files are primary sources of information. The questionnaires that were completed by the mediators at the time are deliberate sources of information as they were intended to facilitate drawing up statistical reports. The notes written by mediators are inadvertent sources in that they were written essentially as an *aide-mémoire* rather than a source of research.

Each file consisted of the original intake questionnaire completed by the mediator during the initial meeting with the clients and the mediator's notes of this and subsequent sessions. In cases where agreement was reached a copy of the agreement was included in the file.

Each of the 114 files was scrutinised by applying a questionnaire type form to extract the relevant information. The form is attached in Appendix 1. Questions were posed in such a way to produce responses which could be broken down into percentages to allow for comparison. This was achieved using a Microsoft Excel spreadsheet which also facilitated the presentation of the findings in graphic format.

Initially ten cases were picked at random to assess the contents of the files to ensure that they contained the relevant information and to test the 'questionnaire' to be applied.

This pilot study showed that the files did contain relevant information. It also led to a refining of some of the questions regarding the information that was being sought.

Firstly, it had to be established if people who experience domestic violence seek mediation at the Family Mediation Service of Ireland when separating from an abusive partner. The information was contained in both the intake questionnaire, where clients can identify domestic abuse as a reason for their separation, and in the mediators' notes when domestic violence is identified as an issue during screening or subsequent sessions.

The issue of gender in domestic violence is a contentious one. The research sought to establish, in the cases under examination, whether domestic violence was asymmetrical or not in relation to gender. Mediators' notes were used to discover whether violence was perpetrated by the male or female partner or if it was mutual. The knowledge of who used violence in a relationship allowed an exploration of what differences, if any, existed in the outcomes depending on which gender perpetrated the violence.

The debate about the appropriateness of mediation where there has been domestic violence is a heated one. Whether victims or abusers initiate contact for mediation might be a pointer to how people view the usefulness of mediation. It could also indicate whether people who have suffered from domestic violence themselves choose to attend mediation. Having established the numbers of cases where violence occurred and the breakdown of who carried out the violent acts it was now possible to establish whether abusers or victims initiated contact with the Family Mediation Service seeking mediation.

The information about who initiated mediation was contained in the initial intake form which would have been completed by the administrative staff in the office.

The next area of research was to discover if clients who have suffered domestic violence were advised to attend mediation and if so who refers them. This is a standard question on the intake questionnaire.

Much has been written about the appropriateness of screening for domestic violence. It is the policy of the Family Mediation Service to individually screen all clients. To find out if the screening process is effective mediators' notes were looked at to determine if domestic violence was raised as an issue through the screening process.

In order to determine whether clients who have experienced domestic violence are facilitated to make agreements the outcomes from their mediation were compared to the outcomes from those where domestic violence was not an issue. Having attended the initial interview / session there were a number of possible outcomes for the clients; that they did not continue following the initial interview / session; they reached agreement; they did not reach agreement or they returned to their relationship.

The reaching of agreement in itself is open to interpretation and some can argue that agreements can be made under duress. In order to explore the possibility of agreements being reached that were disadvantageous to the victims of domestic violence the content of agreements in cases involving domestic violence were compared to cases where there has not been violence. These were examined specifically with regard to parenting arrangements, arrangements about family home, and arrangements about maintenance.

The types of parenting plans that were drawn up were examined in relation to which parent the children mainly stay with. The types of parenting plans fell into the main categories of; equal parenting, i.e. close to equal time with each parent; shared parenting, i.e. overnight stays and regular time with the non-custodial parent; single parenting, i.e. no overnight but visitation arrangements.

The question of what happens to the family home was also examined to see if it was; retained with male living in it; retained with female living in it; bought out or transferred to one person, or if it was sold.

Agreements about the issue of maintenance were also part of this procedure of comparison and it was sought to establish who, if anyone, was to be paid maintenance.

Process is a very important part of mediation and there was also exploration of some of the techniques used in order to see how mediators facilitated those who had suffered violence in comparison with those who had not. The researcher explored the following areas; the number of sessions that mediators allowed; the use of individual sessions, caucusing; checking with clients about the possibility of abuse of children and checking if victims had support structures in place.

Having gathered this raw data from the relevant case files it was then entered onto summary sheets for each individual question. The figures produced were next entered onto a Microsoft Excel Worksheet to give percentages, averages and graphs of the data to allow for analysis.

## Chapter Five

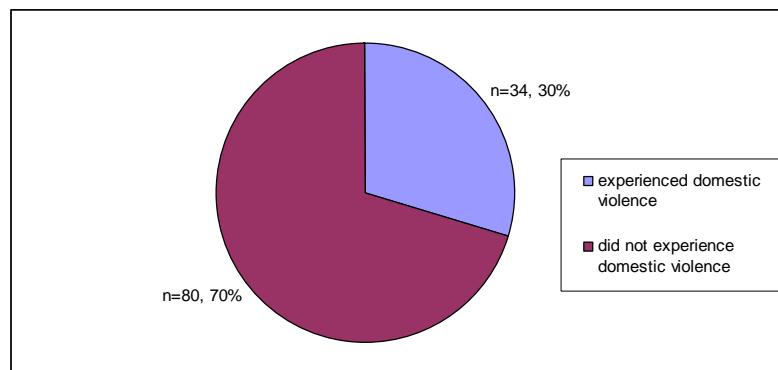
### Research Findings

The Family Mediation Service of Ireland is availed of by people who are separating and who wish to work out their own agreement with the assistance of a mediator. The purpose of this research was to establish if it facilitates people who have experienced domestic violence to negotiate their own agreement.

#### Incidence of Domestic Violence

In the sample year chosen there were 114 cases of separating couples dealt with in the office where the research was carried out. As seen in Figure 1-1 some 34 of these couples had experienced domestic violence, as defined for the purpose of this research, in their relationship.

Figure 1-1 Number of Couples who had experienced domestic violence.



A sizeable number of those in the sample attending the Family Mediation service had experienced domestic violence in their relationship. The numbers of couples attending who have experienced domestic violence both justifies and demands that questions are asked about how these people are facilitated by the Family Mediation Service. Different

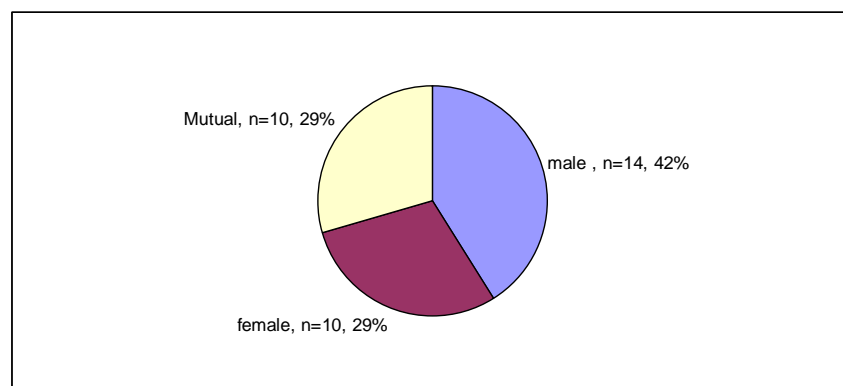
aspects of the mediation process and the outcomes for these couples were examined to determine if the Family Mediation Service meets their needs so that mediation provides them a safe, fair and effective forum in which to negotiate their own arrangements.

A lot of debate continues about the symmetry of abuse between the genders and whether or not domestic violence is a gender issue. Others studies already cited (Cronin & O Connor, 1993; Kelleher & O Connor, 1995; Bradley et al, 2002; McKeown and Kidd, 2002; Mirrlees-Black, 1999; McKeown et al, 2004) have looked at this issue and have had varied results depending on the methodology employed.

This research into all cases from a one year time span, January to December, in one office of the Family Mediation Service shows that both female and males who are separating have used violence in their intimate relationships.

Figure 1-2 shows that in the 34 cases involving violence, the violent acts were carried out by the male partner in 14 of the cases and by the female in 10 of these cases. The remaining 10 cases stated that violence was mutual. It is important to note that in all these cases the violence was disclosed by both partners and both were in agreement about the violence that had taken place.

Figure 1-2 Violence by gender of the perpetrator



In order to provide the maximum safety possible for all clients attending the Family Mediation service it is the policy that all clients are screened for the possibility of domestic abuse.

There is an ongoing discussion about the effectiveness of such screening but most writers agree that everything possible should be done to ensure the safety of clients who attend mediation. Thoennes et al (1995;9) quote studies by various authors such as Erickson & McKnight, 1990; Lerman, 1984; Marthaler, 1989; Sun & Woods, 1989; who make this point

Also debated is the best method for screening. In this present study it is of note that in all 34 cases, where violence had occurred, it was revealed in the initial screening session by both parties.

Mediators operating in the Family Mediation Service also carry out continuing assessment for power imbalances throughout the course of mediation. There was no instance in the subsequent sessions of clients disclosing that violence had occurred.

Screening, no matter in which form it takes place, relies on both parties to the mediation process revealing that violence has taken place. There is no method that can accurately estimate if in any of the cases in this study the clients did not reveal that violence had occurred. If clients did not reveal the fact of violence it is a conscious decision that they have made, for their own reasons in their own particular situations, and must be respected as such.

Many people hold the view that mediation is not an appropriate forum for those who have been the victims of domestic violence, especially when the victim has been the

female partner, and should never be employed in these cases. (Goundry, 1998; Rimelspach, 2001)

Others question this view and point out that such a position further removes decision making from people who have already been disempowered. (Milne; 2004; Thoennes et al 1995)

### **Initiation of Mediation**

How do those in domestic violence situations themselves view the use of mediation? Do people who have experienced violence in their relationship seek mediation when separating in order to work out agreements with their partners?

There is an important issue about which of the partners in the relationship, the user of the violence or the victim, initiates contact with the Family Mediation Service seeking mediation.

Examination of the 24 cases in the present study where violence had occurred, and was not mutual, shows that the initiation of mediation is divided equally between victims and perpetrators of violence.

Further examination shows that when the figures from the sample cases are broken down by gender, Figure 2-1, Table 1 , that the majority of female victims of domestic violence opted to choose mediation as the forum to help make agreements about separation.

In the majority of cases where the victim of the violence was male it was the female perpetrator who initiated mediation.

Figure 2-1 Initiation of Mediation by Gender of Victim



Table 1. Initiation of Mediation by Victim / Perpetrator broken down by gender

Total	Male Victim	Female Victim	Male Perpetrator	Female Perpetrator
24	2	10	4	8

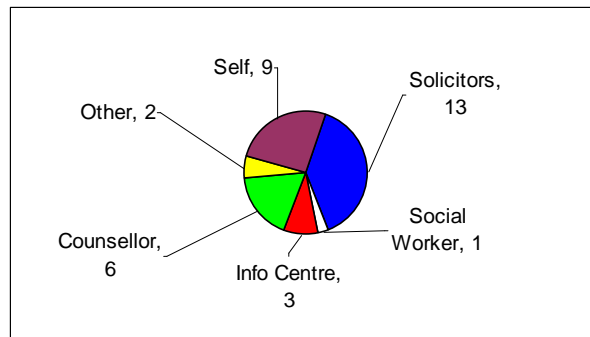
In the cases examined where domestic violence had occurred it appears that women are the ones who initiate mediation in most cases, regardless of whether they are the victims or perpetrators of domestic violence.

### **Referrals to Mediation**

Many of those who come to the Family Mediation Service are self referred having learned about it from a wide variety of sources. Others are referred by professionals such as counsellors, solicitors, social workers and by information centres. In some circumstances people are referred by the family courts.

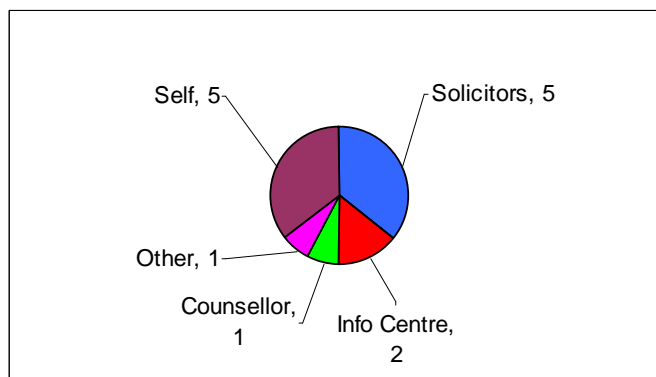
Figure 3-1 will show that none of the cases were court referred. Solicitors referred the majority of cases with a large number also self referring. Counsellors were also a prominent group that referred cases involving domestic violence.

Figure 3-1. Referrals of cases where domestic violence was an issue



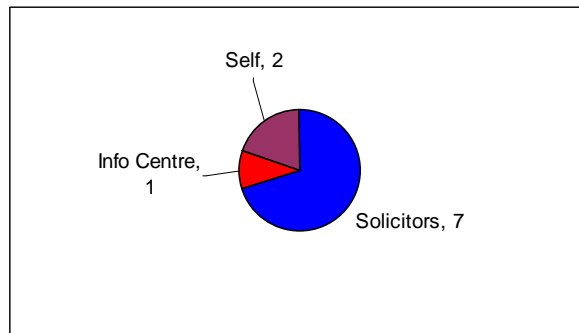
The pattern of referral of cases by solicitors and self referral is also evident in Figure 3-2 when the cases are broken down by gender of the perpetrator of the violence where the male was the one who carried out the violence.

Figure 3-2: Referrals where violence was carried out by the male partner



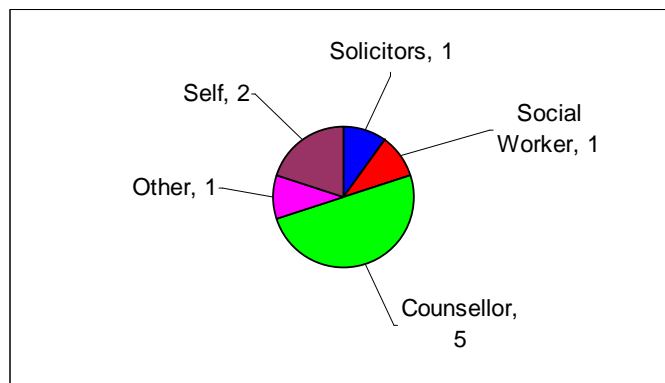
Solicitors are also the predominant group referring clients to mediation in cases where the violence has been mutual.

Figure 3-3: Referrals where violence was mutual



However, as displayed in figure 3-4, there is a change in who does the referral when the violence has been perpetrated by the female partner in the relationship. In these cases referral is more likely to be by a counsellor rather than anyone else.

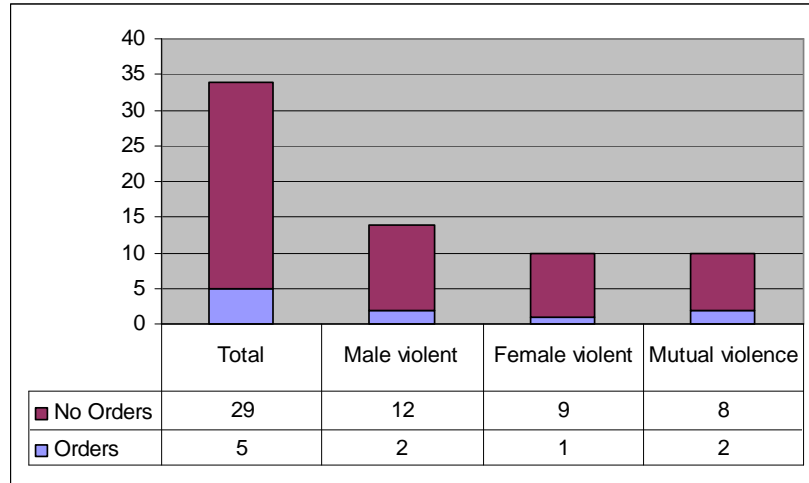
Figure 3-4: Referrals where violence was carried out by female partner



While solicitors referred people to mediation it appears that relatively few of these had court orders, such as barring, interim barring, safety or protection orders, in place.

Figure 3-5 shows the numbers of those who had court orders in place before starting mediation.

Figure 3-5: Prevalence of Court Orders in domestic Violence Cases attending Mediation



### Living Arrangements of Clients

The circumstances of those who attended mediation were also examined. The majority of those who came to mediation were found to be already living apart. But as is outlined in Figure 4-1 and 4-2 indicate that there were proportionally more living apart in cases where there was no domestic violence.

Figure 4-1: Living together or apart by where there was domestic violence.

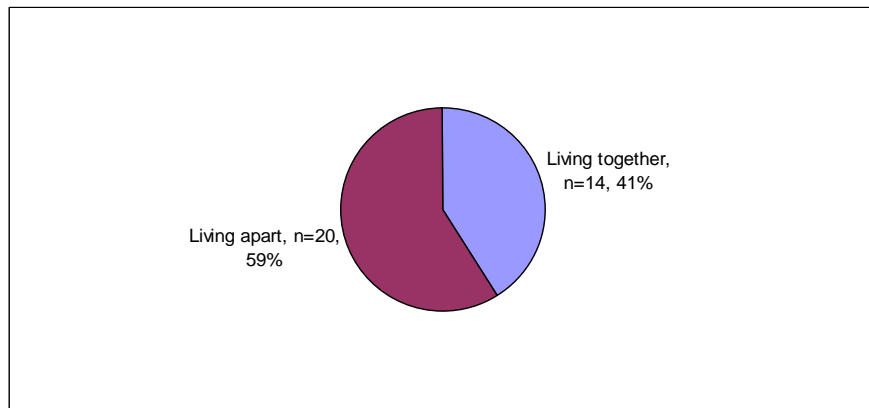
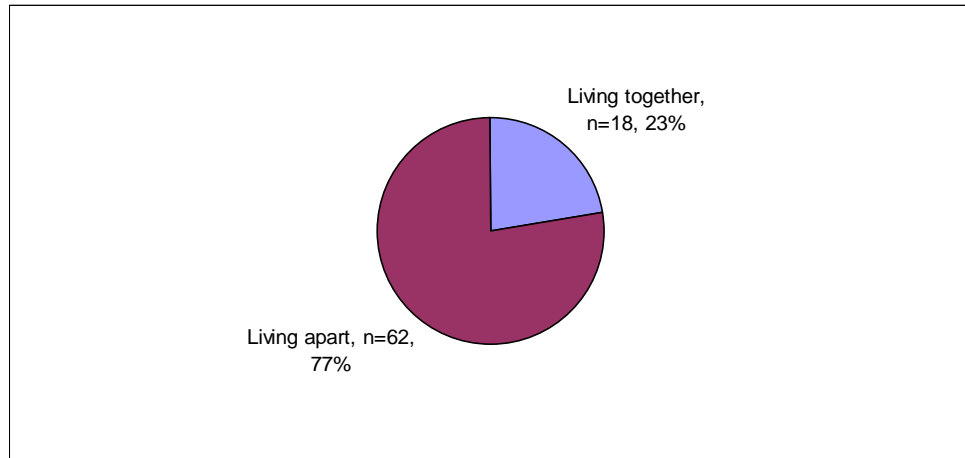


Figure 4-2: Living together or apart by where there was not domestic violence.



These figures were then examined in relation to the length of time that couples had lived apart before attending mediation. Figures 4-3 and 4-4 show that there was broad similarity between these two groups with people who were living apart accessing mediation services within approximately the same timeframe regardless of whether they had experienced domestic violence or not. The majority of both groups were living apart less than six months when they started mediation.

Figure 4-3: Length living apart before mediation where domestic violence had occurred

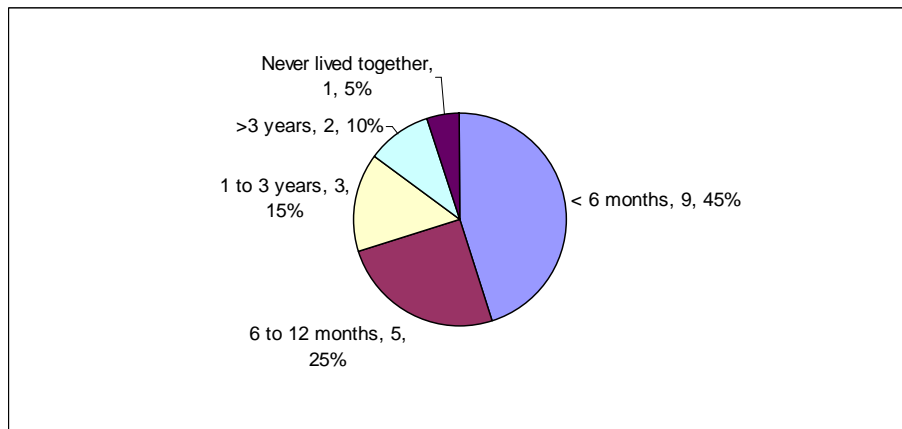
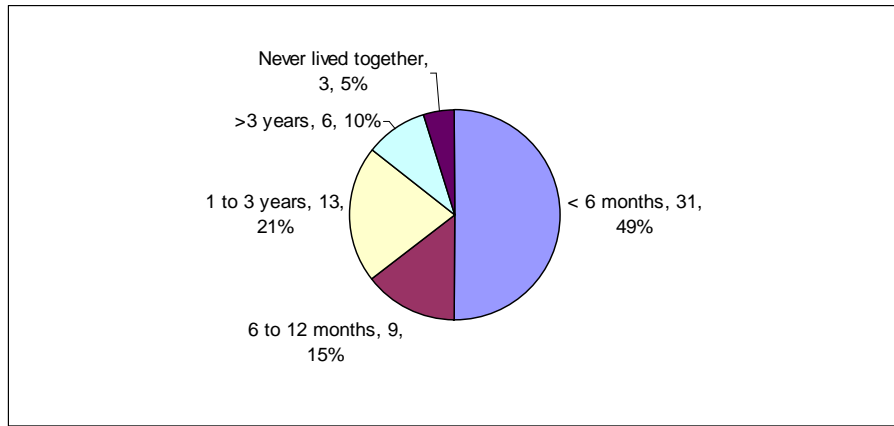


Figure 4-4: Length living apart before mediation where domestic violence had not occurred



These figures were then further analysed to find out if the fact that clients were living separately or together had an effect on the outcomes between those who had experienced violence and those who did not.

Figure 4-5, clients living apart who did have violence in their relationship, and figure 4-6, clients living together who did have violence in their relationship, show that there were differences in outcomes between those who were living together from those who were already apart when they attended mediation to negotiate their separation agreement.

Figure 4-5 Outcomes, Living apart, cases involving violence

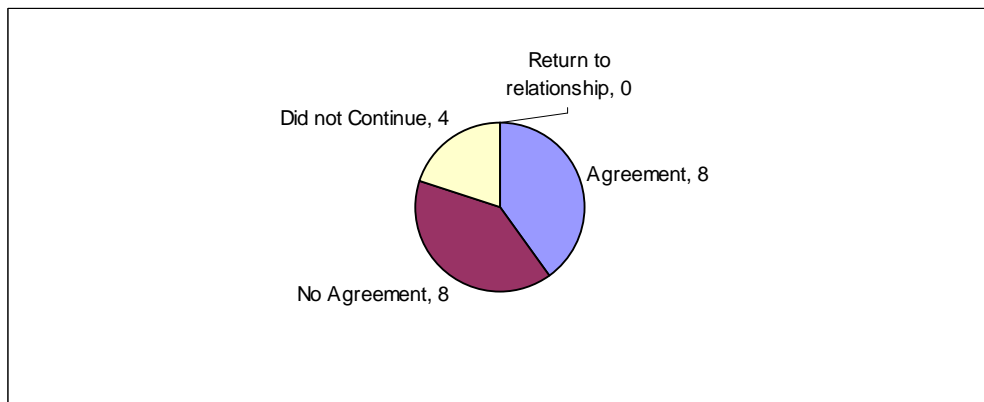
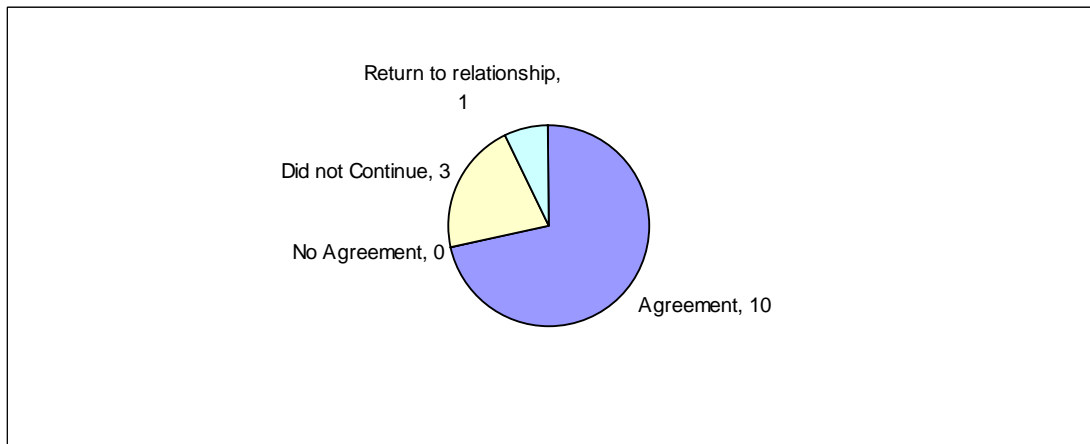


Figure 4-6 Outcomes, Living together, cases involving violence



These figures show that those clients who have experienced violence in their relationship and who are living together are more likely to reach agreement than those living apart who have or have not experienced violence.

These figures were next compared to those cases where there had been no violence. Figures 4-7 and 4-8 show the outcomes between clients living apart and clients still living together where there was no violence.

Figure 4-7 Outcomes, Living apart, cases with no violence

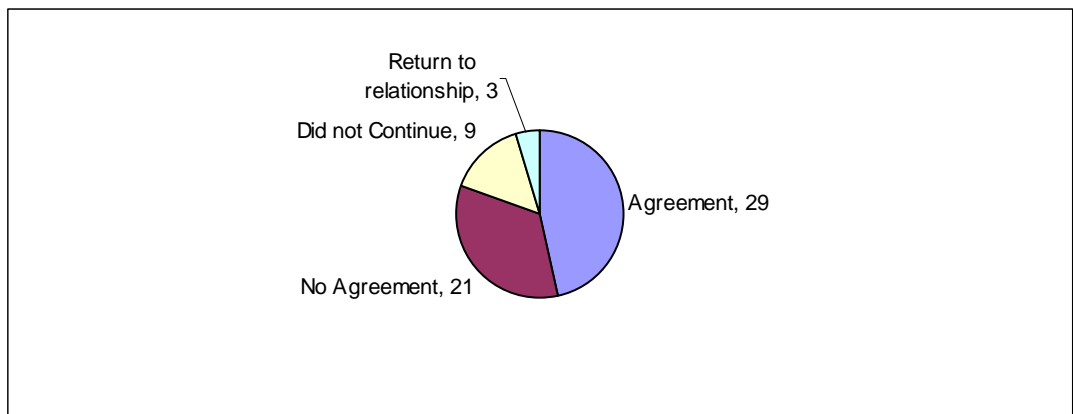
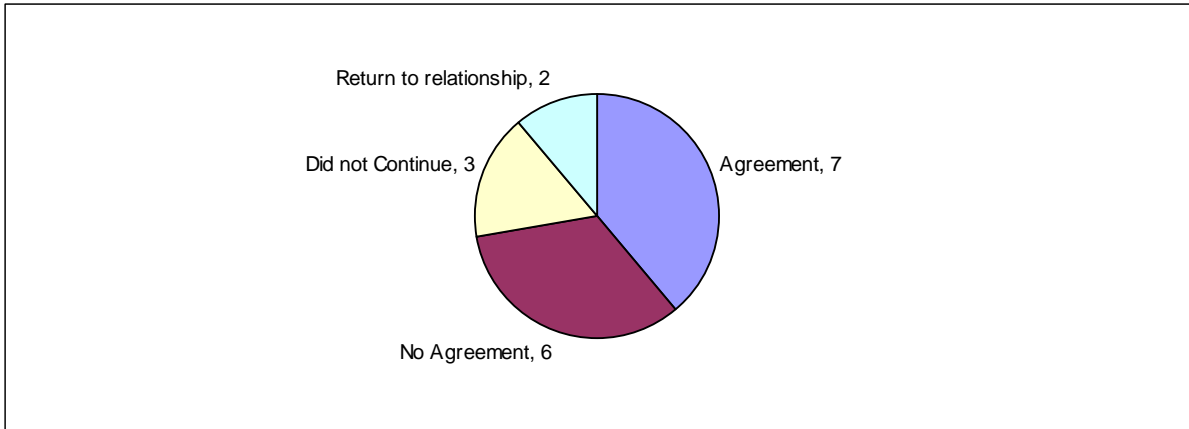


Figure 4-8 Outcomes, Living together, cases with no violence



When these cases are further examined it shows in Table 2-1 that in the 9 cases which continued to mediation, where violence had been used by one partner and the couple were still living together, agreement was reached in all 9 cases.

This is in contrast to the 13 cases in which couples who were living apart where violence had been used by one partner. Out of these 13 cases agreement was reached in 6 of them.

Table 2-1; Outcomes by violence and living circumstances

	Living together	Living apart
<b>Male Violent, Totals</b>	7	7
Agreement	6	4
No Agreement	0	3
Did not Continue	1	0
Return to relationship	0	0

	Living together	Living apart
<b>Female Violent, Totals</b>	3	7
Agreement	3	2
No Agreement	0	4
Did not Continue	0	1
Return to relationship	0	0
<b>Mutual Violence, Totals</b>	4	6
Agreement	1	2
No Agreement	0	1
Did not Continue	2	3
Return to relationship	1	0

Table 2.1 displays clearly that in the cases where the violence had been mutual a different picture regarding outcomes is painted to those where one of the partners had been violent.

### **Support systems for clients living together**

In all cases of the couple living together mediators recorded that there were support systems in place for the victim of the violence.

In all seven cases where the male had been violent the female had obtained legal advice and in four of the cases was also attending counselling. Only one female reported having sought help from a Women's Support Group such as Women's Refuge / Women's Aid.

Two of the three men who had experienced violence from their partner, and who were still living with that partner, had obtained legal advice and the other had sought

counselling. One had also involved the Social Services and Gardai because of issues involving their children.

Where there had been mutual violence and the couple were still living in the same accommodation, three of the couples had sought legal advice with two of them also attending counselling. One couple had not obtained legal advice or counselling but said that they had involved family in an attempt to end the violence.

### **Process of Mediation and Outcomes of Cases**

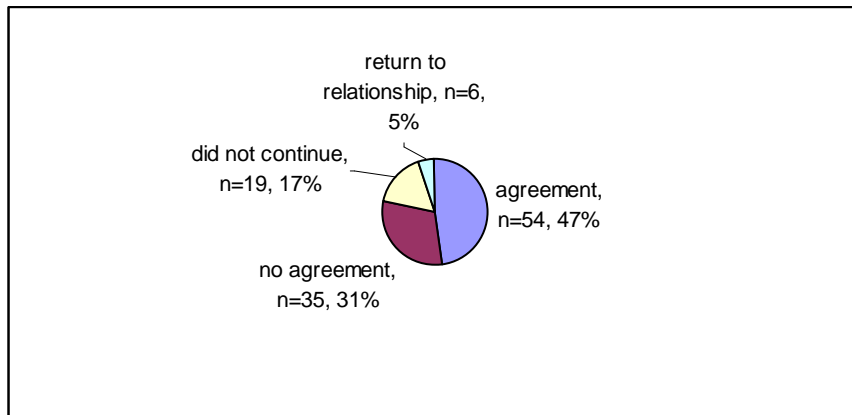
Having established the numbers attending mediation affected by domestic violence, which of the parties had carried out the violence, who initiated mediation, the proportions living apart and the timescale within which they accessed mediation services the case files were then examined in relation to the actual process of mediation and the outcomes.

The outcomes of attending the Family Mediation Service were first examined for all 114 cases seen in the particular office during the sample year. A comparison was then made between those who experienced domestic violence and those who did not.

The first session with all couples attending the Family Mediation Service is an introductory one where the nature of mediation is explained, where there is some initial fact finding and where clients are screened individually for domestic abuse. Clients are encouraged to then make an individual decision regarding the appropriateness of mediation for themselves.

Mediators operate according to the policy and procedures of the Family Mediation Service as already outlined in Chapter 3 and attached in Appendix 2.

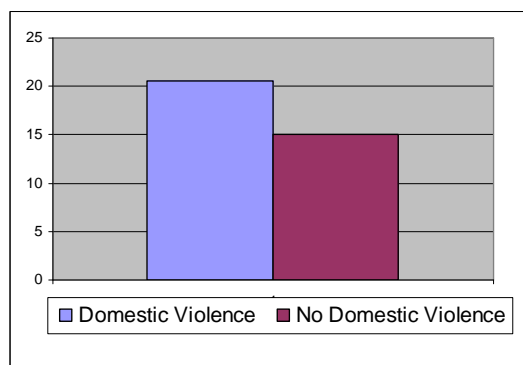
Figure 5-1 Outcomes for all cases



A sizeable proportion of clients, 17%, did not enter into mediation after the introductory / screening session. Current recording methods, questionnaires and mediators' notes, do not consistently record the reasons why clients did not continue so it was not possible to obtain a breakdown of the reasons for they not continuing. In some cases the reason may not be known as the couple did not make further contact.

However as can be seen from figure 5-1 there are enough couples not continuing with mediation to warrant examination. A comparison shows that for those who have experienced domestic violence in their relationship there is a higher rate for not continuing after the initial session.

Figure 5-2: Percentage of those cases not continuing by experience of violence or not



The case files were next examined to provide a comparison between cases involving and not involving violence in order to discover if there were significant differences in the processing of these cases. Such differences might give some indication about how mediators facilitate those who have suffered violence.

The total number of sessions for each case was commuted and the median for each was calculated. Some differences were immediately apparent as is evidenced in figures 6-1 and 6-2.

Figure 6-1: Median number of sessions to reach agreement

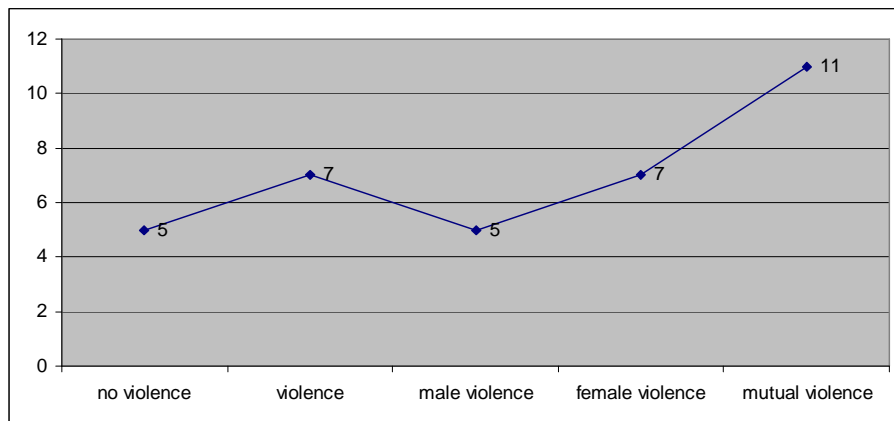
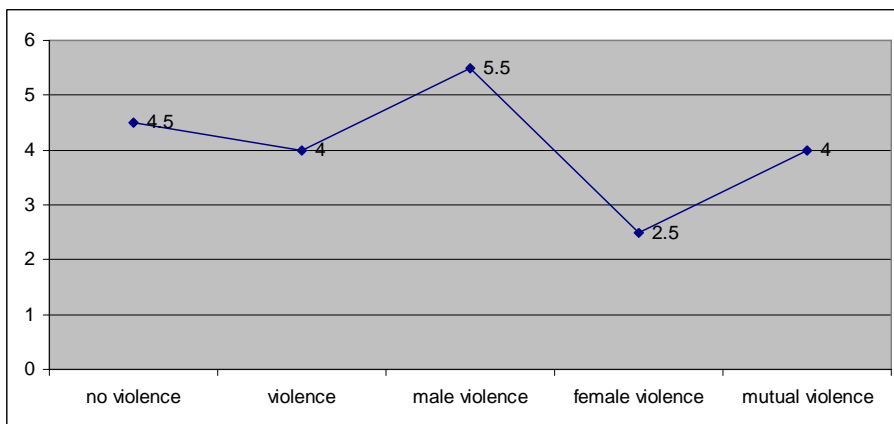


Figure 6-2: Median number of sessions in cases where no agreement was reached



It is of interest that where there has been mutual violence that the median number of session taken to reach agreement is the highest of all categories. Where the violence was perpetrated by the male it took the same number of sessions to reach agreement as the cases where there was no violence.

Where violence was perpetrated by the female partner a decision was made much earlier than all other categories that agreement could not be reached and mediation was to end.

The use of individual sessions for screening purposes takes place during the initial meeting between the mediator and the clients. Following this session it is at the discretion of the mediator whether clients are seen individually in caucus or not. The incidence of mediators using caucus was looked at as another possible indicator of the ability of the Family Mediation Service to facilitate clients where domestic violence was an issue.

In cases where there has been violence sometimes the mediation is conducted entirely in caucus type sessions. This is sometimes referred to as shuttle mediation. In the cases in this research one case was conducted entirely in this fashion due to a barring order being in place and ongoing criminal proceedings concerning assault.

Figure 7-1 shows that mediators were proportionally much more likely to caucus in cases where there was domestic violence. In cases with domestic violence mediators used caucus in 55% of the cases compared with 27% where there was no violence.

These figures concerning caucus were further analysed as to the outcome following caucus as displayed in Figures 7-2 and 7-3

Figure 7-1 Frequency by percentage of Caucus in violent and non violent cases

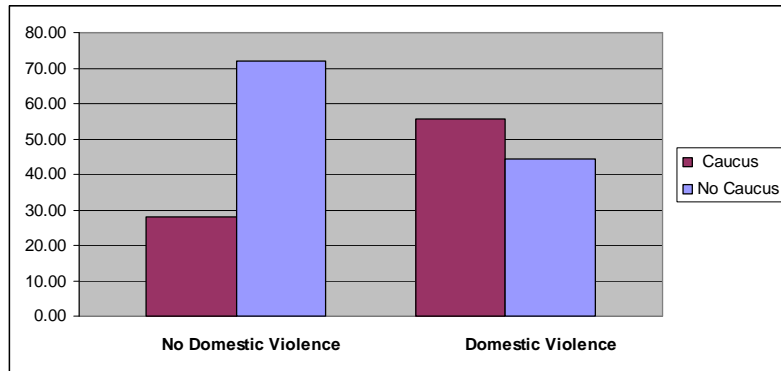


Figure 7-2 Outcome by number of cases involving domestic violence re use of caucus

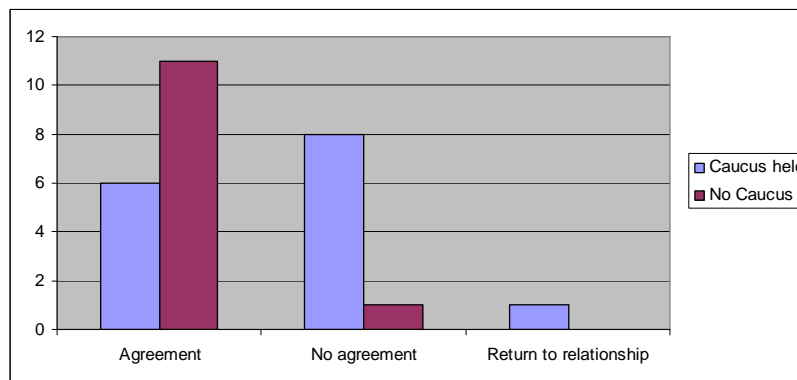
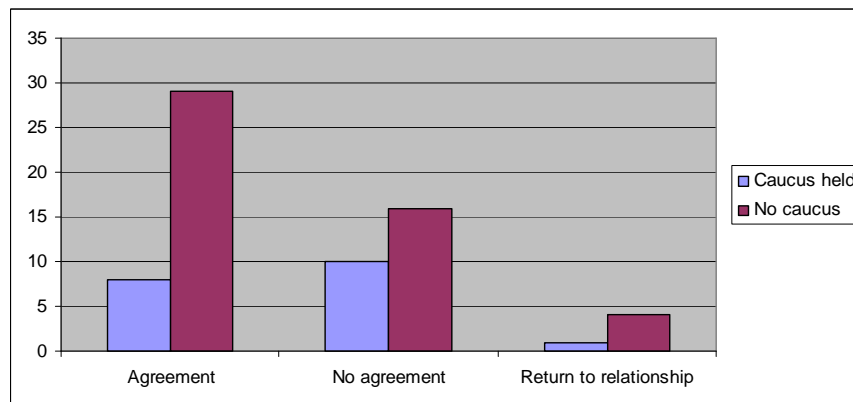


Figure 7-3 Outcome by number of cases not involving domestic violence re use of caucus



The use of caucus in cases where domestic violence occurred is more prevalent than in those without violence, regardless of whether the case ends in agreement or not.

### **Agreements**

The agreements reached by clients were examined in order to assess if there were any marked differences or similarities between cases involving domestic violence and those where there had been no incidence of domestic violence. Specifically the agreements made by clients were looked at in relation to what decisions were made about the family home, maintenance payments, and parenting arrangements.

### **Agreements about the Family Home.**

Table 3-1 shows the breakdown of those cases that reached agreement where there was a family home. There were 17 such cases where violence had been involved which reached agreement and 30 where there had not been violence.

Table 3-1 Agreements re family home

	<b>retained by male</b>	<b>retained by female</b>	<b>transferred to, bought out by, male</b>	<b>transferred to, bought out by, female</b>	<b>sold</b>	<b>other</b>	<b>Total</b>
<b>No Domestic Violence</b>	1	3	3	15	7	1	30
<b>Domestic Violence</b>	0	1	3	6	6	1	17

Table 3-2 Analysis of Agreements re family home by gender of violent party

	<b>retained by male</b>	<b>retained by female</b>	<b>transferred to, bought out by, male</b>	<b>transferred to, bought out by, female</b>	<b>sold</b>	<b>other</b>	<b>Total</b>
<b>Male violent</b>	0	1	3	2	3	0	9
<b>Female violent</b>	0	0	0	3	2	0	5

The preferred option in the cases where violence was an issue was the transfer of the home into the name of, or buying out by, one of the parties. This was followed by the sale of the family home.

In the six cases where the person who was violent in the relationship had the family home transferred into his / her name this was done by a buyout. In all these cases the victim of the violence received at least 50% of the value of the home and other assets.

### **Agreement about Parenting Arrangements**

When the parenting arrangements made in the cases being examined were looked at, it was evident that in the vast majority a shared parenting arrangement was put in place. This involves regular overnight stays and visitation of the children to the parent with whom they are not primarily resident. Figures 8-1 and 8-2 display the difference in arrangements between those cases involving violence and those where there was no violence.

Figure 8-1: Parenting arrangements where there had not been violence

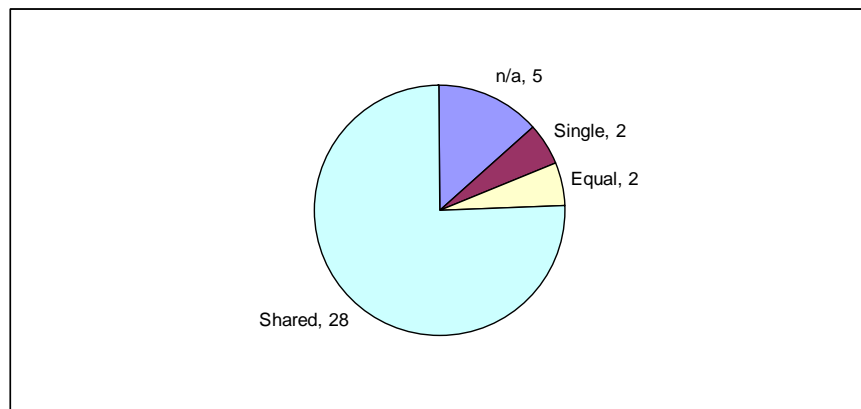
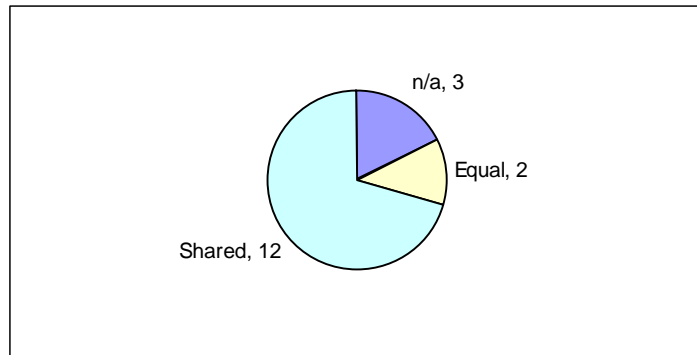


Figure 8-2: Parenting arrangements where there had been violence



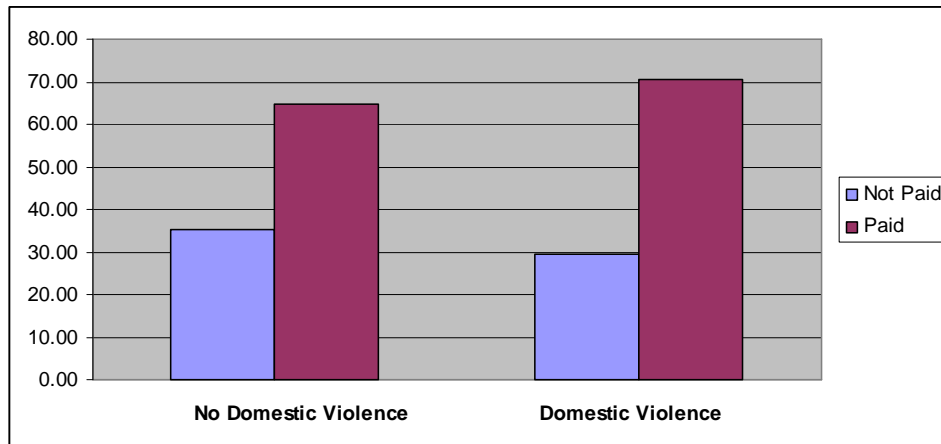
In all twelve cases of shared parenting, where there had been violence, the mother was the primary carer of the children and they were mainly resident with her. This was true for five cases where the mother had been the violent partner in the relationship and two where the violence had been mutual. In one case where the father had been the violent partner was there equal parenting arrangements with the children staying roughly the same amount of time with each parent. This was true also of one case where the violence had been mutual.

In eight of the cases parenting arrangements were not applicable as the couple had no children or their children were no longer dependent. In just two cases, where there was no violence and there were shared parenting arrangements, was the father the parent with whom the children had primary residence.

### **Agreements about Maintenance Arrangements.**

Figure 9-1 shows a comparison of cases where there had been violence with those where there was none in relation to the payment of maintenance. The comparison of the percentage of cases where maintenance was and was not paid by one partner to the other shows that maintenance was paid in proportionally more cases where there had been violence.

Figure 9-1 Percentage of cases where maintenance was paid.



A further examination shows that in all but two cases maintenance was paid by the male for the female partner and children or, as in the majority of cases, for the children only.

Table 4-1 Maintenance payments

	To Female only	To Male only	To Male & Children	To Female & Children	To Children only by Male	To Children only by Female	To Children by Both
<b>No violence</b>	1	0	0	4	19	0	0
<b>Male violent</b>	0	0	0	2	2	0	0
<b>Female violent</b>	0	0	0	2	2	0	1
<b>Mutual violence</b>	0	0	0	1	2	0	0

In one case where there had been violence by the female partner maintenance support for the children was paid by both. In the other cases where the female was the violent partner maintenance was paid to her or to her and the children.

## **Chapter Six**

### **Discussion of Findings**

Some thirty four of the one hundred and fourteen cases examined had experience of domestic violence as defined for the purpose of this research. While the sample is limited to cases from a one year time frame in a particular region this is a clear indicator that some couples who experience domestic violence do attend mediation with the Family Mediation Service.

#### **Choice of clients to use Mediation**

The figure of 30% of the couples who experienced violence cannot be generalised to the wider community as it refers specifically to these couples who were separating and who chose to attend mediation with the Family Mediation Service in this region. There are couples who having experienced domestic violence do not separate, or who when separating choose methods other than mediation to achieve their aims.

Whatever of the arguments, already outlined, for and against the use of mediation in cases where there has been domestic violence it is clear that some people who have experienced violence in their intimate relationship and who are ending that relationship do choose to attend mediation.

The choice of those who have suffered violence to make new arrangements through mediation needs to be respected, otherwise there is a very clear risk that these people could be further disempowered, (Milne, 2004), be regarded as infants (Thoennes et al, 1995), and be treated as being perpetual victims incapable of decision making.

The Family Mediation service stresses the voluntary nature of mediation; that clients decide for themselves whether or not to use mediation as a forum for working out agreements. Of those who attended the initial screening / introductory session 17% did not continue with mediation. This, at first reading, may seem a relatively high percentage but it is a pointer to the fact that clients are encouraged to make a decision in that first session about their use of mediation and to the fact that it is the policy of the Family Mediation service that they are allowed to do so without being pressurised into attending.

The fact that it is made very clear that mediation is a voluntary process, and that it is for the client to choose, clearly is of great importance to victims of domestic violence so that they are not placed in a situation where they can be intimidated into attending mediation and into making agreements that are against their best interests.

Figure 5.2 shows that of those who choose not to continue after the initial session there is a higher percentage among those cases where there has been violence in the relationship. This would seem to show that victims of domestic violence are encouraged, and are allowed, to make a choice about their attendance at mediation.

The importance of the voluntary nature of mediation is highlighted in most major works on mediation. (Moore, 1996) Another aspect of the voluntary nature concerns the means by which clients come to attend mediation. In this research the initiation of mediation was evenly divided between victims and perpetrators of domestic violence.

Often mediation has been initiated after consultation with other services or professional. Figure 3-1 shows that where there has been violence the majority of clients have been in contact with other services or professionals and have had some advice before contacting the Family Mediation Service.

However, the figures for the initiation of mediation need to be examined in more depth. Those who oppose mediation in cases where violence has occurred argue that it places the victim at a further disadvantage. (Maxwell, 1998) The figure of 50% of mediation cases where there had been violence being initiated by perpetrators of domestic violence might be seen to support this argument.

It is important to note that following initial contact with the Family Mediation Service the other party in the relationship has then to make contact separately to confirm that they are interested in attending an initial introductory meeting. If they choose to do so only then they are offered the opportunity to attend the initial meeting. Having been informed of the nature of mediation and having been screened for domestic abuse and violence at the initial meeting they then decide whether or not to use mediation. So, although the perpetrator of the violence may make the initial contact, at all stages the victim is given a clear choice to participate or not. This is reinforced when the person is seen privately by the mediator at the initial screening session.

The mediator also has an input into the decision to continue mediation or not. If the mediator thinks that it is unsafe for mediation to continue or if there is a question about the capacity of a person to engage in mediation, for whatever reason, the mediator has an obligation to terminate mediation in a manner that is safe for all concerned.

With these safeguards in place this research shows that some people who have suffered violence in their relationship choose mediation as their preferred method of working out details of their separation. The fact that victims of domestic violence choose to attend mediation places a responsibility on the Family Mediation Service to ensure, as far as is possible, their safety and that of its staff. In order to discharge this responsibility it is

necessary that mediators are aware when they are mediating in a case that involves violence.

### **Screening for Domestic Violence**

The use of screening to establish power imbalances due to domestic violence or abuse is recommended by almost all services dealing with victims of domestic abuse.

Its value is underlined by this present study where the violence in all 34 cases was revealed in the initial screening / interview with the clients. The type of screening used is also important and the use of individual sessions, as is the policy of the Family Mediation Service, seems to afford the best opportunity for a person to express their fears or needs in cases where violence has been an issue. Girdner (1990) states that an individual interview with the client is an effective method for screening. This is the current policy and practice of the Family Mediation Service,

The fact that in all the cases in this study where violence was involved it was revealed at the initial screening session would point to the fact that the Family Mediation Service facilitates the disclosure of domestic violence.

One of the methods employed in helping ascertain if there has been violence in a relationship is to check for the presence of court orders such as barring or safety and protection orders. Figure 3-2 shows that relatively few clients have any such orders from the courts. When this figure is linked to the numbers who have sought legal advice and who have been referred to mediation by a solicitor, Figure 3-1, it indicates a reluctance on the part of clients to obtain court orders.

This may seem to be a paradox given the success in recent times of different interest groups having successfully portrayed domestic violence as a criminal matter and the

success of having this view largely accepted by society, the media, and the legislature. Considering that these victims have sought advice and information from various sources and are in the process of ending their relationship the findings that few avail of court orders may be further evidence that those who have suffered violence are not totally powerless and do make decisions based on what they regard as being in their own best interests when they decide how to end their relationship.

There is an interesting anomaly in the referrals. Figure 3-4 shows that where the female has been the one to use violent behaviour that the majority of referrals come from counsellors.

Perhaps female domestic violence has not yet been successfully portrayed by the relevant interest groups as being a criminal legal issue in the same way as male domestic violence has, and that as a result it is still largely regarded as a relationship issue. This is useful information for the Mediation Service as it may have a bearing on how victims and perpetrators in such situations view themselves and approach mediation. It may also help inform mediators how they themselves might be influenced by society and be predisposed to view cases involving violence by the female partner.

In accepting couples who have experienced violence the Family Mediation Service undertakes to facilitate them work out their own separation agreement.

To evaluate whether or not the Family Mediation Service facilitates couples who have experienced violence to work out their own agreements some of the many variables that exist in all cases were looked at. Where it was seen that there were no apparent differences due to these variables a realistic comparison could then be made between cases with violent behaviour and those where there was no violence.

## **Appropriate Time for Mediation**

One such variable concerns the appropriate time for mediation to take place. The 'ripeness' of a case so that it may be amenable to mediation is the subject of its own research and debate.

In this current study the cases were examined from the point of view of whether or not the couples were living apart and if so for how long. There was great similarity between the two groups, those who experienced violence, Figure 4-1, and those who did not, Figure 4-2, in relation to the proportions living apart. This proportional similarity in relation to the length of time they had been apart before attending mediation also existed in the two groups, Figure 4-3 and Figure 4-4.

This allows the assumption that whether or not a couple were living apart, or the length of time they were apart, should not affect the comparisons between those who experienced violence and those who did not.

## **Gender**

Within the group which had experienced violence there are some differences. The first most noticeable one, and one which generates a lot of discussion and controversy, concerns who is responsible for the violent behaviour.

The findings in this research, Figure 1-2, show that the responsibility for violent behaviour is divided among the parties. Because of the contentious nature of the debate around gender symmetry and domestic violence it is important again to emphasise that these findings are limited to this particular research group and cannot be extrapolated into society in general.

The finding in this research that in 42% of the cases examined the violent behaviour was attributable to the male partner, in 29% to the female partner and in the remaining 29% was mutually attributable raises the question of the nature and dynamic of such violence. Is the motive of a male being violent towards a female partner the same as a female being violent to her male partner? The cases where there was mutual violence raises the question of the dynamic that is at work in these cases as opposed to the other two scenarios.

There are many theories put forward about the nature and dynamic of domestic violence. Brewster (2002) suggests they fall into three broad categories, psychological, sociological and feminist and makes the point that no one theory gives an adequate explanation for domestic violence.

The issue of exercising control and power over a partner has gained widespread acceptance as being a primary factor in most male domestic violence against females. Some, however, would contend that it can also result from a feeling of powerlessness in maintaining or controlling the relationship as they would wish. (Rodney, 2001) An inability to be truly intimate in a relationship is also thought to be a factor in some cases.

The theory is hypothesised that female to male violence operates from a different perspective and that it is often the result of self defence and as a result the men in question do not experience control. (Buckley et al, 2006:4)

Others would contest this view and a survey carried out with forty men who were victims of domestic violence 'found that the effects on them are broadly similar to the effects on women.' Amen (2003:8)

Female perpetrated violence on male partners is understood by others to be the result of frustration at lack of communication and engagement in their relationship. This view too has been criticised as merely excusing violent behaviour by females.

Where violence is truly mutual and not a case of genuine self defence there seems to be an altogether different dynamic at work. One possibility is a lack of any negotiating skills at resolving ongoing leading to frustration and inappropriate expressions of anger.

As there may be different dynamics at work depending on the gender of the person responsible for the violent behaviour there may well be implications for the process of mediation that mediators should be aware of.

### **Length of Mediation**

The research shows that the number of sessions required to reach a conclusion in mediation varies depending on who was responsible for the violent behaviour. This is true regardless of whether the conclusion is an agreement or the decision that agreement cannot be achieved.

Figure 6-2 and 6-3 would point to the fact that there is a different dynamic at work in the different types of cases based on the gender of the perpetrator and where the violent behaviour was mutual.

That mediators in the Family Mediation service allowed cases continue over a relatively long number of sessions when there is a possibility for agreement is a strong indicator that they do facilitate clients come to agreement. A criticism of many of the court related mediation programmes, especially in the U.S.A. is that time limits are imposed on their work.

## **Use of Caucus**

Another area that was examined was the mediators' use of caucus in the chosen cases. Figure 7-1 shows that mediators were more likely to use individual caucus sessions when they were aware that violence was an issue in the clients' relationship. It is a pointer to mediators being aware of the necessity to take adequate care to provide for the safety of the clients and their willingness to avail them every opportunity to reach their own agreement in mediation.

## **Agreements**

Comparisons were made to see if there were any major differences in the agreement outcomes of cases where there had been violence and where there had not been violence.

Along with comparing the cases with no violence to those where there was violent behaviour interesting trends and patterns were observed when the cases with violence were compared to each other depending on who the violence is attributable to.

## **Agreements re Family Home**

At first appearance the figures in Table 3 could give the impression that female abusers are favoured, in that the family home was bought out by or transferred into her name in 3 cases and sold in another 2 of these cases.

In 3 cases where the male had been violent the family home was bought out by or transferred into his name but in 2 it was bought out by or transferred into the female's name, and the family home was sold in another 3 cases.

However these cases need to be further examined to determine if there are patterns that would indicate that victims of violence were not being treated fairly in their agreements. If there were any such indications they would raise serious questions about the fairness of the process for them and would call into question the ability of the Family Mediation Service to broker fair agreements for those who have experienced domestic violence.

In the instances where the family home is bought out by or transferred into the female's name this seems to be in keeping with the majority of cases where there is no domestic violence involved. Usually it had to do with the fact that the female was more often than not the primary carer of the children of the relationship. This was the circumstance in these three cases where the female partner had been violent in this study.

The three cases where the male had been violent and the family home was bought out by or transferred in to his name could seem to indicate a bias towards the male who was violent but as already outlined in each of these cases it was bought out with at least 50% of the equity going to the female partner.

In the cases involving violence there is a higher incidence of the family home being sold than in the cases where there was no experience of violence. Perhaps the desire of both parties to move away from a home where there are less than pleasant memories could be a feature in their decision to sell.

From a victim's point of view it might also seem to be safer to move to a new home over which they would feel the perpetrator of the violence would not think they had any claim of ownership or territorial rights.

Where control was the issue involved in the violence the victim might feel safer in a place where they had not been subject to controlling behaviours in the past and could feel freer to make a new beginning.

The arrangements made by couples concerning the parenting of children also seem to have been a factor in deciding the outcome of the family home.

### **Agreements re Parenting**

Parenting agreements where there has been domestic violence are a contentious issue. Some people opposed to the use of mediation feel they can be used by a violent partner to gain access to their ex partner.

Others feel that sometimes children may be at risk as studies have indicated that children might be more at risk where there has been domestic violence. Ooms (2001; 244) refers to studies that indicate that 'there is growing awareness of the co-occurrence of domestic violence and child maltreatment'.

The majority of cases showed a preference for a system of shared parenting with one parent being the primary carer with whom the children stayed most of the time. In these instances the other parent had very regular time with the children including regular overnight stays.

In all but 2 of the entire cases involving dependent children the mother was the primary carer. In a small number of cases arrangements were made so that there was no, or very little, contact between the parents themselves, with children being picked up by grandparents or other family members. This may point to an awareness on the part of victims and of mediators of the danger that can exist for victims of violence post separation.

While there were notes in some cases of mediators having enquired about the risk to children there were insufficient records to be able to have a definitive view of how frequently the issue was addressed.

In a small number of agreements it was stated that the overnight stays by children were to take place in a grandparent's home or the home of another relative. In one case Social Services and the Gardai had been involved by the parents prior to their coming to mediation.

### **Agreements re Maintenance**

Another indicator of whether agreements made between partners where violence has occurred are fair is the pattern of maintenance payments that are agreed. In this research these were compared with the maintenance arrangements of the couples where there had not been violence. The percentage of cases where maintenance was paid was proportionally higher in cases where there had been violence than where there had not been violence. Figure 9-1.

In the majority of cases where there had been no violence maintenance was paid for the children only by the male. Where the male had been violent maintenance was paid to the children and the female in 2 cases and in another 2 cases to the children alone. While the numbers involved are too small to draw definitive conclusions there is certainly no indication that female victims of domestic violence are treated any less favourably than those who have not suffered violence.

Where the violence was mutual or carried out by the female maintenance was again paid to the female and to the children. This reflects the fact that the female was the primary carer for the children.

Overall, in considering the agreements reached there is no indication from the perspective of maintenance, parenting or decision about the family home that those who experienced violence in their relationship had significantly different outcomes in their agreements from those couples where there had not been violence in their relationship.

One area where there was a noticeable difference was between the outcomes for those who had experienced violence and were still living together and those who were no longer living together. Figure 4-5 and 4-6

Where the couple lived together and there had been violence the majority reached agreement in contrast to the couples living apart where there had not been violence. In five cases where the couple were still living together the male had been violent, in four the female had been violent and one case involved mutual violence.

It could be hypothesised that because the couples still shared the same accommodation that there was more urgency and focus about their negotiations in contrast to couples where they already had separate living arrangements. Alternatively it could be argued that because of their living arrangements that clients felt under duress to make agreements.

The indicators used to evaluate the other cases remain the same with these in that outcomes with regard to family home, maintenance and parenting are remarkably similar to all the other cases where violence was not an issue. In one case where the male had been violent it was agreed during mediation that he would live elsewhere. It would appear that despite the higher rate of agreement that there is no evidence that these agreements were made under duress or that that they contained anything to indicate unfairness in the process.

## **Chapter 7**

### **Conclusions**

This research set out to ascertain whether or not the Family Mediation Service of Ireland facilitated those who had experienced domestic violence in their relationship to negotiate their own agreement when separating.

The study chose a sample of all cases over a one year timescale from one office of the Family Mediation Service and examined these by comparing the outcomes of the cases involving domestic violence with those where there was no violence in relation to the outcomes.

All stages of the mediation process were included in the study through the examination of the case files and mediators' notes.

The first conclusion of the research was that some couples who experienced violence in their relationships do attend mediation when ending their relationships.

They made up a large enough proportion of the total number of clients for it to be stated that the issue of domestic violence is one the Family Mediation Service needs to be aware of, to regard very seriously, and make special provision for.

The evidence showed that where violence occurred it could be carried out by either or both of the partners in the relationship, even if not in the same proportions between the genders.

The fact that domestic violence can be carried out by either partner or by both has implications for the Family Mediation Service.

It means, firstly, that there cannot be a presumption based on gender by the Family Mediation Service about which partner is responsible for violent behaviour. This reinforces the need for an effective screening process where mediators are open to all possibilities and afford victims and perpetrators of domestic violence every opportunity to make the fact of violence known.

Mediators need to be aware of the possibility of domestic violence in every case they deal with in order to provide the best possible level of safety for their clients, other staff of the Family Mediation service, and themselves.

This awareness is also necessary if clients are to be given the opportunity to negotiate an agreement free from intimidation or duress. It can be concluded from this present research that screening was an effective method in helping discover the existence of domestic violence and possible imbalance of power in a relationship.

To ensure that the Family Mediation Service does have an effective screening process the screening methods employed need to be reviewed periodically and there should be a dialogue with other mediation services in other locations with a view to keeping pace with what is accepted as best practice in this area.

The research showed that the female partner in the relationship was the one more likely to initiate mediation, regardless of whether she was violent in the relationship or the victim of violence.

The majority of referrals come from solicitors in instances where there has been violence in the relationship with the interesting anomaly with referrals from counsellors, already referred to, in the case where the female has been the violent partner.

There were apparent differences in the time taken to reach decisions in the cases examined depending on the gender of the person using violence. A conclusion from this fact is that there are different factors and dynamics at work in these cases. There are obvious implications for the management of these cases. The Family Mediation Service does not explicitly set a limit on the number of sessions allowed for each case.

However there are limited resources and there may be implicit or unspoken limits within which some resolution of a case is expected. There is need for awareness that because of their nature some cases will take more time than others if the clients are to be afforded an opportunity to reach agreement.

In informing clients of an expected time frame of mediation the explanatory literature of the Family Mediation service and mediators will need to take into account the different types of cases they are dealing with. The use of an average number of sessions based on all cases should be avoided as it could lead to a sense of frustration if they feel that they are not achieving decisions within that timeframe.

The majority of the clients in this research attending the Family Mediation Service, regardless of having suffered violence or not, live apart from their partners and are less than six months living apart. A significant minority are still sharing the same accommodation.

Having compared the cases studied there would appear to be a great similarity in outcomes between those cases involving domestic violence and those not. Likewise when the contents of the agreements between the two groups were compared there was no evidence that victims of violence fared any better or worse than people who had not experienced domestic violence in their relationship.

Having examined a sample of cases from one region covering a one year time frame it appears that the Family Mediation Service did facilitate those who have experienced violence in their relationship to negotiate their own agreement.

Furthermore it can be stated that the Family Mediation Service facilitated couples in whose relationship there was violence in other ways. The reaching of agreement at mediation is not the only favourable or useful outcome for a client.

For some couples a decision was made at some point that they could not negotiate an agreement and that other methods would have to be employed in order to come to an arrangement concerning their separation. For many this was a positive outcome in that it clarified what they needed to do.

In some cases having attended the initial meeting a decision was taken that mediation was not the preferred forum for them to negotiate a settlement. This in itself could be seen to be an empowering act, especially if one was unaccustomed to being encouraged and allowed to make decisions due to domestic violence.

From the comparisons in this study it can be concluded that the Family Mediation Service of Ireland does facilitate couples who have experienced domestic violence to negotiate their own agreements.

## References

- Amen (2003) *Domestic Violence Against Men and Children*. Navan: Amen
- Bradley, F., M. Smith, J. Long and T. O Dowd (2002) *Reported Frequency of Domestic Violence: Cross Sectional Survey of Women Attending General Practice*. [online] British Medical Journal, Vol. 324. Available from <http://bmj.bmjournals.com/cgi/content/full/324/7332/271> [Accessed 28 February 2006]
- Brewster, M.P., (2002). Domestic Violence Theories, Research and Practice Implications in A.R. Roberts (Ed.) *Handbook of Domestic Violence Intervention Strategies: Policies, Programs and Legal Remedies*. New York: Oxford University Press
- Buckley, H., S. Whelan and S. Holt (2006) *Listen to Me! Children's Experience of Domestic Violence*. Dublin: Children's Research Centre, Trinity College.
- Cronin, J., M. O Connor (1993) *The Identification and Treatment of Women Admitted to an Accident and Emergency Department as a Result of Assault by Spouses / Partners*. Dublin: Women's Aid and St. James Hospital.
- Family Mediation Service (1999) *Policy and Procedures when Issues of Domestic Abuse Present at Mediation*. Dublin: Family Mediation Service.
- Gewurz, I., (2001) '(Re)Designing Mediation to Address the Nuances of Power Imbalance'. *Conflict Resolution Quarterly* 19 (2): 135-162. Jossey-Bass Publishers

- Girdner, L. (1990) Mediation triage: Screening for Spouse Abuse in Divorce Mediation. *Mediation Quarterly*, 7(4) 365-376 Jossey-Bass Publishers
- Goundry, S. A., (1998) *Family Mediation in Canada: Implications for Women's Equality*. Ottawa: Research Directorate, Status of Women Canada
- Haynes, J.M., S. Charlesworth (1996) *The Fundamentals of Family Mediation*. Sydney: The Federation Press
- John, R. (2001) *Mediation and Domestic Violence: an Inquiry* [online] Available from [http://www.ontariomediation.ca/mediation\\_domestic\\_violence\\_an\\_enquiry.pdf](http://www.ontariomediation.ca/mediation_domestic_violence_an_enquiry.pdf)  
[Accessed 09 February 2006]
- Johnson, D. (1984) 'Planning Small Scale Research' in Bell, J., T. Bush and A. Fox et al *Conducting Small-scale investigations in educational Management*. London: Harper & Row
- Kelleher, P., M. O Connor (1995) *Making the Links: Towards an Integrated Strategy for the Elimination of Violence Against Women in Intimate Relationships with Men*. Dublin: Women's Aid.
- Kelly, J.B. (1996) 'A Decade of Divorce Mediation Research: Some Questions and Answers'. *Family and Conciliation Courts Review*, 34 (3): 373-385. Sage Publications Inc.
- Maxwell J. (1998) *Power inequality and dissociated coercion in the mediation of interpersonal and domestic disputes: recognition and response* [online], Available from [http://dept.kent.edu/cacm/pwr\\_ineq.htm](http://dept.kent.edu/cacm/pwr_ineq.htm) [Accessed 27 October 2005]

McKeown, K., P. Kidd, (2002), *Men and Domestic Violence: What Research Tells Us, Unpublished Report*. Dublin, Department of Health and Children.

McKeown, K., T. Haase, J. Pratschke, R. Rock, and P. Kidd, (2002), *Unhappy Marriages: Does Counselling Help?* Dublin: ACCORD.

McKeown, K. T. Haase, J. Pratschke, (2004) *Distressed Relationships: Does Counselling Help?* Dublin: MRCS.

Milne, A.L., (2004) 'Mediation and Domestic Abuse', pp. 304-355 in J. Folberg, A.L. Milne, and P. Salem (eds), *Divorce and Family Mediation: Models, Techniques, and Applications*. New York: The Guildford Press

Mirrlees-Black, C. (1999) *Domestic Violence: Findings from a New British Crime Survey Self-Completion Questionnaire*. London: Home Office.

Moore, C. (1996) *The Mediation Process: Practical Strategies for Resolving Conflict*. San Francisco: Jossey-Bass

Ooms, T. (2001) 'Policy Responses to Couple Conflict and Domestic Violence: A Framework for Discussion' in Booth, A., A. Crouter, and M. Clemens (eds.) *Couples in Conflict*. Lawrence Erlbaum Associates: New Jersey.

Pollet, S. (2005) 'Mediating Domestic Violence, A Potentially Dangerous Tool'. *New York State Bar Journal*. New York: New York State Bar Association

Ricci, I. (2004) 'Court-Based Mandatory Mediation: special Considerations', pp. 397-419 in J. Folberg, A.L. Milne, and P. Salem (eds), *Divorce and Family Mediation: Models, Techniques, and Applications*. New York: The Guildford Press

Rimelspach, R. (2001) *Mediating Family Disputes in a World with Domestic Violence: How to Devise a Safe and Effective Court Connected Mediation Program*. [online] Ohio State Journal on Dispute Resolution 17 (1) 95-112. Available from <http://www.mediate.com/pfriendly.cfm?id=816> [Accessed 12 January 2006]

Saunders, D. (1998) [Online] *Child Custody and Visitation Decisions in Domestic Violence Cases: Legal Trends, Research Findings, and Recommendations*. Available from <http://domestic-violence.tripod.com/Child%20Custody/dvcustody.htm> [Accessed 03 November 2005]

Thoennes, N., P. Salem, J. Pearson (1995) 'Mediation and Domestic Violence: Current Policies and Practices'. *Family and Conciliation Courts Review*, 33 (1) 6-29, Sage Publications Inc.

Watson D., S. Parsons (2005) *Domestic Abuse of Women and Men in Ireland: Report on the National Study of Domestic Abuse*: Dublin: National Crime Council in association with ESRI.

**Appendix 1 Questions posed of case files**

Case No.

**Domestic Violence**      Yes                       No   
Perpetrator      Male                       Female                       Mutual

**Initiation of Mediation**      Victim                       Abuser   
Where not Mutual  
Victim Initiating      Male                       Female   
Abuser Initiating      Male                       Female

**Supports in Place**      Yes                       No                       Not Recorded   
If Yes: Legal Advice       Family Informed       Counselling   
Support Group       Friends   
Court Orders in place      Yes                       No   
Barring       Interim Barring       Protection                       Safety

**Living Apart**                      Yes                       No   
How long      u 6 months       6 months – 1year       1- 3 years       3years +

How long since last incident of d.v.  
u 6 months       6 months – 1year       1- 3 years       3years +

**Allegation of Children abused**      Yes                       No   
Record of question being asked re abuse of children      Yes                       No

**Outcome**  
DNC       Agreement       No Agreement                       Return to Marriage   
No. of Sessions      \_\_\_\_\_                      \_\_\_\_\_                      \_\_\_\_\_

**Caucus Used**      Yes                       No   
No. of Sessions      \_\_\_\_\_

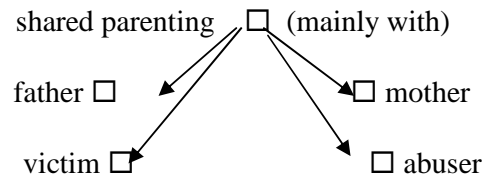
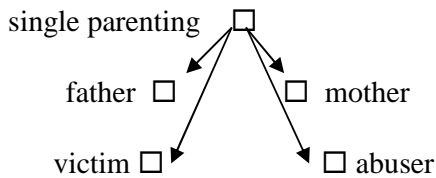
**Cases with domestic violence advised to attend mediation?** Yes  No   
 Referred by? Solicitor  court/judge  social worker  information centre   
 counsellor  other  \_\_\_\_\_

**Was the issue of domestic violence raised through the screening process?**  
 Yes  No

**Agreements**

What type of parenting plan was drawn up in relation to which parent children mainly stay with?

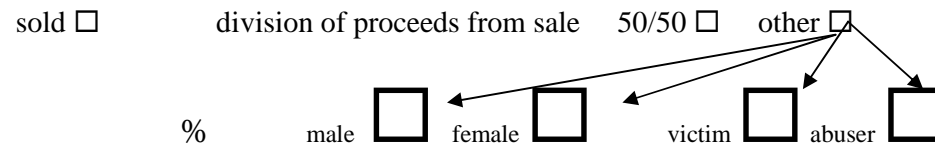
n/a  equal parenting



**What happens to the family home**

retained with male living in it  retained with female living in it

bought out or transferred to male  bought out or transferred to female



**Is maintenance to be paid** Yes  No

If yes, is it  
 paid to female only  paid to male only  paid to male and children   
 paid to female and children  paid for children only by female  paid for children only by male   
 paid for children by both parents

## Appendix 2

# FAMILY MEDIATION SERVICE

## POLICY AND PROCEDURES WHEN ISSUES OF DOMESTIC ABUSE

### PRESENT AT MEDIATION

#### **Mission Statement**

The Family Mediation Service recognises Mediation as a process that empowers couples to achieve a strengthened awareness of their own ability to make fair and lasting agreements. The mediator works with the good in each person.

Domestic Abuse creates serious power imbalances for couples, whereby one partner is in fear of his or her spouse and cannot make agreements standing in his or her own power.

The abuser is concerned with issues of power and control and is attempting to make his or her agreement from that place.

The Family Mediation Service aims to work to create safety for couples and their children.

When working with clients who have experienced domestic abuse, safety issues are pre-ordinate. The mediators' ethical commitment is that everyone should be safe from harm.

#### **Procedures for Best Practice**

- (1) The Mediator will meet with all clients separately at Intake Session to assess with each person their ability to mediate and to screen for Domestic Abuse.
- (2) In order to proceed with Mediation with a couple where domestic abuse is an issue, the domestic abuse has to be out on the table.

(3) Where this is not possible the Mediator must terminate safely.

(4) **Categories where Mediation May be Appropriate**

(a) Abuse is on the table, and both parties agree to safety procedures as requested by the mediator.

(b) The abused person has support structures in place.

(c) The victim has the ability to identify his/her own needs and not compromise them due to past control and abuse.

(d) The victim has no fear of retribution.

(e) Economic abuse is not present to undermine the ability to mediate and live separately.

(f) Ongoing assessment of appropriateness for mediation is checked.

(5) **Categories where Mediation is not Appropriate**

(a) Where there is ongoing violence or fear of violence abuse.

(b) Where the abused party concurs with the recommendation for no mediation.

(c) Where the abused party wants mediation but has no sense of his/her own entitlements and needs and no sense of fairness for him/herself.

(d) Where the abused person cannot concentrate sufficiently and make decisions because of the stress he/she is under.

(e) Where the abused person is in ongoing danger and has taken no safety procedure.

(f) Where the mediator assesses that the abusive person lacks the capacity to mediate:

is unable to accept responsibility for his/her own actions

is unable to mediate in good faith

is unable to accept that the other person has separate interests and rights

is unable to comply with agreements

has feelings of entitlement and ownership

(g) When the abuse cannot be "put on the table", because the abused person is not able or willing to allow it.

(6) **Checklist for Screening for Domestic Abuse during Mediation Sessions**

a. Obvious indicators are when the issue of a barring order or violence is raised at intake.

b. **Verbal Cues:**

(a) Does one client speak for the other?

(b) Does one client attempt to take charge of the mediation session?

(c) Does one client agree to unreasonable demands by the other?

(d) Are there permission words used?

c. **Non Verbal Cues:**

Personality types are not an indicator of abuse. Both abusers and victims can present in a vast range of ways from pathetic to self confident and charming, from reactive and aggressive to quiet and crying. However the following non-verbal cues may indicate abuse:

(a) Does the victim appear to be nervous, agitated, jigging, moving a lot, shaking?

(b) Does the abuser exhibit a tense control of himself/herself?

(c) Is there a way that signals are passed by the abuser to the victim, with their eyes or by other means?

(d) Does the abuser sit slightly behind victim?

d. **The Mediator's Gut Reaction:**

When the mediator pays attention to their own instinctive reactions to the male and female client this will help in making an assessment. How you feel about the abuser is probably how the victim feels about him/her e.g. sorry for abuser or scared of the abuser.

(a) Do you feel flattened to the wall by the abuser client?

(b) Do you pick up agitation in the victim?

e. **Attitudes and Behaviours where there is abuse in the relationship**

(a) If abuse is on the table does the abuser take responsibility -

how much responsibility does he/she take - at all, some, fully?

- (b) Does the victim take responsibility for the abuse?
- (c) Has the abuser had counselling, been in group dealing with abuse - shown that she/he has changed or is in the process of growth?
- (d) Has the victim had counselling, been in a group that allows him/her grow in his/her own authority and self esteem or is in the process of growth?
- (e) Does the abuser own weapons?

f. **General Attitudes**

- (a) At base does the abuser show narcissistic attitudes e.g.
  - (i) Not caring how much money the rest of the family have so long as his/her financial needs are met.
  - (ii) Putting his/her own needs above the childrens. ("They must do as I say no matter how they are feeling").
- (b) Does he/she at base show a hardness, coldness, in his/her attitude to his family?
- (c) Does he/she talk about the marriage in terms of traditional stereotypes indicating ownership and control patterns in the relationship?
- (d) Is there an obsessiveness in how the clients describe or show the attitude of the abuser to the victim e.g. "I adore him/her", follows him/her, watches him/her?
- (e) Is the projected image of the ideal husband and wife unrealistic?

The attitude may not mitigate against mediation whereas if the consequence is fear this will mitigate against mediation. It's not the behaviour but the consequence of behaviour that is important.

g. **Other Indicators**

- (a) Is the victim or family isolated?
- (b) Does the abuser have the complete charge of finances?
- (c) Do any of the children have problems without adequate explanations?

h. **Assessment**

***Control***

---

High                      Medium                      Low

***Abuse***

---

High                      Medium                      Low

***Violence***

---

High                      Medium                      Low

The attitude may not mitigate against mediation whereas if the consequence is fear this will mitigate against mediation. It's not the behaviour but the consequence of behaviour that is important.

(7) **How to Screen**

The following steps follow a procedure that can be varied depending on each situation, particularly in relation to handing responsibility to the abuser client:

**Confidentiality**

Confidentiality is offered at the end of each separate meeting. On occasion the mediator may need to discuss confidentiality earlier if there are concerns about one party being victimised.

**Question by Mediator**

Is there anything that you have said in this meeting that you would not want repeated in joint session?

If client says "yes", discuss with client the implications of this for proceeding with the Mediation process.

**Step 1** *In joint session say to couple*

I would now like to meet with you both separately. The purpose of meeting with each of you like this is to find out if mediation is a reasonable way for you both to sort out your issues'.

**Step 2** If you have concerns about abuse ask the person you think might be the abuser to meet you first otherwise just ask one person to leave the room.

**Step 3** Say to first client you interview:

- (a) 'As you know, mediation is about good decision making. I want to ask you about how decisions were made in your relationship'.
- (b) So, how do you and your partner make your decisions?
- (c) What happens when you don't agree?
- (d) Has there ever been violence between you?
- (e) If there is a barring order ask why was this taken and ask follow through questions.
- (f) If violence has been mentioned in joint session explore this.
- (g) Ask more specific questions about types of violence.

(8) **Suggested Questions for Screening for Domestic Abuse**

- (a) How were decisions made in your marriage? Give me an example.
- (b) How do you feel about that?
- (c) How did your partner feel about that?
- (d) Any other ways decisions were made?
- (e) What happened when you were unable to agree?
- (f) How were arguments handled?
- (g) Do you have any concerns about mediating in the same room together with your partner?
- (h) Are you fearful of your partner for any reason?
- (i) Has your partner ever threatened or hurt you in any way?
- (j) Has there been violence between you?

(k) Has he/she ever hit you or has any other type of physical force been used towards you?

If yes, what happened? - Ask for details.

(l) Does your partner control most of your daily activities?

(m) Do you control most aspects of your partner's life?

(n) Have you ever been violently or constantly jealous of the other?

(o) Have you ever called the police, requested a protection order or sought help for yourself as a result of abuse by your partner?

(p) Do you believe you will be able to communicate with your partner on an equal basis in mediation sessions?

(q) How would you like decisions to be made in mediation?

(r) What would the two of you need for that to happen?

(s) What is it that concerns you most about mediating with your partner?

(t) In mediation, each person needs to be able to accept that the other person might disagree with them. How do you think your partner would react if you disagreed with him/her about money or children or whatever else in mediation?

(u) What about anger? How do you handle anger? How do you and your partner act when angry?

(v) What types of things make your partner angry?

(w) How will I know that your partner is feeling angry in mediation?

(x) How will I know that you are feeling angry?

(y) What are you afraid your partner might do to undermine mediation?

(z) What might your partner think you would do to undermine mediation?

What could you do to assure him/her that this will not happen?

### **Termination**

If abuse is evident say to abuser client while in separate session, 'I have concerns about how mediation will work for you based on some things that you have said about how decisions were made'.

**Step 4** Ask to see the partner. Go through same questions and procedure. Check if they are in fear of their partner. Check if he/she was in fear in the past and how he/she has moved from that place if he/she no longer fears him/her. Ask about how she/he is controlled, abused and physically abused in detail.

Check that he/she has a safety plan and if not help her/him construct one

i.e. having the phone number and address of a refuge, that the children know how to telephone the guards and depending on the lethality of the situation if she/he needs to have a bag packed. Check if she/he knows how to get a barring order.

**Step 5** Ask the victim if he/she would like to leave at that stage and that you will talk with his/her partner. Ask if they are travelling in the same car and if so what this is like for him/her. Is there a risk to him/her if mediation is ended by the mediator? This will determine what you say to the abuser and whether she/he can leave first.

**Step 6** If victim leaves first, return to the abuser and tell him/her that in your opinion mediation will not work, reiterating the reasons you gave them in the first instance. Explain that there was no point in bringing the other party back and you asked them to leave.

**Step 7** Where the decision to terminate is made by the Mediator and/or victim and both parties return to mediation session together with mediator, the Mediator explains that their history of decision making is such that mediation would not be suitable. Be aware that confidentiality cannot be broken.

(9) **Safety Strategies if Decision is Made to Proceed with Mediation**

(a) **Establish ground rules**

- i. Be clear that violence is unacceptable.
- ii. Freedom from violence is non-negotiable. The victim should not make any concessions (to change his/her behaviour or bargain away property, money, or time with children) in exchange for not being battered.
- iii. Threats of, or behaviour indicating imminent bodily harm to the victim, the Mediator, or any other person, are exempt from confidentiality and will be reported.
- iv. Parties do not interrupt.

- v. No intimidating behaviour.
  - vi. Require parties to attend individual or group counselling for abuse prevention.
  - vii. Written ground rules acknowledged by signatures.
- (b) Address the need for Protection Order (especially if violence recurs).
  - (c) Facilitate having a support person or advocate in the waiting room or in the session.
  - (d) Stagger the arrival and departure times of the parties. Arrange for the abuser to arrive first and leave last.
  - (e) Provide adequate space, don't seat couple facing each other. Allow the victim the seat closest the door.
  - (f) Adopt the policy of not allowing the abuser prolong Mediation.
  - (g). Establish a signal which will indicate intimidation or the wish for caucus or the wish to end the session.
  - (h) Limit contact between parties.
  - (i) Question any agreements which allow frequent access of the abuser to the victim.
  - (j) Discourage joint custody if it allows for frequent contact between the parties and / or the batterer appears to use the children in an effort to control and / or manipulate the victim.
  - (k) Encourage no contact in the final agreement including during child pick-up and drop-off times.
  - (l) Emphasise the need for detailed structure rather than flexibility in the final agreement.
  - (m) Limit story telling during Mediation.
  - (n) Control information questions, protect
  - (o) Remind the couple that it is also acceptable to reach a partial agreement or no agreement at all.
  - (p) Primarily use caucusing and shuttle Mediation.
- (10) **Safety Procedures must be put in place in each office:**

- (a) Create waiting room facilities - a safe physical setting so that the abused person can leave safely.
- (b) Make available literature on referrals to agencies, with relevant phone numbers etc, there should be no delay in sourcing the information.
- (c) Panic buttons, security desk, and alerting other office personnel are all measures that may need to be considered.

**(11) Agency Management**

- (a) Staff support.
- (b) Regular supervision.
- (c) Process strategy development.
- (d) Assistance with personal responses.
- (e) Ongoing training for Mediators and clerical staff.
- (f) Dialogue should be continued with relevant agencies and services.
- (g) Refer staff to Family Mediation Service Safety Statement Section 11. B. "Security for FMS", specifically Nos. 6 and 7 which refer to dealing with aggressive clients.

**THE ROLE OF THE SUPPORT PERSON**

- a. to provide emotional support for the person requesting assistance
- b. to assist the person in their preparation for mediation (e.g. completing forms, reading documents, etc.);
- c. to remain silent during the mediation session;
- d. to refrain from answering for the client or making any decisions on their behalf
- e. to offer no legal advice;
- f. to arrange assistance from the Gardai and also from support groups if necessary.