



# **Family Mediation in Ireland**

**An Analysis of the  
Family Mediation Service (2003-2010)**

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# Executive Summary

This study analyses the short-term impacts of the Family Mediation Service. It does not attempt to evaluate the operational aspects of the FMS or its regulatory environment, nor can the study offer a statistical analysis of the role of family mediation within the wider context of marital and relationship breakdown. Nevertheless, the results are very interesting, shedding light on the characteristics and expectations of couples who enter mediation in an attempt to resolve their conflicts and documenting the achievements of the FMS over the past decade. The results of the analysis draw strength from the large number of observations in the dataset: 4,210 matched records containing information on participants at the beginning and at the end of the mediation process. The study situates these results in a wider context by reviewing the international literature on family mediation. This reveals the similarities and differences that exist between the work of the FMS and similar organisations in other countries and highlights areas where further research is required in order to obtain a better understanding of the strengths and limitations of family mediation. In this summary, we review the key findings of the study and provide recommendations regarding procedures for data collection in the future.

## **The Family Mediation Service has an established role in resolving family conflicts**

Family mediation has developed considerably over the past thirty years. Whilst it is clear that mediation is not a substitute for counselling, therapy, legal advice or access to litigation, it is now widely accepted as a viable form of dispute resolution with many beneficial effects. The Family Mediation Service in the Republic of Ireland is in line with international practices, methods and philosophies and the results that it has achieved over the past decade are similar to those reported for similar services in other countries.

## **One in eight separating or divorcing couples use the Family Mediation Service**

As in other jurisdictions, mediation is chosen by a minority of separating/divorcing couples each year in Ireland. Between 2003 and 2010, about 800 couples entered mediation each year, roughly 12 per cent of the total. Without additional data, it is not possible to say whether this share is likely to increase or decrease in the future or to determine the potential benefits of providing broader access.

## **Mediation provides an effective means by which to reach agreement**

The data collected by the FMS confirm that mediation can be very effective in helping parties to reach agreement and to develop a more co-operative approach to parenting. Just under half of separating/divorcing couples (47.5%) reach agreement by the end of mediation, with another 3.8 per cent returning to their marriage or relationship.

## **Mediation agreements are comprehensive and appear to clarify contested issues**

From its inception, the FMS has engaged in all-issues mediation. The resulting agreements are generally multi-faceted, involving children, the family home, financial matters, assets and liabilities, pensions and succession. In more than half of all cases (56.0%), mediation contributed significantly to clarifying the couple's issues, although this figure is based on mediators' assessments and may not necessarily coincide with the perceptions of clients.

## **The majority of mediation agreements are likely to be transformed into legally-binding documents**

Over three-quarters (77.1%) of participants who reach an agreement intend to use this as the basis for a legal separation or rule of court.

## **Lack of comprehensive outcome measures is a drawback**

The available data do not allow us to draw any broader conclusions regarding the effectiveness of the mediation process. Outcomes are measured solely in terms of agreement by the end of the mediation process and little information is available on the long-term durability of these agreements. Above all, the current system of data collection does not yield any information on the short-term or long-term impacts of mediation on the well-being of participants and their children.

## **Developing a new knowledge base**

It is evident that the FMS dataset has significant limitations and cannot provide answers to many fundamental questions regarding the role of mediation in family conflict resolution in Ireland. This is mainly because the available data have little to say about the sustainability of mediation outcomes, the long-term effects of mediation on participants' lives, the effect of separation and mediation on their children and, most importantly, the differences that exist between those who enter mediation, those who pursue an exclusively legal route, and those who separate or divorce without engaging in either of these processes.

We believe that the development of an improved knowledge base on family mediation can best be accomplished within the context of a "family research agenda" embracing three major axes: (i) improved outcome measures; (ii) collection of data on the nature of interventions and on the capacities of mediators; and (iii) the development of a comparable survey of couples who have chosen other paths to separation. For this reason, our recommendations focus primarily on the improvement of data collection methods to provide a superior knowledge base.

# 1 Introduction

The Family Mediation Service has been provided by the Family Support Agency since the mid-1980s and the number of couples using this service has grown continuously, particularly over the past decade. This study represents a first step towards an evaluation of the FMS by providing a detailed review of the international literature, a description of those who used the service between 2003 and 2010 and an analysis of outcomes. Specifically, the objectives of the research are:

- to study the process of family mediation in Ireland between 2003 and 2010
- to analyse the social, economic and relationship characteristics of couples whose relationship has broken down and who have entered family mediation
- to analyse the outcomes and effectiveness of the family mediation process
- to identify the key factors that contribute to mediation outcomes
- to compare findings with previous research at international level
- to make recommendations about how data collection may be improved in the future
- to optimise the role of data collection and analysis in the strategic development of the Family Mediation Service

In order to achieve these goals, this study undertakes four distinct tasks, the first of which involves a comprehensive literature review on family mediation, with particular emphasis on the conceptualisation of processes and outcomes, which was compiled by Professor Janet Walker. The literature review was based on an exhaustive literature search and personal contacts with leading scholars, researchers and practitioners<sup>1</sup>. Due to the large number of publications identified during this preliminary stage, only studies which were relevant to the assessment of the FMS were selected. The second task entails the analysis of the social, economic and relationship characteristics of couples who participated in family mediation during the period in question. The third task involves assessing the effectiveness of the family mediation process and exploring the perceptions of clients. The fourth task is to formulate recommendations for data collection in the future, with a view to facilitating more powerful analyses and achieving a more effective and precise evaluation of the service.

Family mediation services are provided by the FMS in 18 centres throughout Ireland (Phillimore 2011, p. 7)<sup>2</sup>. A total of 67 mediators are involved in providing services, centred on a nucleus of 24 key personnel who provide most of the mediation (84.4% of cases), ensuring a high level of experience and consistency in the service. The FMS provides services to about 800 couples per annum. Lunn *et al.* (2009) estimate that 5,531 women either separated, divorced or remarried each year between 2002 and 2006. During the same time period, an average of 670 FMS clients participated in mediation (i.e. took part in mediation sessions after an initial intake session). The FMS has thus provided mediation to about one in eight (12.1%) couples experiencing relationship breakdown.

From its inception, the Family Mediation Service has collected information from clients using two questionnaires, completed during the first and final meetings between mediators and clients. The resulting dataset contains 6,254 records and spans an eight-year period (2003-2010). The records are evenly distributed over these eight years of service provision, although the first and last years have

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<sup>1</sup> Experts in the field consulted during the review include Robert Emery and Joan Kelly in the USA, Bruce Smyth in Australia, Joe Hornick, Nick Bala and Brad McKenzie in Canada, Eberhard Carl in Germany and Jan Pryor and Paul von Dadelszen in New Zealand.

<sup>2</sup> Three centres (Ballymun, Letterkenny and Portlaoise) became functional from 2006 and another opened in Raheny during 2007. There are no data for Coolock from 2008.

fewer records due to the absence of matching cases. We have information on roughly 550-700 couples per year, with no underlying temporal trends, although the number of couples who completed questionnaires in 2005 is considerably lower than in other years.

The dataset contains 776 clients (12.4%) for whom no questionnaire was completed at the first meeting, and 1,268 (20.3%) clients for whom it was not possible to collect data at the final meeting. The latter group includes cases where clients did not proceed with mediation after the initial meeting or subsequently dropped out. The absence of follow-up data for clients who dropped out of mediation is a considerable drawback from the perspective of evaluation, as no information is available on the reasons for this decision. We will return to this issue later, discussing its influence on the results as well as highlighting the importance of follow-up data in future data collection strategies.

The analysis presented in this report is based on complete data relating to 4,210 clients (i.e. for whom we have data before and after mediation), as this enables us to explore the outcomes of mediation and to analyse clients' perceptions of this process. The large number of observations in the dataset, the availability of data collected directly from clients, the use of follow-up interviews, the availability of dyadic data (on both partners) and the ongoing nature of the data collection process make this a particularly interesting source of data on relationship breakdown, family processes and mediation services.

The Family Mediation Service has recently moved from the Family Support Agency to operate under the auspices of the Legal Aid Board. This transition offers a unique opportunity to assess the service, evaluate the data collected from clients and to examine the IT systems utilised to date. The final chapter provides detailed recommendation regarding data collection in the future, with a view to improving the monitoring and operational capabilities of the FMS and facilitating research on the effectiveness of family mediation.

This report is structured as follows: Chapter Two provides an overview of mediation, starting with its historical development and more recent trends in mediation practice. Chapter Three presents findings in relation to the mediation process, including take-up rates, client characteristics and the models and strategies adopted by mediators. Chapter Four discusses mediation outcomes and benefits, whilst Chapter Five deals with the findings of random control trials and longitudinal studies of mediation. Chapter Six provides an overview of research on specific issues, including the role of children, domestic violence and high-conflict cases in mediation. Chapter Seven discusses possible future trends and directions in family mediation, drawing some provisional conclusions regarding the services provided by the Family Mediation Service in Ireland. Empirical data based on the questionnaires administered by the FMS to its clients are presented wherever relevant, integrated within the discussion of the international literature. We hope that this will facilitate comparative analysis of the FMS and provide a richer context for understanding the strengths and weaknesses of mediation services in Ireland.

## 2 Family Mediation

Mediation has a long history in a variety of cultures and social contexts (Milne and Folberg, 1988). It was the principal means of dispute resolution in ancient China, for example, and it has been used over the last hundred years in Japan to assist individuals in resolving personal disputes (Schimazu, 1982). Mediation recognises and respects the right of each party to a dispute to fashion a mutually acceptable agreement in a consensual manner which meets their particular needs. Continuing conflict can be damaging to interpersonal relationships, so a process which focuses on co-operation and problem-solving is regarded as an important option.

It is hardly surprising, therefore, that as the incidence of divorce throughout the Western world rose during the latter half of the last century, mediation was increasingly used by couples whose relationship was breaking down, in order to help them to reach mutually-acceptable agreements about arrangements for children, the distribution of property and the allocation of finances after separation. Family mediation schemes blossomed in the public and the private sectors, and many of the early schemes – particularly in the USA – were linked to divorce courts. Court-related mediation services (referred to originally as conciliation services) were first established in California as long ago as 1939 and are now commonplace across the USA.

In the UK, the potential benefits of family mediation were first advocated in the mid-1970s and new services proliferated during the following two decades. Some of these were attached to the courts, whilst others were based in the community. The Family Mediation Service (FMS) in Ireland was modelled on early mediation (conciliation) services in Bristol (Corry, 2007). Established in 1986, the FMS began as a three-year pilot project and was the first publicly-funded family mediation service in Europe. By 1986, several other mediation schemes had been set up in England and Scotland, but the FMS is one of the pioneering services, setting the pattern for the future development of services across the four jurisdictions (Ireland, England and Wales, Scotland and Northern Ireland).

During the last 25 years, family mediation has become an integral feature of family justice systems in Europe, North and South America, Africa, Asia and Australasia. Unless mediation is mandatory – as it is in an increasing number of jurisdictions – it plays a relatively minor (albeit strategically important) role in the separation and divorce process, and a wide variety of practice models exist. As a consequence, the international literature does not refer to a uniform body of work, nor to a homogeneous service. Rather, ‘family mediation’ is a shorthand term for a varied and fragmented approach to dispute resolution which developed as an alternative to litigation through the courts and negotiation via partisan lawyers. As support for family mediation expanded, counsellors, therapists, mental health professionals, family lawyers and judges contributed to its development, and tensions emerged about whether mediation should be regarded as the preferred route in separation and divorce, whether it should be mandatory and the extent to which it should be integrated with family justice systems. These tensions have come to occupy a central role in several jurisdictions over the last decade, lending additional relevance to this study.

Although the social, economic and cultural contexts in which family mediation is practised have varied considerably, there are many common factors. This review of the evidence from other countries relating to family mediation will enable us to situate the contribution made by the FMS in Ireland within an international context, allowing comparisons to be made. It is important to note, however, that family mediation is a product of social change and is heavily influenced by societal values and the specific approaches to family breakdown that have been adopted in each country. The distinct cultural, religious and legal contexts operating in Ireland have helped to shape the service and should not be overlooked when making comparisons with mediation practices in other jurisdictions. Moreover, mediation is practised in a variety of forums by a range of professionals with varying



backgrounds and skills, who rely on different models and are driven by varying theoretical perspectives, which adds to the complexity of these comparisons.

## 2.1 The Changing Scope of Mediation Practice

As family mediation flourished during the 1980s and 1990s, the scope of mediators' work gradually shifted. The early programmes focused primarily on the resolution of disputes relating to arrangements for children – 'custody and access disputes', as they were termed. Gradually it became clear that it was virtually impossible for mediators to restrict negotiations to these topics if other issues, such as finances and property, were also in dispute. The parties found it confusing to be encouraged to be conciliatory when settling issues relating to children, only to be forced to use the courts to settle other matters (Walker *et al.*, 1994).

As a result, there was a significant but gradual shift in mediation practices during the 1990s to what was termed "all-issues mediation". Not all mediation services made this move, and the FMS in Ireland was somewhat unusual in having opted to mediate all issues from its inception. It had already adopted a comprehensive approach to mediation and was ahead of many similar programmes in the UK and the USA. This was due, at least in part, to the influence exerted by the mediation model advocated by John Haynes (1981) and the decision to take a comprehensive approach was reaffirmed by a national evaluation of mediation in England and Wales (Ogus *et al.*, 1989). The findings of a subsequent comparative study which examined the outcomes from child-focused and all-issues mediation programmes (Walker *et al.*, 1994). The latter study, which compared the experiences of 102 couples who mediated all issues with those of 298 couples who mediated only child-related issues, reports that just over half of those who attempted to resolve all the issues completed the mediation process, and that most were able to reach agreement on at least some of the issues. The study also found that, in comparison with couples in the child-focused mediation group, couples who mediated all of the issues in dispute were more likely to reach agreement in mediation and found mediation to be more helpful in (a) improving communication between the parties, (b) enabling them to negotiate with each other and (c) clarifying areas of disagreement.

The finding that all-issues mediation was more likely than child-focused mediation to achieve these broader outcomes was highly influential in extending the scope of mediation practice in the UK, and this trend was reinforced by the convergent results of studies conducted elsewhere (Kelly, 1990; Emery, 1994; Ellis, 1994). The FMS was well-placed, therefore, to make a positive impact in Ireland because it was able to embrace all-issues mediation from the very beginning. Unlike mediation services elsewhere, it did not have to cope with making substantive shifts in practice soon after it was established, and the determination of the founders to be ambitious meant that it was able to develop a distinctive model of practice in parallel with other ambitious mediation programmes in other jurisdictions.

## 2.2 Trends in International Research

Over the last thirty years, a plethora of studies of family mediation have been carried out, ranging from small local evaluations (Davis, 1981; Davis and Roberts, 1988; Walker *et al.*, 1990) to national research projects (Ogus *et al.*, 1989; Davis *et al.*, 2000). Most of the early studies were initiated in order to assess the often sweeping claims made by mediators about the benefits of this service and were designed to address questions such as:

- Is mediation less expensive than adversarial processes or litigation? Does it save money?

- Does mediation promote faster dispute resolution?
- How many consensual agreements are reached?
- Is there greater compliance with mediated agreements than with those imposed by courts?
- Is there less re-litigation as a result of mediation?
- To what extent does mediation restore harmony; enhance problem-solving skills; promote co-operative parenting; result in the better adjustment of the parties concerned; improve outcomes and reduce risks for children and empower participants?

Other research projects were designed to address specific concerns about mediation. Lawyers, in particular, have been sceptical about the claims made for family mediation and often viewed this as an attempt to divert clients away from the legal system, exposing vulnerable parties to processes which may not sufficiently protect their legal rights (Davis 1988a,b; Davis *et al.*, 1994). Women's advocates were also concerned about power imbalances in mediation and the ability of women – particularly those who have experienced domestic violence – to negotiate equitable arrangements (Hester *et al.*, 1997).

It is not surprising, therefore, that many of the early studies focused on client satisfaction, settlement rates and the extent to which mediation processes were beneficial to the parties involved (Pearson and Thoennes, 1989; Kelly, 1989, 1990; Walker *et al.*, 1994; Beck and Sales, 2000). This review includes references to some of the studies which have addressed concerns about power imbalances and client satisfaction because they provide important indicators for assessing outcomes. The evidence relating to costs, potential savings to the public purse and speed of settlement has largely been excluded, however, because cost savings no longer provide the main rationale for mediation practice and because the findings of published studies tend to be related to specific models and contexts.

The first wave of research conducted in the USA, Canada, Australia and the UK constitutes the main body of empirical mediation research, but as Kelly points out:

*Variations in research populations, methodologies, measures, and dispute settings have been the norm, making it problematic to generalise about family mediation or rely on a single study.* (Kelly, 2004, p. 3)

Much of the early research which attempted to examine the claims made for mediation did not distinguish between or make allowances for different approaches to mediation practice – such as single sessions, multiple sessions and co-mediation – or different settings – such as court-connected and community-based services. Nevertheless, as Kelly acknowledges:

*Despite those problems, convergence on many questions has emerged over two decades, indicating that some major findings regarding family mediation are robust and replicable across settings.* (ibid., p. 4)

It is important, therefore, to examine evidence from a broad range of studies, enabling key themes to emerge. Having selected a range of strong studies, we can be relatively confident that the research cited in this review is robust enough to provide comparative data against which the FMS can be assessed, particularly as the FMS's model of practice developed and evolved from approaches that were used in other community-based mediation services in the UK and elsewhere (Coogler, 1978; Haynes, 1981; Folberg and Milne, 1988).

Two features of mediation research should be borne in mind. Firstly, the most influential studies were undertaken in the 1980s and 1990s, with fewer evaluations being carried out in the last decade.

Secondly, the vast majority of studies were conducted in North America, primarily in the USA, although a respectable body of knowledge is available from UK studies.

We decided to include the first generation of family mediation research in this review, as its exclusion would have led us to ignore much of the available evidence, including critical insights into features of mediation practice. As we will see, early studies of family mediation remain highly relevant to the assessment of the Family Mediation Service in Ireland. Because the FMS is located within the community-based sector rather than being affiliated to the courts, it would have been possible to ignore studies which focus on court-related mediation. But these studies also provide useful insights into processes and outcomes, enabling us to consider the influence of mediation settings. Key studies of court-connected mediation have therefore been included, where the findings were deemed to be relevant to the objective of exploring the potential of family mediation in Ireland.

The reality, therefore, is that much of the literature reviewed here is somewhat dated. Interest in mediation research has waned over the last decade, not least because family mediation is now readily available and accepted as a viable alternative dispute resolution mechanism in most Western jurisdictions. Mediators no longer need to persuade policy-makers that it should be considered an alternative to litigation, and the need for mediation to ‘prove’ its worth through independent evaluations has diminished. Secondly, there has been a serious lack of research funding for new studies of family mediation. This is partly due to the fact that the kinds of studies needed – rigorous comparative studies which can capture impacts over a lengthy period – are very expensive and take a long time to complete. Third, family breakdown and family mediation are no longer the hot topics they were in the 1970s and 1980s because other social issues have come to dominate policy and research agendas. Discussions with leading family mediation researchers confirm that there is a paucity of new research and that building new knowledge about family mediation has not been a priority in recent years. For this reason, we have been careful to include, whenever possible, more recent research which meets scientific criteria and to identify studies which point to new directions in family mediation.

Since family mediation was spearheaded by American practitioners, it is not surprising to discover that many influential studies were conducted in the USA. It is disappointing, however, that randomised control trials (RCT) have been so limited, as have those which include long-term follow-up of mediation outcomes. One key study which respects these “gold standard” criteria will be considered in some depth, although it relates to a specific model of mediation used in the USA. Studies from non-US jurisdictions have been included wherever possible.

There are also other gaps in the literature, including a paucity of research on the relative benefits of different types of mediation (Kelly, 2004): problem-solving, transformative, therapeutic, facilitative, and evaluative. We know little about the efficacy of these processes and for whom they might be more beneficial. We also need to know more about the impact of co-mediation models and conjoint mediation on outcomes. Kelly (2004) notes the lack of research on mediator behaviour and interventions, participant characteristics and behaviours and the interactions and relationships that exist between these. It may therefore be some time before we have a clear view of “the interaction of emotions and personality attributes that individuals bring to the mediation setting” (Kelly, 2004, p. 31) and about the approaches which are most likely to result in positive outcomes.

### 3 Mediation Processes

One of the questions which has dominated research, at least in the UK, is the extent to which separating and divorcing couples use mediation services to settle their disputes. When family mediation was initially established, the numbers using it were fairly small. One of the guiding principles of mediation has been that it should be a voluntary process, freely accepted by both parties. Practitioners in most European jurisdictions consider mandatory mediation to be a contradiction in terms, although those in North America are much less opposed to this, particularly at the stage when disputes have reached the courts and litigation appears to be inevitable. The insistence that it is appropriate to undertake mediation only if each party is willing to freely engage in this process has reduced take-up, making this a matter of concern in the UK.

As jurisdictions in the USA moved towards a model of mandatory mediation, mediation clients increasingly reflected a wide range of socio-economic groups and ages. In jurisdictions in which mediation remains a voluntary option, it is not surprising that a comprehensive model attracts couples who have more assets to negotiate and are likely to have been married for longer.

In other countries, where couples have a greater choice of mediation providers, the take-up of services has been spread more evenly across different sectors. The shift to all-issues mediation provided the impetus for lawyers to become more involved in mediation practice, and in the UK, the USA and elsewhere, they have increasingly trained as mediators. Their approach has often been based on a partnership with social work and mental health professionals, enabling them to offer complementary skills and knowledge. As their competence has increased, lawyers have provided mediation alongside their legal practice, offering an alternative service in competition with family mediators who are working in the courts or in community-based services.

In this chapter, we will discuss the process of mediation, including the role of client characteristics, models of mediation, the styles and strategies adopted by mediators and the attitudes of service users. This will prepare the ground for Chapter Four, in which we explore the issue of mediation outcomes and discuss the different criteria that have been used to assess mediation services at international level. These two chapters are therefore of particular relevance to the assessment of the FMS, and we will draw extensively on the FMS dataset relating to the period 2003-2010. By comparing these data with the results of international studies, we will be well-placed to formulate accurate recommendations with regard to the further development of monitoring systems and data collection.

#### 3.1 Client Characteristics

Conneely's study of mediation clients in Ireland found that almost half of clients were between the ages of 36 and 45 (Conneely, 2002). This is consistent with findings for England and Wales (Walker *et al.*, 1994), which show that the average age for men is 38, and for women 36. Conneely reports that the age profile of those using mediation in Ireland increased during the 1990s, and couples were mediating the termination of marriages which had survived for 16 years or more. The age profile of FMS clients has not changed greatly since 2003. Clients who attended mediation services at the FMS between 2003 and 2010 are heavily concentrated in the 30 to 50 years age bracket: more than one third of male clients (34.9%) are aged 30-39 years and 39.4 per cent are aged between 40 and 49 (Table 3.1), women being slightly younger than men.

**Table 3.1: Age Group by Gender**

Age Group	Female (%)	Male (%)
Under 30 years	10.0	7.1
30 - 39 years	38.7	34.9
40 - 49 years	37.8	39.4
50 - 59 years	12.0	16.2
60+ years	1.5	2.4
Total	100.0	100.0

With regards to their nationality, 89.6 per cent of male clients and 89.4 per cent of female clients are Irish. By contrast, just 5.2 per cent of men and 4.9 per cent of women are British citizens, whilst 1.4 per cent of men and 2.1 per cent of women are from other European countries. The vast majority of couples attending mediation services at the FMS are married to each other (85.4%). Of these, 14.8 per cent have been married for less than 6 years, almost one-fifth (19.5%) for 6-10 years, one third (38.4%) for 11-20 years and 27.3 per cent for more than 20 years. Most couples (86.8%) were married in church, although 12.8 per cent were married in a registry office, and more than three quarters of those who were not married have lived together. Two fifths (40.2%) of couples attended marital counselling together, and less than one person in ten (8.7%) was previously married. By the time they sought mediation services, most couples had decided to separate (87.3% of men and 93.5% of women).

Concerns have been expressed over the past thirty years that mediation tends to attract couples in higher socio-economic groups and those who are more articulate. There is some evidence in early US studies to support this view (Pearson and Thoennes, 1989), and research in England and Wales (Walker *et al.*, 1994) indicates that the majority of couples opting for all-issues mediation are owner-occupiers of their marital home. A logical explanation for this derives from the fact that comprehensive mediation is centred on property and financial matters. Pearson and Thoennes (1989) found that mediation clients tended to be higher more highly on socio-economic indicators (for example, 72% of men and 55% of women had at least a college education, as against 58% of men and 48% of women in the non-mediation group). Men who mediated tended to be in higher-status occupations and generally had higher incomes than those who did not mediate. In addition, those opting for mediation reported better spousal communication patterns and had usually been encouraged to mediate by their respective lawyers. The authors conclude that as long as mediation is a voluntary option, it will be used primarily by couples in higher socio-economic groups who have managed to maintain some form of communication.

Studies of the FMS in Ireland conducted by Nic Giolla Phádraig (1992) and Conneely (2002) also suggest that mediation clients are more affluent than the general population of separating couples, more likely to be in employment and more likely to have high educational attainments. Table 3.2 below shows the employment status of FMS clients in the period between 2003 and 2010, including reference data for married persons aged 25-54 from the 2006 Census of Population. This table suggests that the situation of these two sub-populations is rather similar, as 66.7 per cent of female clients in mediation are employed or self-employed compared to 62.7 per cent for the Census reference group. A total of 82.5 per cent of male mediation clients are at work, compared to 90.4 per cent of the reference group. However, as Lunn *et al.* (2009) point out, there is a clear social gradient amongst those who separate or divorce, with those from lower socio-economic backgrounds being more likely to experience relationship breakdown. Taken together, this would indicate that the

couples who participate in the FMS are indeed in more favourable employment situations than separating couples in general.

**Table 3.2: Economic Status by Gender**

Economic Status	FMS 2003-2010		CSO 2011 Married, aged 25-54	
	Female (%)	Male (%)	Female (%)	Male (%)
Employee – full-time	30.5	60.0	62.7	90.4
Employee – part-time	29.1	4.6		
Self-employed – full-time	3.9	17.6		
Self-employed – part-time	3.2	3.0		
Unemployed – seeking work	4.0	8.2	3.6	4.8
Unemployed – due to disability	5.1	2.9	3.0	2.2
Home-maker	19.9	0.5	29.1	1.3
Retired	0.9	1.7	0.5	0.6
Other	3.4	1.5	1.2	0.7
Total	100.0	100.0	100.0	100.0

Another way of assessing the socio-economic profile of couples attending mediation at the FMS is to calculate their incomes. Nearly one third of male FMS clients (31.4%) earn between €30,000 and €49,999, whilst the modal category for women is under €15,000 (38.8%). Table 3.3 shows the incomes stated in the intake questionnaire (which are missing for roughly one tenth of clients), and the table also includes incomes for all clients following the substitution of missing values. Where clients refused to indicate their income, we used their employment situation and gender to assign the modal income category for women and men in full-time employment, part-time employment or not in employment. The adjusted income distributions for women and men are shown in columns three and four of Table 3.3 and highlight the dependent financial status of many women experiencing separation or divorce.

**Table 3.3 Approximate Gross Annual Individual Income by Gender**

Income	FMS 2003-2010		FMS 2003-2010 (adjusted)*	
	Female (%)	Male (%)	Female (%)	Male (%)
No individual income	9.2	1.8	9.3	1.8
Under €15,000	36.3	13.0	43.7	15.2
€15,000 - €29,999	25.1	23.5	28.2	24.8
€30,000 - €49,999	13.5	29.9	13.8	36.6
€50,000 - €74,999	3.8	14.5	3.9	14.8
€75,000 - €99,999	0.8	4.2	0.8	4.3
€100,000+	0.2	2.5	0.2	2.6
Refused to specify / missing	11.0	10.5	n/a	n/a
Total	100.0	100.0	100.0	100.0

\* following substitution of missing data

Unfortunately, it is not possible to make an exact comparison between the income figures shown in Table 3.3 and those for an equivalent subset of the Irish population. This is because data published by the Revenue Commissioners are based on tax units rather than individuals, and data for single males and females would not be representative of FMS clients, as they relate to people who are typically either younger or older and exclude those outside the tax net.

We must therefore make two further adjustments to the FMS income data before comparing them with the estimates provided by the Revenue Commissioners. Firstly, we combine individual incomes to derive an estimate of gross household income using the mid-points of the income ranges (column 1 of Table 3.4). Secondly, we restrict the analysis to households with two earners (column 2), as this sub-group (which encompasses the majority of FMS clients) is closest to the type of family included in the estimates published by the Revenue Commissioners (column 3).

**Table 3.4 Approximate Gross Annual Household Income**

Income	FMS 2003-2010		Revenue Commissioners 2006***
	Gross Household Income (%) *	Gross Household Income both earning (%) **	Married couples both earning (%)
No individual income	0.4	-	4.1
Under €15,000	3.6	0.6	
€15,000 - €29,999	36.2	26.6	10.2
€30,000 - €49,999	37.0	39.7	23.7
€50,000 - €74,999	17.0	25.1	29.7
€75,000 - €99,999	2.9	4.7	16.0
€100,000+	3.0	3.3	16.4
Total	100.0	100.0	100.0

\* Estimated Household Income, based on combined mid-points of income ranges

\*\* Estimated Household Income, based on combined mid-points of income ranges, two earners households only

\*\*\* Revenue Commissioners, Statistical Report 2008, Income Tax 2006 Table IDS1

Comparing columns two and three of Table 3.4, it is immediately apparent that dual-income couples attending the FMS have a significantly lower income than dual-income married couples more generally. Even if we bear in mind that low-income couples are more likely to experience separation or divorce (Lunn *et al.*, 2009) than married couples in general, the results do not suggest that the services provided by the FMS are disproportionately utilised by high-income couples.

This conclusion receives further support when we compare average gross household income for FMS clients with data from the *Survey of Income and Living Conditions* (EU-SILC) published by the CSO. Although the EU-SILC has been undertaken since 2003, a breakdown of average annual disposable income by household composition has only been published for the past three years, including estimates for families comprising “two adults with 1-3 children”. Average annual disposable household income for the latter group was €54,138 in 2009, €52,047 in 2010 and €51,448 in 2011. Although incomes prior to 2009 may have differed somewhat from this trend, these averages (for *disposable* income) are considerably higher than the average *gross* incomes of FMS clients during the period 2003-2010, which we estimate at €36,733.

Regarding their living situation, two thirds of FMS couples were not living together at the moment in which they entered mediation, compared to just 11.6 per cent who were living apart in the family home and 17.3 per cent who were living together (based on data provided by mediators). Of those living apart, one third (33.6%) had been living apart for less than 6 months, one quarter (25.5%) for 6-12 months and the remainder (40.9%) for more than a year. Most couples who were still living together had a joint mortgage (68.8%). Where clients were living apart, almost half (46.3%) of the women continued to live in a family home purchased with a joint mortgage (Table 3.5).

**Table 3.5: Accommodation of Couples Living Apart**

Accommodation Status	Female (%)	Male (%)
Owned outright	10.3	8.4
Mortgaged in joint names	46.3	25.8
Mortgaged in sole name (male)	2.2	6.4
Mortgaged in sole name (female)	5.1	0.9
Rented - privately	21.1	35.7
Rented – local authority	6.2	2.5
Parents/relatives/friends	7.5	17.5
Other	1.4	2.9
Total	100.0	100.0

\* n = 3255 male and 3258 female clients are living apart

Overall, 80.2 per cent of clients owned their family home, whilst just 4.8 per cent were renting from a local authority (1.8%) or privately (3.0%); the remainder (15.1%) did not have a family home. These figures may be compared with census data for the Irish population, which indicate that 77.2 per cent of Irish homes were owner-occupied in 2006, 7.5 per cent of families were living in local authority housing and 13.8 per cent were in private rented accommodation. The approximate value of the outstanding mortgage is shown in Table 3.6.

**Table 3.6: Approximate Outstanding Mortgage/Loan**

Approx. Outstanding Mortgage	%
Up to €25,000	10.1
€25,001 - €50,000	13.9
€51,000 - €100,000	21.2
€101,000 - €150,000	13.3
€151,000 - €200,000	10.9
Over €200,000	14.0
No mortgage/loan	16.5
Total	100.0

## 3.2 Take-up of Mediation Services

When family mediation was first established, there were optimistic expectations that the majority of separating couples could and would benefit from it. The reality, however, has been somewhat different. Family mediation has struggled to find an appropriate niche in the family law arena, being



regarded as somewhat marginal when compared with family lawyers (Walker and Hayes, 2006). Research in the UK indicates that mediation is still a little-used option (Davis *et al.*, 2000; Walker, 2001; Walker *et al.*, 2004), although service providers report an increase in take-up in recent years.

Robinson (2008) suggests that while there has been an increase over the last decade in the use of family mediation in England and Wales – rising from 10 to 15 per cent of those seeking a divorce – the volume of publicly-funded mediation has stagnated. He attributes this to the continuing challenges associated with incorporating alternative dispute resolution processes into a very long-standing adversarial family justice system, and to the slow pace of change in mediation practice itself. His view is that mediators have not developed their models of practice to meet the challenges of “ever more complex and entrenched child and financial litigation” (*ibid.*, p. 926). In the last few years, mediation has been somewhat overshadowed by new approaches proposed by family lawyers, including collaborative law and holistic legal practices.

In about two out of five cases (41.9%), both clients consulted a solicitor prior to mediation, while in about one third of cases (34.6%) neither had engaged with a solicitor. In 17.4 per cent of cases advice was only sought by the female partner and in 6.2 per cent only by the male partner. Thus, in total, 59.4 per cent of women and 47.9 per cent of men sought legal advice prior to engaging in mediation.

Most men who sought legal advice (85%) stated that they consulted a private solicitor, whilst 8.6 per cent went to a law centre. Amongst women, 73.5 per cent saw a private solicitor and 20.6 per cent attended a law centre.

**Table 3.7: Court Orders made before Commencement of Mediation**

	Number	(%) of total clients
Judicial Separation	41	1.0
Barring Order against male	100	2.4
Barring Order against female	8	0.2
Protection Order against male	101	2.4
Protection Order against female	13	0.3
Safety Order against male	65	1.5
Safety Order against female	11	0.3
Custody of Children to mother	26	0.6
Custody of Children to father	14	0.3
Joint custody	55	1.3
Access of mother to children	18	0.4
Access of father to children	223	5.3
Guardianship of children to unmarried father to children	82	1.9
Maintenance Order	253	6.0

About one in eight clients (10.9% of women and 4.4% of men and 4.8% of both clients) had initiated family law court proceedings prior to mediation, the vast majority of which resulted in either a court order being made or pending. The most frequent types of court orders involve maintenance, paternal access to children, and protection or barring orders. Protection, barring or safety orders were eight times more likely to be directed against the male partner. Custody orders were predominantly in favour of joint custody. Where custody orders were made to one parent only, it was twice as likely to be made in favour of the mother.

### 3.3 Choosing Mediation

Research indicates that couples facing separation and divorce are generally looking for someone to help them to “sort out the mess” and to restore some kind of order (Davis, 1988a; Walker *et al.*, 1994, 2004). Separating couples value legal advice – the province of lawyers – in addition to the kind of legal information which is customarily provided by mediators. Mediation clients, it seems, rarely understand the distinction between legal *advice* and legal *information* and express disappointment at the absence of guidance concerning legal norms during the mediation process (Walker *et al.*, 2004). Having lawyers as mediators has enabled clients to feel more confident that their legal rights will be safeguarded when pursuing consensual settlements.

Nevertheless, it has become clear in the UK that parties tend to appoint legal advisers irrespective of whether they decide to mediate, and this has been overtly encouraged by family mediators. Whether legal advisers have, in turn, encouraged their clients to attempt mediation is less clear, and the take-up of mediation has undoubtedly been influenced by lawyers’ attitudes. As we noted above, while lawyers have generally been sympathetic to the use of mediation to settle disputes about children, they have tend to be more sceptical about the role of non-legally-trained mediators in mediating about money and property (Walker *et al.*, 1994, Walker, 2001a). Perhaps not surprisingly, therefore, the uptake of mediation in community-based services in the UK has remained lower than advocates initially anticipated.

Couples are often encouraged to consider mediation before they resort to litigation. A former Lord Chancellor of England and Wales – Lord Irvine of Lairg – had hoped that 40 per cent of couples would opt to go to mediation if they were given sufficient information and encouragement early in the divorce process. Research indicates that such aspirations are unrealistic unless mediation becomes mandatory. Research undertaken to test the implementation of mandatory information meetings under the Family Law Act (England and Wales) 1996 found that of the 1,838 people who had received information about mediation, just 7 per cent had used a mediation service in the following months, and some of these dropped out of the process or found that mediation did not work for them (Stark and Birmingham, 2001).

When the respondents were contacted two years later, it was found that just 10 per cent of the 1,491 who had responded at the follow-up stage had participated in mediation. A further 2 per cent had attended a preliminary meeting with a mediator but had not entered the mediation process (Walker *et al.*, 2004). Of the 152 mediation clients in the study, 38 per cent had attended mediation to resolve all issues, 28 per cent had attended mediation to resolve financial issues only and 20 per cent to resolve child-related matters. A further 14 per cent of clients were unclear about why they had attended. Most had also consulted a lawyer, and 38 per cent had gone to mediation because their lawyer suggested it.

In Davis’ study of publicly-funded mediation in England and Wales (Davis *et al.*, 2000), 70 per cent of cases handled by mediation providers had been referred by lawyers, and in a more recent study (Hayes, 2002a) nearly two thirds of family mediators surveyed in England and Wales identified family lawyers as their main source of referrals. Davis *et al.* (2000) were commissioned to determine the relative costs and benefits of contracting for the provision of publicly-funded family mediation through different supplier arrangements. They found that the advent of public funding for mediation did not have an immediate impact on the volume of mediation activity. Moreover, at the beginning of the study in 1997, community-based services were undertaking the bulk of the work. By 1999, the balance had shifted to the extent that the community sector was now outnumbered by lawyers in private practice providing publicly-funded mediation.

Davis and his colleagues conclude that the provision of public funding for mediation generated an expectation that people would follow the prevailing professional enthusiasm which associated mediation with reasonableness and compromise. When people were required to attend a meeting with a mediator, however, the latter was often faced with an unwilling or confused clientele which did not have the capacity or desire to make an informed choice about whether mediation would be a suitable option. The evidence was clear: telling people about the benefits of mediation and encouraging them to use it does not automatically result in them taking up the offer.

The national evaluation of information meetings in England and Wales, which collected extensive data on almost 10,000 people in the process of separation or divorce (Walker, 2001) found that many factors must be in place in order for a couple to be able to mediate their differences, including being ready to negotiate an agreement. The determinants of mediation include the personal characteristics, beliefs and attitudes of each party, the characteristics of the dispute(s), the parties' understanding of the process, their desired outcomes and perceptions of fairness. Both parties have to be willing to mediate, so if there is a serious lack of trust or if one of the parties fears that mediation will jeopardise their interests, this is unlikely to be the chosen option (Stark, 2001).

Low levels of take-up of mediation, however, do not imply that couples want to (or will) litigate. The two-year follow-up study of information recipients referred to earlier (Walker *et al.*, 2004) found that 40 per cent of the 1,491 research respondents had given mediation some consideration but that 56 per cent had rejected this idea because their partner was unwilling to attend. Nevertheless, the majority of those who did not use mediation had either reached their own agreements or had negotiated settlements through their lawyers. Most had not resorted to the courts to seek resolution of disputes.

Reflecting on a decade of mediation research, Pearson and Thoennes (1989) examined the evidence from three early mediation projects in the USA: the Denver Custody Mediation Project (CMP), which involved 160 couples who undertook child-focused mediation during 1979–81; the Divorce Mediation Research Project (DMRP), which involved 450 mediation clients using court-connected mediation in three localities (Los Angeles, Connecticut and Minneapolis); and a study of the mandatory mediation of child support issues in 320 cases in Delaware.

In the CMP study, approximately one third of individuals who were offered free mediation refused it. An early study of a local mediation service in Bromley, England (Davis and Roberts, 1988) calculated that one or other party failed to turn up for a mediation appointment in 33 per cent of cases. Pearson and Thoennes (1989) found that one party was often willing to try mediation but the other was not. Women mostly cited mistrust of their partner or a desire to avoid contact as the main reasons for refusing mediation. Men typically explained that they expected to 'win' in the legal process or were sceptical about whether mediation would work.

Concerns about low take-up of mediation services are, of course, not prevalent in jurisdictions which have mandatory mediation programmes. California was one of the first states to conclude that the best way to prevent one partner from forcing divorce settlements into litigation by refusing to use mediation was to mandate mediation prior to any court hearing. A survey conducted in 2000 (Tondo *et al.*, 2001) found that although mediation practice varied widely in the USA, 38 states had legislation regulating this. In states with mediation statutes, this service is used at the courts' discretion, and in many jurisdictions the parties pay a fee, often on a sliding scale. In systems where mediation is mandatory, take-up is relatively high and the results tend to be positive when compared with outcomes from litigation (Ricci *et al.*, 1992; Rosenberg, 1992, Depner *et al.*, 1994). Rosenberg argues:

*In addition [to the positive outcomes achieved], requiring parents to mediate prior to allowing them to invoke the power of the court is thought to be consistent with the societal view that, to the extent possible, parents, rather than the state, should make parenting decisions. (Rosenberg, 1992, p. 427)*

Rosenberg's arguments in favour of a mandatory process were influenced by studies which demonstrated a low rate of take-up of mediation and showed that people who choose mediation are often those who are willing to try something new, those with a college education and a relatively high income and status, indicating that socio-economic factors may be relevant in this context (Kressel and Pruitt, 1989).

### **3.4 Attitudes Towards Mediation**

Mediation users in Northern California (Kelly and Gigy, 1989) provided a range of reasons for choosing to mediate, including:

- to reach agreements satisfactory to both parties (91%)
- to reduce or avoid hostility (83%)
- to reduce the cost of obtaining a divorce (82%)
- to reduce contact with lawyers and courts (81%)
- to seek a fair property division (70%)
- to maintain a friendly relationship with the other party (65%)

The researchers conducted a principal components factor analysis and distinguished two groups of mediation clients. The first group consists of those who seek a divorce process that is cost-efficient, amenable to more personal input and control, avoids lawyers and legal procedures and is advantageous in terms of support and property agreements. The second consists of those who are primarily motivated to end the relationship with minimum hostility, to obtain mutually satisfactory agreements, improve communication and remain friendly in the future. People in the first group were more often divorcing because they had a spouse who was angry, demeaning, emotionally unstable or substance-abusing. Those in the second group were more likely to have decided to divorce (often with mutual agreement) either because there was a loss of love or caring or because of diverging lifestyles and values.

In both groups, men were significantly more positive about entering the mediation process than women. Indeed, the relationship between control over the decision to divorce and a positive attitude towards mediation was particularly strong for men, while for women a sense of trust in the other party's integrity was more strongly correlated with willingness to mediate. Kelly and Gigy (1989) concluded that while a mutual decision to divorce enhances both men and women's willingness to mediate, women's attitudes are shaped by their feelings (of anger or otherwise) towards their partner and their perception of his integrity and propensity to co-operate, whereas men's attitudes are shaped by their recognition of their marriage being poor. These findings are important, as they substantiate the results of studies which have shown that certain predisposing conditions play an important role in the decision to mediate (Stark and Birmingham, 2001).

The disputes that a couple take to mediation may have common elements, but each party presents them from a personal perspective. Other factors that influence mediation include the length of the marriage/relationship, the age of children and the circumstances of relationship breakdown. These factors shape the way in which the issues in dispute are perceived, presented and settled in any kind of dispute resolution process. Another early study, conducted in the mid-1980s in Northern California

(Kelly, 1989; Kelly *et al.*, 1988; Kelly and Gigy, 1989), compared two samples of divorcing people – one using mediation and the other using the courts to settle all issues. This was a comprehensive study in which the research respondents were tracked over time. The mediation sample consisted of 106 couples and the adversarial sample consisted of 225 individuals (including 47 couples). The major demographic differences between the two samples were age, education and the presence of minor children. The men and women who mediated tended to be younger than their adversarial counterparts. The mean ages of the men and women in mediation were 41 and 38 respectively, and they had generally attained higher levels of education. Moreover, 86 per cent of the mediation group had children under 18, as against 66 per cent of the litigation group (reflecting their age profile). There were no differences between the samples, however, in terms of median household income and the average duration of the marriage was thirteen years for both groups.

On six different measures of marital communication, both groups reported equally poor communication at the start. Although both study groups in Northern California were equally dissatisfied with their marriages and equally angry with their spouses, the couples who mediated were more ready to acknowledge that their spouse had some positive qualities and less likely to report divorce-related depression, guilt and stress. Kelly and Gigy suggest that the mediation sample’s “more favourable view of the spouse’s integrity, and their greater internalised psychological distress, may enhance motivation to seek out mediation as a more humane, constructive, and psychologically safe environment in which to end a relationship” (Kelly and Gigy, 1989, p. 270).

**Table 3.8: Main Reasons for Separation/Divorce**

Men’s Reason	%	%	Women’s Reason
Communication difficulty	50.9	51.9	Communication difficulty
Different interests	17.8	18.3	Different interests
Personality clash	16.5	15.9	Personality clash
Money	12.2	14.7	Male’s Third Party Relationship
Do not wish to discuss	12.0	14.6	Money
Working conditions	11.6	13.6	Male Alcohol Consumption
Different parenting approach	9.4	11.5	Different parenting approach
Male’s Third Party Relationship	8.1	11.4	Male Abuse/Violence
Sexual problem(s)	8.0	11.4	Working conditions
Female’s Third Party Relationship	8.0	10.5	Do not wish to discuss
Male Alcohol Consumption	7.1	8.6	Sexual problem(s)
Female Depression	6.0	7.5	Birth of a child
Birth of a child	5.8	7.1	Male Depression
Male Depression	5.8	5.4	Female Depression
Female Alcohol Consumption	4.6	4.3	Female’s Third Party Relationship
Female Abuse/Violence	4.3	2.8	Male Unemployment
Male Abuse/Violence	3.3	2.7	Female Alcohol Consumption
Male Unemployment	2.6	1.9	Female Physical Illness
Male Physical Illness	1.8	1.9	Premarital pregnancy
Female Physical Illness	1.4	1.8	Female Abuse/Violence
Premarital pregnancy	1.4	1.4	Male Physical Illness
Female Unemployment	0.8	1.3	Female Unemployment

The questionnaire administered as part of the first mediation session with FMS clients in Ireland pays particular attention to the reasons underlying the decision to separate or divorce. A list of 21 possible reasons is provided, and the pattern of responses allows us to assess the relative importance of these different motivations. As data are available for both partners, it is possible to compare and assess

their converging or diverging perceptions of issues and behaviours such as drinking, depression, physical illness, unemployment, abuse, violence and other relationships.

Roughly half of clients indicate at least one issue, three quarters indicate at least two and the remainder specify three or more. Table 2.7 lists these potential reasons in order of their relative importance for both men and women (percentage of clients who selected each issue).

The most important reason cited for relationship breakdown is clearly communication difficulties. Just over half of men (50.9%) and women (51.9%) in mediation perceive these to be the main reason for their difficulties, and there is a high rate of agreement between the parties in relation to this issue (88.9%). The FMS client surveys do not provide any deeper insights into the type of communication difficulties encountered. In a study of relationship counselling in Ireland, McKeown *et al.* (2002) distinguish between three distinct communication problems: (i) feeling that one's partner does not listen to you; (ii) feeling criticised by one's partner and (iii) feeling insulted by one's partner. Previous research suggests that these behaviours – and the negative emotions linked with them – are key risk factors for marital breakdown (Gottman, 1997; Markman, Staneley and Blumberg, 1994).

Most existing research on communication is situated within the realm of marital adjustment, but mediation services themselves emphasise communication, both as a concept and a skill (McAuslan 2011; Lloyd 2011). Bodine and Crawford (1998) also place communication at the centre of mediation, underlining its role in the resolution of conflicts: "...conflict resolution strategies are processes of communication between disputing parties for the purpose of reaching a joint decision" (p. 52).

As far as relationships with other men and women are concerned, it is interesting to note that extra-marital relationships involving the male partner are mentioned almost twice as often as those involving women. There is a clear asymmetry in how these relationships are viewed in the process of separation/divorce. Whilst 14.7 per cent of women view betrayal by their partner as a major reason for the separation, only 8.1 per cent of the men involved share this view. In analogous fashion, more than half of women who are seen by their partners as having betrayed their relationship do not perceive their own behaviour to be a major reason for relationship breakdown.

A brief analysis of the relationship between financial problems as a source of relationship difficulties and varying income levels reveals that this is cited by an almost constant proportion of individuals in each income class and applies equally to men and women. In other words, perceptions of financial problems within the context of intimate relationships appear to be relatively independent of the absolute level of income.

Alcohol consumption by the male partner is seen as a major reason for separation/divorce by 13.6 per cent of women and 7.1 per cent of men. By contrast, 4.6 per cent of men see their partner's drinking as a major issue, but only 2.7 per cent of women agree that this is the case. Differing approaches to parenting are perceived by 11.5 per cent of women and 9.4 per cent of male clients as a major relationship difficulty. We will return to domestic violence and abuse in a later section of this report, and the data presented here confirms that these are important and significant issues, particularly for women.

Working conditions are identified by roughly one in ten men (11.6%) and women (11.4%) as a reason for separation/divorce. The period of study (2003-2010) coincided with the frantic years of the 'Celtic Tiger', with only a limited amount of data collected during the subsequent and dramatic downturn of the economy. This may help to explain why working conditions are viewed as a cause of relationship problems much more often than unemployment.

Problems in the sphere of sexuality and intimacy are perceived by 8.0 per cent of men and 8.6 per cent of women as a major reason for relationship difficulties. In half of all cases where this occurs (50.9%), it is perceived as a problem by both partners, in 27.3 per cent of cases by the woman only and in 21.8 per cent of cases by the man only.

The birth of a child can lead to profound changes in intimate relationships, and this is identified as a reason for separation by 5.8 per cent of men and 7.5 per cent of women. According to 7.1 per cent of female respondents, their partner's depression contributed to relationship breakdown, whilst only 5.8 per cent of men responded similarly. Six per cent of male clients indicated that their spouse's depression was one of the factors leading them to separate, whilst a slightly lower proportion (5.4%) of women saw this as a major cause. The relationship between depression, well-being and the quality of couple relationships is a complex one (Pratschke *et al.*, 2011) but is once again of great importance to the mediation process. We would recommend including a short screening tool for symptoms of depression within FMS monitoring questionnaires in the future.

The remaining issues (unemployment, physical illness, premarital pregnancy) are considered less relevant by FMS clients, with less than one person in 20 identifying them as reasons for separation/divorce. In the first case – unemployment – this is itself an interesting result. As shown in Table 3.2, in 2006 the unemployment rate for the 25-54 year old cohort of married persons stood at 4.8 per cent for men and 3.6 per cent for women. A slightly larger percentage of FMS clients were out of work at the beginning of the mediation process (8.2% of men and 4.0% of women), confirming that the sample is not particularly biased towards the employed. Unemployment has a powerful impact on the financial status of individuals and families, which in turn can affect individual well-being and relationship quality. The fact that relatively few people identify unemployment as a major reason for relationship difficulties may derive from the indirect nature of the relationship between financial status and marital quality, this being mediated by a range of other processes and behaviours.

Respondents were also given the opportunity to indicate whether any other issues contributed significantly to the breakdown of the relationship, and 15.8 per cent of men and 17.0 per cent of women selected this option. When asked to describe these issues, men referred to “growing apart” (0.6%), “gambling” (0.1%), “lack of trust” (0.1%) and having “married too young” (0.1%). Women also referred to “growing apart” (0.6%), “gambling” (0.1%) and “lack of trust” (0.1%), as well as “family interference” (0.1%) and “lack of support” (0.1%).

In overall terms, therefore, the most important issue that emerges relates to communication, which probably stands for a whole series of relational processes and attributes. The overall pattern of responses also confirms the important role of personality traits within the context of intimate relationships, alongside individual behaviour (extra-marital relationships) and financial issues (money problems). With a lower incidence, drinking and physical abuse are also important specific causes of relationship breakdown. When asked what matters needed to be resolved during mediation, four fifths of FMS clients mentioned financial issues and children, without significant gender differences. Deciding about the family home was the third most important issue, mentioned by 72.5 per cent of men and 72.9 per cent of women.

### **3.5 Completing Mediation**

While it is helpful to consider the attributes of couples who choose to mediate, it is equally important to note that not all couples who enter mediation actually complete the process. In fact, statistics on intake may not necessarily provide an accurate picture of the number of couples who actually use mediation services. We mentioned this earlier in relation to the design of the FMS dataset. Davis *et al.*

(2000) found that 32 per cent of couples entering the mediation process subsequently withdraw. In their comparative study of all-issues and child-focused mediation in England and Wales, Walker *et al.* (1994) report that 46 per cent of couples who attend all-issues mediation do not complete the process, as against just 12 per cent of those who attend child-focused mediation. The researchers hypothesised that this difference in completion rates was primarily associated with the complexity of the case: the more complex the issues, the longer the mediation process and the more likely that one or both parties may decide to withdraw.

Withdrawal does not necessarily imply that mediation has failed or that the parties are unhappy with it. While some couples withdraw because they feel that nothing has been achieved, others feel that they have made progress but are unlikely to resolve the issues. In their more recent follow-up study of 152 mediation users who had attended an information meeting, Walker *et al.* (2004) found that only 30 per cent had completed mediation in the sense of realising all of their objectives. The other 70 per cent of mediation clients provided the following reasons:

- 39 per cent felt that there had been little chance of making further progress
- 31 per cent felt mediation had not been achieving anything for them
- 18 per cent said that mediation had been causing more rows
- 11 per cent withdrew because the other party had failed to attend
- 5 per cent had been unhappy with the approach of the mediator(s)

Other studies have found similar rates of non-completion. Kelly and Gigy (1989) found that 43 per cent of clients attending mediation in Northern California terminated mediation before reaching full agreements on all issues and obtaining a written agreement or memorandum of understanding. The most common reason given for premature withdrawal was that mediation was 'too expensive', while the unwillingness of one party to attend was the second most common reason given. Nevertheless, over half of those who terminated the process reported that they were either neutral about or satisfied with mediation (Kelly *et al.*, 1988).

It is inevitable that some people who enter mediation will be unsure about the process but willing to try it, only to discover that it is more challenging than they thought. Conneely (2002) found that in 25 per cent of cases of non-completion, one partner was unwilling to continue, and in a further 25 per cent co-operation with the former partner was simply too difficult. The 2008 Ipsos MORI survey in Ireland found that only 60 per cent of couples completed mediation. This is consistent with experience in other countries. Almost all (92%) completers reached agreement, as against just 8 per cent of non-completers. The reasons given for non-completion mirror those given by non-completers in the English study (Walker *et al.*, 2004): there seemed little chance of further progress being made.

### **3.6 Understanding the Mediation Process**

Family mediation research demonstrates clearly that mediation practice is infinitely variable. While we can distinguish between approaches which tend to be very brief (often single sessions run by court-connected mediators) and those which take longer (often associated with community-based programmes), more subtle distinctions which focus on the content of mediation are less easy to discern. In her review of the first decade of mediation research, Kelly (1996) emphasised the lack of attention paid to the mediation process itself and the way in which impacts might be identified.

More recently, in her 25-year review of empirical research (Kelly, 2004), Kelly points once again to the dearth of research on the relative effectiveness of different models. Some studies examine mediator characteristics, whilst others explore mediator styles on the basis of direct observation and content



analysis of conversations. These studies are important, because they enable us to identify potentially appropriate models of mediation and to consider the skills required by mediators. Although the number of robust process studies remains relatively low, research has attempted to uncover when, how, and why mediators use certain techniques and how these influence processes and outcomes (Slaikeu *et al.*, 1985a,b; Pearson and Thoennes, 1988; Davis, 1988a,b; Dingwall and Greatbatch, 1993, 2001; Hayes, 2005).

Early studies of mediation distinguished between two basic styles: bargaining and therapeutic (Silbey and Merry, 1986). The bargaining style assumes that the parties have the capacity to negotiate a settlement and focuses on joint decision-making. The therapeutic style assumes that the parties are not able to participate in joint decision-making until underlying emotional issues have been tackled. An analysis of audiotapes in England and Wales also identified these two styles. Dingwall and Greatbatch (1991; cf. Greatbatch and Dingwall, 1989) set out to examine two specific claims made for mediation: first, that party-controlled settlement-seeking enhances parental responsibilities; second, that mediation is uniquely capable of taking account of children's interests and providing outcomes which are tailored to each family's circumstances.

In one study, Dingwall and Greatbatch (1991) examined 79 mediation sessions (from three independent and two court-connected mediation programmes) and found that in two agencies the mediators mainly used a bargaining style, avoiding relationship or emotional issues. In another agency, the mediators adopted a therapeutic style which encouraged discussions of the couple's relationship and conduct. However, when it came to negotiation, all mediators used techniques that kept the parties focused on reaching agreement. The authors refer specifically to the mediators' use of sanctions, directly challenging the parties if they remain preoccupied with their own interests and concerns. The researchers commented that while interventions which pointedly challenged parties about their commitment as responsible parents might seem intimidating, the prospects of successful mediation seem to be enhanced.

Dingwall and Greatbatch are of the view that mediators exercise considerable influence over the shape of agreements, steering parties towards resolutions which may be considered publicly acceptable and practicable. Mediation services should, they argue, be more explicit about the values on which mediation practice is based. References to children's interests may easily be harnessed to particular outcomes, leading to a degree of moral pressure on parents to behave in socially-acceptable ways. The authors suggested that mediators drew on their knowledge about "what works for children", but did not always explicitly share these normative assumptions with parents during mediation. In this sense, mediators exert power and have the authority to influence the mediation process and settlements.

In later studies, Dingwall and Greatbatch (2000) argue that mediators have become more sophisticated and subtle in both their management of the mediation process and their guidance of clients towards preferred outcomes. Whilst there is still a wide variation in practice, statements to clients about what would happen during the mediation process have become clearer. Moreover, the mediation process is more strongly influenced by the nature of the issues under discussion, with property and finance matters involving a good deal of fact-finding and the preparation of budget documents. Mediator pressure to reach particular outcomes relating to finances is less marked than when discussing arrangements for children. Mediators appear to find it easier to remain impartial when dealing with property and finances than in disputes about children's living arrangements and parental contact. Studies in the USA have also found that mediators in successful cases are more in control of the interaction and that they elicit options which move the parties towards particular settlements (Pearson and Thoennes, 1989).

Kruk (1998) reports that 50 per cent of mediators in Canada adopt a therapeutic style, although 70 per cent believe that the process should be structured towards bargaining and negotiation, indicating that these two styles may not be mutually exclusive. Some 70 per cent see it as important that the mediator should be neutral, but 83 per cent also indicate that the mediator should be interventionist in order to balance power differentials between the parties and control the process. While 60 per cent believe that the mediator should avoid influencing outcomes, 21 per cent believe that mediators should be interventionist. The more experienced the mediators, the less likely they are to adopt a neutral position in relation to process and the more likely they are to be interventionist. Not surprisingly, significant differences are found between lawyer mediators and mental health mediators: the latter are more likely to take a therapeutic stance and the former to be focused on negotiating settlements. Most mediators, however, consider structured negotiation to be the foundation of their practice.

Mediators have been particularly divided about whether mediation should be therapeutic. Mediators with backgrounds in family therapy have argued vehemently that the skills and techniques of family therapy are both relevant and necessary (Saposnek, 1983; Walker, 1988; Walker and Robinson, 1990), whilst others are determined that settlement-seeking and negotiations in mediation should not involve a therapeutic approach (Roberts, 1990). In England, a good deal of time has been spent arguing the relative merits of these opposing positions, without reaching any consensus (Walker, 1989). It is now generally acknowledged that different mediators adopt different positions, creating a rich tapestry of mediation practice. Whether potential clients are aware of this richness and are able to select a model of practice to suit their needs is, however, less certain.

A more recent study in England and Wales (Hayes, 2002a, 2005) examining the strategies, techniques and interventions used by 283 family mediators in a mix of community-based and private mediation practices, at different stages in the mediation process and in different client and dispute situations. The study reveals that the focus of the mediation process is highly pragmatic and that managing conflict and facilitating communication to facilitate settlement-seeking are integral to the process, irrespective of the characteristics of the clients and the disputes. Problem-solving techniques and active negotiation are used by mediators in various combinations. Background characteristics create systematic variations in practice, however, with professional background playing an important role.

None of the questions discussed in this subsection can be analysed using the FMS data, principally because no data is collected on the approach of mediators. We will, however, refer to this issue in the final chapter when making recommendations for future data collection.

### **3.7 Co-mediation**

When family mediation was first established, the common model in use involved just one mediator working with the couple. The advent of all-issues mediation led to the emergence of a co-mediation model which involved a lawyer-mediator working in partnership with a non-lawyer-mediator. In the complex mediation process, the co-mediation model appeared to work smoothly and efficiently: the presence of two mediators with complementary skills and knowledge seemed to assist couples to engage with issues on a number of levels (Walker *et al.*, 1994). The lawyer-mediators do not necessarily attend every session but are present when finances and property are discussed. Observations indicate that working in partnership can be extremely empowering for all participants if the mediators are experienced in working as a team. If they are not, there may be a tendency for mediators to talk across each other and thus undermine the advantages of a multi-disciplinary team approach (*ibid.*).

As Dingwall and Greatbatch (2000) observe, mediators from different backgrounds tend to have a different sense of the 'parameters of the permissible'. Nevertheless, they acknowledge that the benefits of co-mediation may be important, arguing that a more explicit partnership is needed. They are concerned, however, that clients may be put under undue pressure from co-mediators who collaborate in the application of negative sanctions, with the result that mediation may be perceived as coercive and intimidating. Concerns have also been expressed about same-sex co-mediation pairs. Two women or two men working together can be quite intimidating for the party of the other sex and this is generally considered to be an unhelpful model (Walker *et al.*, 1994), and one that is now rarely used.

A pilot project in Winnipeg, Canada involved co-mediation using lawyer and family relations specialists working in partnership, all of whom had been trained in mediation together (McKenzie, 2001; McKenzie and Pedersen, 2003). During the project (1999–2000), comprehensive mediation was delivered to 89 couples, and the use of co-mediators was identified as a particular strength. The training, subsequent supervision and practice enabled family relations specialists to gain knowledge about legal and financial matters, whereas the lawyers highlighted the importance of learning about child development, family dynamics and the emotional content of the separation process (McKenzie, 2001). The users of the service were very supportive of the use of two mediators: 86 per cent were either 'very' or 'somewhat' satisfied with this aspect (McKenzie and Pedersen, 2003).

Another process issue which has emerged is whether each party should be invited to an intake meeting without the other party being present. One of the first mediation services in England (Bristol Courts Family Conciliation Service) avoided joint mediation sessions until the mediators had met each party separately, in order to ascertain their willingness and ability to negotiate and to screen for domestic violence and other potential barriers to mediation. Research indicates that many people appreciate this staged approach (Walker *et al.*, 1994, 2004; Walker, 2001).

The study by Davis *et al.* (2000) of intake meetings in publicly-funded mediation shows that most mediators in community-based services value the opportunity to have individual sessions with clients prior to the start of the formal mediation process. Lawyer-mediators in private practice were less enamoured of this approach, considering it to be largely unnecessary and overly costly. Most clients, however, like the idea of an individual intake appointment and there was no evidence that this influenced subsequent take-up.

### **3.8 Duration of Mediation**

Another aspect of family mediation which has long concerned practitioners and policy-makers is the time spent in mediation. Court-connected programmes have tended to involve fewer and shorter mediation sessions while community-based services have tended to offer more sessions spread over a longer period. Not all independent services offer a lengthy mediation process. For example, the Bromley scheme in England originally envisaged one session per case, although some couples needed longer (Davis and Roberts, 1988). There was a reluctance to move towards a more leisurely style because of the danger that the focus would be lost and a counselling-type relationship might emerge. In their comparative study of all-issues and child-focused mediation, Walker *et al.* (1994) report that all-issues mediation involves more joint appointments, is spread over longer periods of time and demands greater administration. The average number of sessions for all-issues cases is five within a four-month period. The average case takes more than twelve hours of mediator time, including time spent in administration and consulting colleagues. By contrast, the average child-focused case tends to be completed within two appointments spread over one month and takes, in total, just three hours of mediator time. Inevitably, some cases take far longer than the average: one all-issues mediation

case in the sample involved 15 sessions over a 15-month period before agreement on all issues was reached. The average number of sessions in the Winnipeg study (McKenzie, 2001) was five, each session lasting about ninety minutes. The average time from the initial meeting to resolution was 14 weeks. More time was spent on financial issues (57%) than on child-focused issues (43%).

In their study of publicly-funded mediation, Davis *et al.* (2000) indicate that the majority (76%) of mediation appointments last between 46 and 90 minutes, and that 59 per cent of the cases require no more than a single-person-day in total staff time. The majority of cases (86%) are completed in three sessions. This finding was replicated in the study by Walker (2001a), in which a third of mediation users completed mediation in one session. The evidence suggests that there has been a move towards brisker, more focused mediation in most jurisdictions.

In a recent pilot study in New Zealand (Barwick and Gray, 2007) involving court-based mediation on children’s issues, to which children, extended family members and the parties’ lawyers were invited, the guidelines allowed three hours for each mediation session. Thirty per cent of cases were completed within three hours and 75 per cent were completed in four hours. Just 9 per cent of cases took longer than five hours, and the vast majority (89%) were completed in one session. Court-based services typically complete the mediation process in fewer sessions and more speedily than independent mediation services, but early research in England and Wales (Ogus *et al.*, 1989) showed that while the time spent in mediation is not a significant factor in accounting for the effectiveness of the service, the relative brevity of court-connected services is perceived to place undue pressure on parties to reach agreement.

There has been a significant shift in practice, across all settings, to reduce the length of the mediation process and the number of sessions. It is interesting to note, therefore, that the Ipsos MORI survey of former FMS mediation clients found that 57 per cent of clients who reached agreement claimed that they had attended five or more sessions and that the number of sessions was reflected in outcomes (although 39 per cent of clients who did not reach agreement had attended for five or more sessions). Analysis of the FMS dataset for 2003-2010 reveals that mediation often lasts less than one month, with a mean duration of 2.8 months (Table 3.9).

**Table 3.9: Number of Months between first and last Mediation Meeting**

	(%)
Up to 1 month	49.1
1 – 3 months	26.3
3 – 6 months	13.8
6 – 9 months	5.0
9 – 12 months	2.6
1 – 2 years	2.5
Over 2 years	0.6

### 3.9 Links Between Processes and Outcomes

Studies of mediation processes, although relatively scarce, indicate that variations in practice have an impact on the experience of mediation and the outcomes achieved. The overriding interest in family mediation over the past forty years, however, is due to its capacity to reduce the potentially detrimental impacts of separation and divorce on children and families. Studies of outcomes are,

therefore, far more numerous than those which focus on processes. Before examining the international evidence relating to mediation outcomes, we will report on studies which have looked specifically at the links between processes and outcomes.

The majority of studies of family mediation indicate that factors relating to clients, the mediation model and setting and the disputes themselves all have an impact on outcomes. Variables such as the emotional stability of the parties involved and the couple's commitment to divorce and to mediation were found to be associated with outcomes in some of the first generation of research studies (Kelly and Gigy, 1989). Others identified the intensity and duration of the dispute(s) and the quality of the relationship as important indicators of outcomes: more recent and less severe disputes were more likely to be resolved, as were those between parties who had demonstrated at least a modest degree of co-operation and ongoing communication (Pearson and Thoennes, 1989; Hochberg and Kressel, 1983). Pearson and Thoennes (1989) identified certain mediator behaviours which were associated with settlements: substantial time devoted to discussion of the terms of financial agreements; less time explaining mediation; less time coaching parties on how to negotiate; and fewer attributions by the mediator concerning the attitudes of others.

Hayes' (2002b) work in England has shown that particular background characteristics of mediators create systematic variations in their practice. The practice setting is an important indicator of practice style, perhaps because professional background and mediator experience are important variables and different settings attract different professionals. Simulated client studies have enabled researchers to examine variations in mediator reactions to a range of vignettes. Myers and Wasoff (2000) explicitly compared the practice of mediators in Scotland from different professional backgrounds and found a number of areas of difference in their practice. For example, lawyer-mediators are more likely than non-lawyer-mediators to offer direction and advice in respect of settlements during the mediation process. By contrast, non-lawyer-mediators encourage greater levels of client participation and ownership of outcomes. The language used also varies: non-lawyers use the language of needs, responsibilities and preferences, while lawyer-mediators use the language of rights. Mediators from all backgrounds facilitate compromise, minimise apportionment of blame and advocate for children's best interests.

More research is needed if we are to make accurate associations between processes and outcomes. Research which links processes with outcomes remains limited and the ability to predict which cases will do well with which model of mediation is in its infancy. As Kelly (2004) observed:

*Understanding the interaction of emotions and personality attributes that individuals bring to the mediation setting, and the styles and behaviours of mediators that diminish or enhance the likelihood of reaching agreements, would help define and refine practices, improve effectiveness, and promote excellence in the field. (p. 31)*

## 4 Mediation Outcomes

Assessing the contribution made by mediation services involves measuring outcomes and explaining these is a central topic in the international literature. Research deals with a range of key outcomes, such as the percentage of settlements achieved, satisfaction with the process, compliance with mediated agreements and re-litigation rates. We will examine the evidence relating to these key outcome measures in turn.

### 4.1 Settlement Rates

Settlement rates remain the principal outcome by which mediation is evaluated. In 1985, Kressel reported that in the USA, settlement rates ranged from 22 to 97 per cent, with most studies falling between 40 and 70 per cent. In 1989, Pearson and Thoennes found that 40 per cent of couples reach full agreement on custody and access issues and 80 per cent of couples mediating child support reach an agreement. Kelly and Gigy's study in Northern California found that 57 per cent of couples reach agreement on all relevant issues, resulting in a written memorandum which can be incorporated into the marriage settlement (Kelly and Gigy, 1989).

In her review of a decade of mediation research, Kelly (1996) reported that international mediation research indicates that agreement rates range between 50 and 85 per cent, depending on the study and sample. This range applies to court-connected, community-based services and private mediation agencies. Looking at a range of studies, Kelly could find no clear relationship between settlement rates and the number of mediation sessions/hours, confirming early findings in England and Wales (Ogus *et al.*, 1989).

Differences have been found, however, in relation to the focus of mediation and its comprehensiveness. Higher settlement rates have been reported for all-issues mediation than for child-focused mediation. Walker *et al.* (1994) found that while 54 per cent of couples complete all-issues mediation and 88 per cent complete child-focused mediation, all issues mediation leads to resolution of all disputed issues in twice as many cases: 39 per cent of all issues cases were fully settled in mediation, as against 19 per cent of those in child-focused mediation. The researchers argue that all-issues mediation is more likely to lead to a successful resolution of disputes concerning all matters arising from the divorce because disputes about children are inextricably linked with other issues.

In her more recent review of mediation research, Kelly (2004) confirmed once more that settlement rates generally range between 50 and 90 per cent. In their study of publicly funded mediation in England and Wales, Davis *et al.* (2000) report full agreement in 50 per cent of cases involving children's issues and in 34 per cent of cases focused on finance and property disputes. The authors suggest that lawyer-mediators are more effective in dealing with financial matters than mediators from social welfare/mental health backgrounds. Couples who attend mediation following information meeting in England and Wales reach agreement on all issues in 37 per cent of cases (Stark and Birmingham, 2001).

Studies of mandatory mediation programmes provide valuable data about settlement rates. The snapshot study of court-connected mediation in California (Ricci *et al.*, 1992; Depner *et al.*, 1994) involved over 65,000 mediations in 1991. Almost three-quarters (74%) of couples completed the mediation process (typically several sessions) and 42 per cent reached agreement.

More recent studies report agreement rates similar to those of earlier studies. The pilot study of family mediation relating to children's issues in four courts in New Zealand (Barwick and Gray, 2007) found that full agreement was reached in 59 per cent of completed cases. The Winnipeg pilot indicated full agreement in 62 per cent of mediated cases (McKenzie, 2001), and in the next stage of that programme full agreement was reached in as many as 73 per cent of cases (McKenzie and Pedersen, 2003).

A recent survey of 250 high-conflict parents who attended different models of in-court mediation (conciliation) in three sites in England found that a relatively brief intervention (up to one hour) with parties who had a history of difficulties and disputes relating to access/contact with children led to full agreement in 45 per cent of cases, although there were significant variations in agreement rates between the three sites (63%, 43% and 28% respectively) (Trinder *et al.*, 2006a). Regression analyses indicated that these differences could be attributable to the mediation model used and not to the characteristics of the case. Mediation involving a judge was the least successful in terms of reaching agreement, replicating the findings of the first national study of mediation practice in England and Wales (Ogus *et al.*, 1989). The evidence is consistent on the lower settlement rates which are generally achieved in models which are high in judicial control.

An experiment in quasi-compulsory mediation in civil disputes (not family law disputes) in the Central London Court between 2004 and 2005 indicated that while judicial pressure to mediate had been effective in propelling parties towards mediation, many were unwilling participants. The settlement rate fell during the pilot period from 69 per cent of cases to 38 per cent (Genn *et al.*, 2007). Similar outcomes were observed in another court-based study of civil mediation (Prince and Belcher, 2006). These studies confirm the findings from family mediation that the motivation and willingness of parties to compromise is a critical factor in relation to settlement rates.

From this perspective, it is interesting to consider the high rates of agreement recorded in a pilot family mediation scheme in Hong Kong (2000-2003). The majority of users were aged between 30 and 49 and had dependent children (Sullivan, 2005). Some 80 per cent of 933 mediation users reached overall agreement, with agreement being highest (94%) in respect of child contact (access), child custody (92%) and financial support for children (88%). Agreements relating to property were recorded at 84 per cent and spousal support at 82 per cent. These high settlement rates may be due to the role of traditional Chinese cultural beliefs and values which encourage attainment of the common good rather than individual gain. These values resonate with mediation and encourage co-operative decision-making, compromise, the achievement of harmony and the avoidance of negativity and conflict. Conversely, it would seem that the shame and failure attached to marriage breakdown in Chinese culture acts as a barrier to couples seeking and benefiting from mediation.

In Ireland, Nic Giolla Phadraig (1992) reports an agreement rate of 55 per cent for the FMS, which is slightly lower than the rate of 60 per cent reported by Conneely (2002), although both results show that the rates achieved by the FMS are broadly comparable with those observed elsewhere. Using the full FMS dataset for 2003-2010, it is possible to conclude that the FMS helped parties to reach agreement in 47.5 per cent of cases, whilst in 36.6 per cent, mediation failed to produce agreement. Of the remaining cases, 11.8 per cent of couples did not proceed with mediation after the initial interview and 3.9 per cent returned to the relationship (Table 4.1).

**Table 4.1: Outcome of Mediation**

Outcome of Mediation	(%)
Agreement reached	47.5
Return to marriage/relationship	3.8
Did not proceed after initial intake interview	11.8
No agreement	36.9
Total	100.0

For just under half of all couples (47.5%) who reached agreement, the most frequent issue that was resolved through mediation involved financial arrangements (41.9%), followed by issues involving children (38.0%) and the family home (37.5%). Assets were included in 32.4 per cent of agreements, liabilities in 31.1 per cent, succession rights in 30.8 per cent and pensions in 28.1 per cent. In most cases, agreements on these different issues were intertwined, as Table 4.2 below reveals.

**Table 4.2: Co-occurrence of Issues in Mediation Agreements**

	Agreement %	Child %	Home %	Fin %	Ass %	Liab %	Pens %	Succ %
Child(ren)	38.0	-	77.5	90.7	66.8	65.7	57.2	64.1
Family Home	37.5	78.6	-	95.1	80.5	77.1	71.0	75.9
Financial Arrangements	41.9	82.3	85.0	-	74.1	71.6	64.2	70.9
Assets	32.4	78.4	93.1	95.9	-	87.7	75.1	82.5
Liabilities	31.1	80.4	93.0	96.5	91.4	-	76.2	83.6
Pension(s)	28.1	77.5	94.9	96.0	86.8	84.4	-	84.8
Succession Rights	30.8	79.2	92.4	96.6	86.8	84.4	77.3	-
Any one issue	47.5							

Child = *issues involving children*; Home = *family home*; Fin = *financial issues*; Ass = *assets*;  
Liab = *liabilities*; Pens = *pension entitlements*; Succ = *succession rights*

Following conclusion of the mediation process, almost three-quarters (71.3%) of couples who achieved agreement expressed a desire to sign a legal Separation Agreement. A further 15.7 per cent of couples intended to act upon the agreement, but preferred not to formalise it as a legal document. In 5.8 per cent of cases, couples aimed to obtain a Rule of Court based on their agreement, whilst the remaining 7.1 per cent of couples intended either to apply for divorce or had already done so.

**Table 4.3: Route Couples intend to take after reaching Mediation Agreement**

	(%)
Have the Mediated Agreement drawn up into a Legal Separation	71.3
Act on Mediated Agreement	15.7
Apply for a Divorce (or have applied)	7.1
Have the Mediated Agreement made a Rule of Court	5.8
Total	100.0

An analysis of agreements reached at the end of mediation with regards to developing a parenting plan shows that nearly three-quarter (73.7%) of couples opt for a shared parenting plan, which involves overnight stays and regular time with non-custodial parents. Equal parenting, where a child



spends close to equal time with each parent is accepted by 17.0 per cent of couples. In 9.3 per cent of cases, couples agree upon a single parenting approach, involving no overnight stays but visiting arrangements for the non-custodial parent. Where parents did not opt for equal parenting, the overwhelmingly majority of children (93.8%) will predominantly reside with the mother and just 6.2 per cent with the father.

Overall, nearly half of parents (44.2%) do not believe that there will be any major change in the child's regular lifestyle. Of the changes anticipated, the most frequently specified ones are change of living location (9.8%), followed by change of school (2.0%) and contact with grandparents (1.0%). However, 45.6 per cent of parents indicate other significant changes without specifying their exact nature.

## 4.2 Partial Agreements

If full settlement rates are used as the main measure of successful outcomes, a somewhat varied picture emerges, as we have seen. However, full agreement provides an incomplete picture of settlement rates. Given the complexity of some disputes, the time constraints of mediation and the emotional climate within which mediation takes place, it is hardly surprising that full agreement is not reached by all couples. Moreover, some agreements represent final settlements, whilst others may offer only temporary or interim solutions. It is important, therefore, to look at partial agreements.

Walker *et al.* (1994) found that while only 39 per cent of couples in all-issues mediation reached full agreement, a further 41 per cent reached agreement on some issues. Similarly, although only 19 per cent of couples reached full agreement in child-focused mediation, a further 44 per cent reached agreement on some of the issues. These findings indicate that the majority of couples managed to reach agreement on some issues during mediation.

If we look at other outcome studies, we find that partial agreement was reached in 30 per cent of the New Zealand cases (Barwick and Gray, 2007); agreement was reached on some or most issues in 32 per cent of cases in the Winnipeg pilot (McKenzie, 2001), and in the follow-on mediation programme 27 per cent of couples achieved partial agreements (McKenzie and Pedersen, 2003). Davis and Roberts (1988) reported full agreement in Bromley in 38 per cent of cases and partial agreement in a further 25 per cent of cases. The latter study reported higher agreement rates, as the experience of mediators increased. The Ipsos MORI survey of FMS clients indicates that clients take a wide range of issues to mediation and that high rates of settlement are reached in relation to financial matters (82%), the family home (68%), and child contact (60%). Finances and property are the main matters which couples have difficulty resolving.

Studies in the USA confirm these findings (Kelly, 2004), and the Colorado study (Thoennes, 2002a) found that while 39 per cent of cases reached full agreement, a further 55 per cent reached agreement on some issues. A large Canadian study of court-based all-issues mediation recorded a combined full and partial agreement rate of 64 per cent (Richardson, 1988). The snapshot studies in California cited earlier found that 55 per cent of couples had reached some agreement (Kelly, 2004).

Returning to the FMS dataset, agreements reached at the conclusion of the mediation process may be classified into three categories: full agreement (88.8%), interim agreement (6.4%) and partial agreement (4.8%). What is impressive about the service provided by the FMS is the high rate of full agreement achieved. In the case of interim or partial agreements, respondents were asked to specify the outstanding issues, which are shown in Table 4.4. The figures clearly highlight the pivotal importance of reaching agreement with respect to children, with all other issues coming second.

**Table 4.4: Outstanding Issues Following Partial Agreement**

	(%) of partial agreements	(%) of all agreements
Child(ren)	13.3	1.5
Family Home	41.3	4.7
Financial Arrangements	26.0	3.0
Assets	19.1	2.2
Liabilities	17.8	2.0
Pension(s)	33.6	3.8
Succession Rights	26.9	3.1
Other	17.4	2.0

### 4.3 Mediation Agreements

As already stated, agreements were reached in just under half (47.5%) of mediation cases managed by the FMS. Of these, just over two thirds (68.5%) included a maintenance agreement. Looking at all maintenance agreements, financial support for children is provided by the male partner in 61.5 per cent of cases, support to both the ex-wife/partner and the children in a further 21.3 per cent of families and to the ex-wife or partner only in 7.7 per cent of cases. As reported earlier, the overwhelming majority of children (93.8%) reside with the mother after separation, whilst responsibility for financially supporting children and ex-partners is typically accorded to men, and only 0.6 per cent of men received financial support from their female ex-partner (Table 3.13).

These figures clearly underline the pertinence of traditional gender roles, even following separation, and following mediation and agreement. It is impossible to determine whether these outcomes are similar to – or indeed, influenced by – the trends of judicial settlements. As the final column of Table 4.5 shows, two-thirds (65.4%) of all cases involving dependent children either result in no agreement (52.5%), or do not include a maintenance agreement (12.9%).

**Table 4.5: Financial Support**

	(%) of all Maintenance Agreements	(%) of Maintenance Agreements with Dependent Children	(%) of all Cases with Dependent Children
Paid to Children Only, by Male	61.5	65.4	21.4
Paid to Female & Children	21.3	22.3	7.5
Paid to Children Only, by Both	7.8	8.2	2.7
Paid to Female Only	7.7	2.6	2.4
Paid to Children Only, by Female	1.0	1.1	0.4
Paid to Male & Children	0.4	0.4	0.1
Paid to Male Only	0.2	0.0	0.1
No Agreement	n/a	n/a	65.4
Total	100.0	100.0	100.0

Among couples who reached an agreement (47.5%), about one quarter (27.3%) applied for the One-parent Family Payment (OPFP), and exactly four out of five applications (80.0%) were successful. Maintenance agreements (68.5%) thus outstripped OPFP payments (21.8%) by a factor of three and

constitute the financial backbone of arrangements following separation, at least when the mediation agreement was obtained.

With regard to agreements regarding the family home, in nearly half of cases (48.3%), this was retained following separation. In 20.3 per cent of cases, it was transferred to or bought out by the female partner, whilst the male partner retained the family home in 11.1 per cent of cases and in 17.3 per cent of cases it was put on sale. Four-fifths of cases involve a property which is owned by the family (80.2%), with outcomes that are in line with these overall percentages. A more nuanced picture emerges with regard to rented properties (Table 4.6). In two-thirds of cases involving local authority rented accommodation (64.8%), the family home was retained/transferred to one of the partners after separation. In the case of privately rented accommodation, however, three-quarters of clients stated that there was no family home to be included in an agreement. This deserves careful consideration in light of the growing number of couples in privately-rented accommodation, which may create uncertainties for children and increase the likelihood of having to change homes when parents separate or divorce.

**Table 4.6: Retention of Family Home**

	%	Retained %	Transfer to Male %	Transfer to Female %	Sold %	No Family Home %	Total %
Owned	94.2	48.9	11.6	21.1	18.4		100.0
Privately Rented	2.4	23.1		2.6		74.4	100.0
Rented from Local Authority	3.4	50.0	5.6	9.3		35.2	100.0
Total	100.0	48.3	11.1	20.3	17.3	3.0	100.0

*Table excludes cases which stated already at beginning of mediation that there no longer existed a family home.*

In two-thirds of cases (66.9%), the agreement reached through mediation allows the mother and children to continue to reside in the family home (Table 4.7). In another 10.8 per cent of cases, the father remains in the home with the children and in another 4.7 per cent the home will be divided or rotated between the parents. In short, the majority of children continue to reside with their mother following separation/divorce and remain in the familiar environment of the family home, as noted earlier.

**Table 4.7: Resident in Family Home**

	(%)
Female with Children	66.9
Male on his own	11.7
Male with Children	10.8
Female on her own	6.0
Home divided - both to live there	3.9
Rotating, with Children	0.8
Total	100.0

Almost half (45.5%) of couples believe that the issue of the family home has been definitively resolved by mediation, whilst 22.9 per cent state that they might consider selling it when the youngest child

has grown up. The remaining couples might consider this if their financial circumstances changed or if one of the partners was in a position to buy out the other. Following separation, almost half (48.6%) of female clients will continue to live in the family home; roughly the same proportion (41.9%) of male clients have arranged to live in rented accommodation (Table 4.8).

**Table 4.8: Living Arrangements Following Separation**

	Female (%)	Male (%)
Family Home	48.6	20.1
Newly Purchased	19.5	18.4
Rented	22.0	41.9
Other	9.9	19.6
Total	100.0	100.0

With regard to mediation agreements on pensions, in about one third of cases (30.2%), both partners are members of a pension scheme, whilst another third (32.9%) have no contributory pension. More than one quarter of men (27.6%) are in a pension scheme, compared to just 9.3 per cent of women, suggesting that separation/divorce may penalise women. In fact, pension schemes often must be upgraded following separation/divorce. In nearly one third of cases (31.4%), the female partner indicates that she will have to make changes to her pension arrangements, whilst a marginally smaller proportion of males (28.2%) indicate the same intention. In 7.3 per cent of cases, both ex-partners indicate the need to make changes to their pension schemes, whilst only one third of couples (33.0%) declare that no changes will need to be made.

#### 4.4 Lack of Agreement

When full and partial settlement rates are combined, the evidence across a very wide range of studies is that relatively few couples leave mediation without reaching agreement on any issue – the group which Kelly and Gigy (1989) referred to as the true terminators, those for whom mediation did not resolve any disputes. Looked at in this way, family mediation has been shown to be remarkably successful in terms of assisting couples to reach agreement. Walker *et al.* (1994) found that 20 per cent of couples did not reach any agreement in all-issues mediation and that some 37 per cent did not reach any agreement in mediation which was restricted to children’s issues, perhaps because the issues in dispute were intertwined.

In Winnipeg, just 14 per cent of couples in the pilot phase (McKenzie, 2001) and only 8 per cent in the follow-on phase (McKenzie and Pedersen, 2003) did not reach any agreement. In the New Zealand study (Barwick and Gray, 2007), 11 per cent of completed mediations did not reach agreement, and in the Hong Kong pilot the number of cases in which no agreement was reached was extremely small. This is in accord with the study of the FMS by Nic Giolla Phadraig (1992), which indicated that just 2 per cent of couples did not reach any kind of agreement. Conneely (2002), on the other hand, reported that 20 per cent had not managed to settle any of their disputes. Research by Ipsos MORI indicates that 41 per cent of mediation cases did not reach any agreement, and this percentage varied according to the location of the service, increasing for clients aged over 60, but remaining stable across income groups.

The Ipsos MORI survey suggests that the failure to reach agreements relates primarily to disputes about finances and property, although 36 per cent of cases had not reached agreement on child contact. The main reason cited for non-agreement was the inability/unwillingness of the other party

to negotiate – a finding echoed in research conducted elsewhere (Walker *et al.*, 2004). It seems perfectly possible that other mediation services with lower non-settlement rates have been more successful in screening out clients who are essentially unwilling to negotiate, particularly on financial issues.

There is a pronounced lack of research on cases where parties fail to reach any kind of agreement, and it would be useful if we were able to identify common characteristics among these cases involving client characteristics, mediation approach or settings. It seems reasonable to conclude, on the basis of the available research on family mediation that couples are more likely to reach at least partial agreement in mediation when this is not rushed or limited to one relatively brief session in court, and when parties have sufficient time to find elements of agreement. Conversely, it is also known that new disputes can occur at any time during the divorce process, and that as one area of contention is dealt with another may emerge (Walker *et al.*, 1994, 2004). The longer the mediation process, therefore, the more likely it is that new issues/disputes will emerge. Finding the correct balance and determining the optimum length of the process is a continuing challenge for mediators.

Clients’ reasons for either interrupting the mediation process or for not reaching agreement are not always clear, although the FMS dataset provides some important insights into this question (Table 3.17). Nearly one-fifth (18.7%) of unsuccessful outcomes are due to the high level of conflict prevailing between the partners and their resulting inability to negotiate. Unwillingness to negotiate by the male partner accounts for 15.7 per cent of negative outcomes, whilst the equivalent figure for women is 12.2 per cent. This is followed by an impasse over a particular issue (11.9%), whilst domestic violence prevents a successful outcome in 2.5 per cent of cases and addiction problems in another 1.5 per cent.

Other specific reasons account for one-fifth of cases (19.6%) and include cases where agreement is reached outside the mediation process, those where one of the partners is unavailable for work or health reasons, those where the mediator himself or herself decides that mediation is not suitable, those where one of the partners enters the legal route and those where the couple simply defers resolution of their difficulties.

**Table 4.9: Reason for Termination of Mediation**

	(%)
Reason Unknown / Couple did not Return	29.6
Other specific reasons	19.6
High Conflict / Inability to Negotiate	18.7
Male Unwilling to Negotiate	15.7
Female Unwilling to Negotiate	12.2
Impasse Over an Issue	11.9
Domestic Violence / Lack of Freedom to Make Decision	2.5
Addiction	1.5

*Note: Sum of percentages exceeds 100% due to multiple reasons being cited*

Turning to the specific issues why mediation was either discontinued or did not result in agreement, just over one third (36.9%) of clients offered one or more specific explanations (Table 4.10). As one might expect, the order of importance for failing to agree reflects the original motives for entering mediation.

**Table 4.10: Issue that Prevented Agreement**

	(%)
Child(ren)	13.3
Family Home	12.0
Financial Arrangements	9.4
Assets	5.7
Liabilities	0.4
Pension(s)	0.3
Other	1.6

## 4.5 Satisfaction with Mediation

The rate of agreement is just one measure of the success of the mediation process, and must be considered alongside more subjective assessments. Kressel and Pruitt (1989) argued that there has been an overemphasis on settlement rates as an indicator of success, particularly as couples who do not reach agreement often value the mediation experience because it provides other beneficial outcomes (Kelly and Gigy, 1989). The failure to reach any agreement in mediation does not necessarily imply that the parties are dissatisfied with the process or that they have not achieved other benefits, at least in the short term.

In her review of early mediation research, Kelly (1996) found that, with one exception, all studies in all countries and settings show that client satisfaction with both the mediation process and outcomes is high – within the range of 60-80 per cent (*cf.* Richardson, 1988; Pearson and Thoennes, 1989; Kelly and Duryee, 1992; Bordow and Gibson, 1994; Emery, 1994). By contrast, Walker *et al.* (1994) report that just 50 per cent of all-issues mediation clients express satisfaction, and 38 per cent of clients who engage in child-focused mediation. The majority of studies indicate that couples who reach agreement are more satisfied than other couples, but Walker *et al.* found no evidence that the number of mediation sessions attended affected clients' satisfaction with either the process or the outcome. Indeed, couples who attend a single session were as likely to express satisfaction as those who had attended several. Slaikeu *et al.* (1985a) suggest that the best indicators of success in mediation are clients' perceptions of the mediator's ability to facilitate communication, to allow each party to be heard, identify options for resolution and engender mutual understanding between parties. Mediation participants express satisfaction when these factors have characterised the process.

The Winnipeg study revealed high levels of satisfaction: more than 80 per cent of clients were either somewhat or very satisfied with the co-mediation process, the session content, the intake process and the overall mediation experience (McKenzie, 2001). Somewhat lower rates of satisfaction were attributed to the mediation location and the duration of the intervention. Participants (90%) rated mediators as unbiased and aware of the needs and concerns of both parties. Between 80 and 90 per cent felt that the mediators had helped them to understand child support and parenting arrangements and to identify settlement options.

The snapshot study of mediation in the Californian courts described earlier (Depner *et al.*, 1994) found widespread satisfaction: parents found it helpful in developing workable agreements for child custody and contact and they were satisfied with the outcome. The general pattern of positive evaluations was stable across diverse populations, but mediation was rated more positively by parents with lower education levels and incomes and by ethnic minorities. The type of service model

had no statistically significant effect on general satisfaction and the vast majority of participants had not felt intimidated or rushed. Reaching agreement emerged as the strongest determinant of client satisfaction. At the conclusion of the snapshot study, 74 per cent of couples had completed mediation, 42 per cent had reached agreement and 32 per cent remained at an impasse. Those who had reached agreements were more positive than those who had not, although most of the latter group were still positive about mediation: overall, 90 per cent said the mediator had offered good ideas, 80 per cent felt mediation was a good way to develop a parenting plan and 60 per cent said that mediation had helped them to see new ways of working together as parents and drawing on community-based services.

Although levels of satisfaction are undoubtedly higher when couples are able to reach agreement in mediation, the research suggests that even when couples fail to reach agreement, most feel that mediation has given them the opportunity to address the issues, receive helpful information, clarify the issues and move forward (Depner *et al.*, 1994). The generally high levels of satisfaction reported by all mediation users are reflected in the finding that most say they would recommend family mediation to someone in similar circumstances. Kelly and Gigy (1989) reported that, among those completing mediation, 74 per cent of both men and women said they would recommend it to a friend, and among those terminating mediation prior to reaching a full agreement, 76 per cent of women and 41 per cent of men said they would recommend it to a friend. Overall, this body of research suggests that satisfaction levels are higher than settlement rates, irrespective of mediation settings.

In the vast majority of studies reviewed here, mediation clients were asked to explain why they are satisfied or dissatisfied with the process and the outcomes of mediation. Their responses provide very helpful insights into valued attributes of the mediation process, such as:

- being heard and understood
- being respected and taken seriously
- being given a chance to express their feelings and concerns
- receiving information about what matters to children
- having a safe forum in which to communicate
- having mediators who are impartial and sensitive to difficult and emotive issues
- feeling empowered to find a solution
- being helped to manage personal affairs
- being able to focus on the needs of children
- having an opportunity to air grievances

In addition, dissatisfaction is related to:

- being pressured to reach agreements
- experiencing tension-filled and unpleasant mediation sessions
- feeling rushed
- feeling confused about the purpose of mediation

It would be useful to collect data on satisfaction levels in relation to issues such as these, within the context of the follow-up FMS client questionnaire, and we will discuss this in the conclusions. In order to gauge clients' reactions to more specific aspects of the mediation experience in Northern California, Kelly and Gigy (1988, 1989) administered a 45-item questionnaire (Client Assessment of Mediation Services – CAMS). It explored issues relating to mediator behaviours and skills, power imbalances and satisfaction with specific outcomes. In the mediation completion group, Kelly and Gigy found that some 75 per cent of men and women saw mediators as skilful, concerned about their

feelings and felt that they provided sufficient information, helped to identify important issues and remained impartial. Furthermore, 82 per cent of women and 71 per cent of men felt that the mediator helped them to protect their individual rights. In respect of the mediation process there were no statistically significant differences between men and women. Similarly, both men and women were positive about the fairness of agreements. The only gender difference was in relation to child support agreements: 37 per cent of mothers and just 3 per cent of fathers described child support as inadequate.

Women reported that mediation had given them greater confidence to stand up for themselves and greater insight into their spouse's point of view. The data did not support the view advanced by critics of mediation (Bruch, 1988; Grillo, 1991) that women are disadvantaged in mediation and forced into compromise agreements. Indeed, women were significantly more likely than men to say that mediation gave them an opportunity to express their point of view and helped them put aside their anger and to focus on their children's needs (Kelly and Duryee, 1992).

Concerns about mandatory mediation have been couched in terms of the disadvantages for women, pressuring them into reaching compromises which are not in their interests or are unfair. Yet the evidence suggests that parents who participate in mandatory mediation of child custody disputes are twice as satisfied with the process and its outcomes as those who resort to litigation (Kressel and Pruitt, 1989). The vast majority of these parents believe that mediation has helped them to focus on the needs of their children and to improve their relationships (Duryee, 1991). No evidence exists that women, as a group, tend to fare worse in negotiations as a result of their greater interest in co-operation and maintaining good relationships (Rosenberg, 1992). Nor are women more likely than men to drop out of mediation. Kressel and Pruitt (1989) indicate that when parents are required to mediate (even when they would have preferred not to), between 75 and 85 per cent are satisfied with the process.

Nevertheless, gender differences are evident among couples who fail to reach final divorce agreements in mediation. Women are more likely than men to drop out of mediation because they lack sufficient understanding of financial issues and/or feel confused. They are also significantly more likely to believe that their spouse has some kind of advantage during negotiations, that the issues are too complex and to feel emotionally drained or unprotected (Kelly *et al.*, 1988; Kelly and Duryee, 1992). In some studies, men indicate greater dissatisfaction than women about what they perceive to be a bias in the family justice system (including mediation) in favour of mothers over issues such as custody and contact (Maccoby and Mnookin, 1992; Emery *et al.*, 1991, 1994; Walker, 1994).

Overall, existing research indicates high levels of client satisfaction with the mediation process and outcomes and consistently higher satisfaction than is achieved via litigation. In the Winnipeg pilot study (McKenzie, 2001), parties using the courts reported lower levels of control over the process and were less likely to describe outcomes as fair. Emery (1994) found that parents who participate in mediation are more likely to report that they achieved at least some of the goals that they had identified, whereas litigation parents more often described their outcomes in terms of a win/lose situation. Moreover, Kelly (1989) and Pearson (1991) reported that property agreements were perceived by mediation clients to be fairer, and men and women using mediation were more satisfied with their spousal support agreements than those who used the courts.



## 4.6 Compliance and Re-litigation

One of the key tests of the effectiveness of mediation is the extent to which the agreements reached stand the test of time. Longitudinal studies are the most helpful in this respect, although the evidence in relation to the durability of agreements is somewhat mixed. Pearson and Thoennes (1988) state that 79 per cent of clients in the Denver Custody Mediation Project who reached agreements in mediation reported that their spouse was complying with the terms of the agreement. This was higher than compliance with court-adjudicated outcomes (67%). Only 6 per cent of the mediation group experienced serious disagreements over the settlement in the months following mediation, whereas this applied to 33 per cent of the litigation group (Pearson and Thoennes, 1982, 1984a, b). There was also evidence of poorer compliance in the litigation group with child-support and access orders, although non-compliance was also problematic in the mediation group. Over longer periods, both groups reported frequent disagreements. Nevertheless, Pearson and Thoennes (1988) were of the view that successful mediation clients are better-equipped to work through their disagreements and do not necessarily turn to the courts to resolve them.

The Winnipeg study evidenced better compliance in the mediation group than in the non-mediation group, and this appeared to have a positive impact on parenting behaviour (McKenzie, 2001). A follow-up study of 47 mediation users some six months after completion indicated that levels of co-parental interaction had increased and that satisfaction with the arrangements remained high (McKenzie and Pedersen, 2003). The subsequent follow-up study of court records two years on indicated a lower rate of court filings in the co-mediation pilot than in the non-mediation group.

The recent study of in-court mediation in England (Trinder *et al.*, 2006a) found that agreement rates had been surprisingly high and that they were still intact six months later, irrespective of the mediation model. Thirty-nine per cent of parents reported that the same agreement was in place and a further 50 per cent reported that they had renegotiated their agreement, mostly to extend contact time with the non-resident parent. Only 12 per cent reported that their agreement had broken down and had not been replaced. Only 12 of the 65 parents with a renegotiated agreement had gone to court to achieve it. The researchers found that two factors were significant predictors of durability: not being eligible for legal aid/public funding, and having reached full rather than partial settlements in mediation. The 'easiest' cases were the most likely to remain intact. The very low number of cases returning to court was viewed as a positive outcome from a complex sample. These results show the value of longitudinal studies where follow-up questionnaires are administered to couples several months, or even years, after the end of mediation.

Compliance with mediated agreements in Ireland appears to be high. Compliance is higher among those who reach agreement, and in 77 per cent of cases involving agreement on parenting matters both parents were complying with the agreement at the time of the Ipsos MORI survey, as against 57 per cent in cases which failed to reach agreement through mediation. Some parents had made changes since having reached agreement in mediation and 62 per cent had done this by mutual consent, as against just 19 per cent of parents who did not achieve agreement in mediation. The durability of settlements in Ireland is consistent with data from other contexts, with an overall compliance rate of 81 per cent. Compliance with child contact and compliance with financial arrangements were the most problematic, although just 10 per cent of those whose agreements broke down experienced litigation.

Of course, not using the courts does not necessarily indicate that agreements are being complied with, and research in this area is not robust enough to enable us to be certain that all mediated agreements are durable. Changes in family relationships after separation and divorce are often complex and challenging. Whereas mediation appears to be effective in increasing parental co-

operation during the first year, the evidence from several studies demonstrates that there are no discernible differences between mediation and litigation groups after two years, although parents who used mediation were more likely to be able to accommodate changes in arrangements (Kelly, 1991b; Walker *et al.*, 1994). For all but a hard core of parents who are repeat players in court, the passage of time tends to reduce the problems associated with divorce, with the result that it is more difficult to discern differences between mediation and litigation groups.

Nevertheless, re-litigation tends to be higher in non-mediation samples than among mediation clients during the first two years. Dunlop (1978) reported that less than 25 per cent of mediation clients returned to court within a year, and 75 per cent were compliant with support provisions, as against 48% of the non-mediation clients. Mclsaac (1981) found a re-litigation rate of 10 per cent among mediation clients, as against 35 per cent of those who had used the courts to resolve their disputes.

A presumption of 50–50 parenting time has been a major goal of fathers' lobby groups in recent years, with continuing disappointment expressed by fathers at the unwillingness of the family justice system to place more emphasis on shared physical care. Men who litigate children's arrangements are generally the most dissatisfied with the outcomes they achieve (Emery, 1994; Walker *et al.*, 2004) and are likely to remain dissatisfied. Over 90 per cent of FMS clients with dependent children who reached agreement agreed to share parenting responsibilities (17.0% equal parenting plus 73.7% shared parenting), indicating the influence that successful mediation can have on parenting arrangements.

#### 4.7 Wider Benefits of Mediation

The wider benefits associated with mediation have been recognised by practitioners, providing additional evidence for those advocating mediation as a way of resolving family disputes. However, the advent of public funding for mediation in England and Wales appears to have created a shift in mediation practice over the past decade and some of the associated benefits have been called into question. Recent research (Walker, 2001a; Walker *et al.*, 2004) reports, for example, that an increased focus on 'settlement-seeking' requires mediators to conform to legal-centric outcome measures.

The Winnipeg pilot study found that mediation had reduced conflict around custody and time-sharing for 59 per cent of the participants (McKenzie, 2001). There was a consistent and statistically significant decline in conflict at follow-up, including a significant decline in conflicts between parents who had tended to put children 'in the middle'. At follow-up, mediation clients had a more positive post-separation relationship in terms of communication and problem-solving activities. The frequency of interaction around parenting issues had declined at follow-up, indicating that new support systems had been developed by parents, resulting in a diminution in reliance on the ex-spousal relationship over time. Co-parenting interactions had helpfully moved towards a focus on decision-making concerning the children. Significant improvements were evident in terms of child coping and the achievement of full agreement in mediation appeared to result in more positive outcomes. McKenzie (2001) concluded that comprehensive mediation can help to improve the quality of post-separation parenting and that, in cases where it reduces conflict, the process of separation should be less damaging to children.

As mediation has gradually become more integrated with legal processes, it has been increasingly regulated and its remit has narrowed. The study of mediation following information provision (Walker, 2001a) found that agreements were reached in just 37 per cent of cases, and that, while 44 per cent of people expressed some degree of satisfaction, 33 per cent described themselves as dissatisfied. The follow-up study shed some light on this high level of dissatisfaction (Walker *et al.*, 2004). Some two years after going to mediation, 19 per cent were dissatisfied; 16 per cent of those

who had reached agreement were dissatisfied, alongside 57 per cent of those who did not reach agreements. Interviews with the research respondents indicated several reasons for this:

- Unenforceable agreements – mediation agreements did not stand the test of time
- Making agreements under pressure – mediators were described as aggressive
- Intimidation – there was frustration with the way mediators had handled the process
- Lack of advice – there was complaints that mediators did not provide any advice when complex issues surfaced during mediation
- Uncooperative spouses – there was complaints that mediation failed because ex-partners were uncooperative and mediation was untenable
- Lack of solutions – mediation did not make progress in finding solutions to disputes

The findings from this study indicated that 60 per cent of mediation users did not feel they had been helped to improve communication; 60 per cent did not think mediation had helped parties to share decision-making; 58 per cent did not believe that mediation had helped to reduce conflict; 58 per cent said that mediation had not helped to make divorce less distressing and 60 per cent did not believe that mediation had avoided them going to court. While those who had reached agreement were significantly more likely to feel that they had benefited in other ways, 38 per cent of them nevertheless disagreed with the proposition that mediation had helped to improve communication, and 38 per cent said it had not reduced conflict. These findings were contrary to those of previous studies and signified a distinct shift in the ability of mediation to promote wider benefits.

One of the consequences of increased public funding for mediation in England and Wales is the imposition of national standards and competency assessments for mediators, regarded by some mediators as invasive (Hayes, 2002a). The emphasis appeared to shift from promoting the multiple benefits and more therapeutic goals associated with mediation to the reaching of agreements as the mark of success. Mediation had been viewed by users as a process which helped 'to sort out troubles' (Genn, 1999), but this image began to change as the mediation providers became more closely identified with the legal process. Davis (2001, p. 374) argued that mediation had become a kind of hybrid service – a settlement device within legal proceedings – in which mediators are required to devote themselves "to achieving success according to standards invented by lawyers". Mediators were increasingly influenced by the notion of settlement that "features so powerfully in the conduct of litigation" (*ibid.*).

If the ability 'to sort out troubles' has diminished in the quest for greater uniformity of practice, it can be argued that the bureaucratisation of mediation within the legal system is in danger of compromising the aspects of family mediation which most practitioners and clients have appeared to value. As lawyers adopt a conciliatory approach, non-lawyer mediators may lose their share of the mediation market (Walker and Hayes, 2006). In 1983, 75 per cent of USA family mediators were mental health practitioners, but by 1999 this had fallen to 17 per cent (Grebe, 1999). In the UK, the number of lawyer-mediators in the private sector has similarly increased. Mosten (2004) has pointed out that the trade-off between regulations, creativity, accountability and quality control has generated a vigorous dialogue with the USA mediation community. He goes on to note the coercive pressure on mediators in the USA to settle cases.

The Ipsos MORI survey of the FMS in 2008 showed that the wider benefits associated with mediation are still intact. Some 60 per cent of those who had reached agreement in mediation reported that mediation had helped them to focus on the future, avoid going to court, negotiate better, reduce conflict, improve communication, share decision-making and experience the process as less distressing. Moreover, 78 per cent of those who had reached agreement felt that mediation had provided long-term benefits. These wider outcomes are consistent with those found in other studies –

valued outcomes which are endangered if mediators are under pressure to focus their energies exclusively on settlement-seeking.

According to the FMS dataset, mediation contributed to the clarification of issues in just over half of all cases (56.0%) managed by the service, although it should be emphasised that this figure is based on mediators' responses, which may be somewhat biased<sup>3</sup>. In more than one-third (36.3%) of cases some consensus and/or some joint problem-solving was apparently achieved, whilst in one quarter (22.0%) of cases, mediation helped the reluctant party to accept the fact of separation. Recognition of new financial realities was achieved in 21.0 per cent of cases, whilst one-fifth of couples learned to improve their communication. In 17.7 per cent of cases, mediators believed that one party was "empowered" to challenge the other, whilst 16.6 per cent of couples achieved a greater understanding of one another. Mediation also facilitated a better understanding of the parenting relationship (16.0% of cases), while improved parenting arrangements were put in place in 13.7 per cent of cases. Mediation led to acknowledgement of both partners' contribution to the relationship, whilst facilitating the drafting of new ground rules (Table 4.11).

**Table 4.11: Positive Outcomes, Mediator Responses**

	% of Agreement	% of No Agreement	% of Total
Clarification of issues	61.4	50.2	56.0
Some consensus/some joint problem solving	50.9	21.0	36.3
Reluctant party accepted the fact of separation	25.3	18.5	22.0
Recognition of financial reality	27.3	14.3	21.0
Improved communication	30.8	8.5	20.0
Empowerment of one party to challenge the other	18.4	16.9	17.7
Improved understanding of each other	25.8	7.0	16.6
Power balancing	19.3	13.5	16.5
Better understanding of necessary parenting relationship, post separation	21.5	10.1	16.0
Improved parenting arrangements put in place	19.5	7.7	13.7
Affirmation/acknowledgement of partner's contribution to marriage/relationship	18.8	4.8	11.9
Ground rules for couple drawn up	7.6	7.8	7.7
Re-establishment of trust	11.4	1.8	6.7
Temporary parenting arrangements agreed	3.6	9.3	6.4
Child protection issues dealt with in accordance with FMS policy procedure	0.4	0.4	0.4
Agreement reached without Note of Mediation Agreement being prepared	2.0	3.1	2.5
Agreement reached by parties outside of mediation	1.6	2.1	1.9
Agreement of both parties not to continue with mediation	2.1	12.9	7.4
<b>Share of Agreement / non Agreement</b>	<b>51.3</b>	<b>48.7</b>	<b>100.0</b>

*% of Agreement includes "Return to Marriage/Relationship" (3.8%) and "Agreement Reached" (47.5%)*

*% of No Agreement includes "Did not Proceed after Initial Intake" (11.8%) and "No Agreement" (36.9%)*

<sup>3</sup>

We recommend collecting this data from clients rather than mediators in the future.

## 5 Randomised Control Trials and Longitudinal Studies

Randomised control trials (RCTs) constitute a sort of “gold standard” in applied social science research, as they facilitate identification of the impact of interventions with a greater degree of confidence than would otherwise be possible. While RCTs are normal practice in health care research, they are relatively rare in social research. To be able to answer a number of key questions about the effectiveness of family mediation, RCT methods are necessary in order to identify impacts over time.

### 5.1 The Virginia Study

Research conducted by Robert Emery in the USA adopted this research design, using a mediation group and control group (traditional litigation) which were followed over twelve years. The results for these two groups provide a wealth of information about the relative effectiveness of family mediation, patterns of interpersonal influence and relational dynamics between divorced parents.

Emery and his colleagues began their study of divorce mediation in the 1980s, with a view to examining whether mediation produced more desirable outcomes than litigation (Emery and Wyer 1987; Emery *et al.*, 1991). The research involved 71 families who had requested a child custody hearing at a court in Central Virginia between 1983 and 1986. Of these, 35 were randomly assigned to divorce mediation and 36 to the traditional litigation route through the court. The divorced parents in the sample represent a high-conflict group – approximately 10 per cent of divorced parents went to court to resolve a child custody dispute at that time.

Research assessments took place about five weeks after dispute resolution (time 1), and again some eighteen months later (time 2). Long-term follow-up assessments were undertaken some twelve years after the initial custody decision (time 3). The original sample consisted of 63 mothers and 59 fathers, whilst the twelve-year follow-up included 50 mothers and 43 fathers. The families were mainly from low socio-economic groups, and the majority of parents were in employment. The number of children in each family ranged from one to seven and most were relatively young. There were no significant differences between the mediation and litigation groups in respect of their background characteristics. At time 3 assessment, around half of the participants were either remarried or cohabiting.

The mediation service was developed specifically for the research project. Mediation was conducted on court premises by four male/female pairs of co-mediators and was limited to a maximum of six two-hour sessions (with an average of 2.4 sessions; Emery, 1994). The mediation process was relatively short and the mediation style was informed by therapeutic considerations, with elements of both problem-solving and therapeutic mediation (Emery *et al.*, 2005). A number of measures were used in the research to provide objective measures of change. The key findings at time 1 and time 2 were as follows (Emery *et al.*, 1994; Kitzmann and Emery, 1994; Emery *et al.*, 2001):

1. Most of the mediation group reached agreement in mediation (only 11% proceeded to a court hearing, as against 72% of parents in the litigation group).
2. Mediated agreements were more likely to specify joint legal custody, although mothers were the resident parent in all cases.
3. Fathers reported much higher satisfaction with mediation than with litigation.
4. Mothers were more satisfied than fathers with both mediation and litigation outcomes.
5. The level of litigation in the two years following the settlements was lower among the mediation group.

6. Immediately after dispute resolution and at time 2, the quality of family relationships and the psychological adjustment of parents were the same in both groups, except that fathers in the mediation group reported less co-parenting conflict at time 2.
7. Decreases in parental conflict between time 1 and time 2 predicted better psychological adjustment for children, but no differences were found between the mediation and litigation groups at time 2.

All these findings are consistent with those of other studies which compare mediation with litigation (Benjamin and Irving, 1995; Kelly, 1996), although the gender differences in the Virginia study are more marked. Emery (1994) noted that the findings could be explained by the disadvantages experienced by men in litigation and did not point to any disadvantages experienced by women in mediation. The consistency in the findings adds validity to other studies reported in this international review which were not able to conduct RCTs.

The Virginia study is unique in tracking a sample of families over such an extended period of time. Although other studies (Kelly, 1996, 2004; Walker *et al.*, 1994) conclude that the passage of time tends to erode the differences between mediated and non-mediated outcomes, Emery *et al.* sought to determine whether the benefits associated with the mediation process might be said to accumulate over the years as a result of more co-operative parenting and increased child contact. The longitudinal design allowed them to examine arrangements for children, parenting behaviours, parental satisfaction with dispute resolution, the quality of parenting, and children's psychological adjustment. A range of measures were used, including the Non-residential Parent-Child Involvement (NPCI) scale; the Acrimony scale (Shaw and Emery, 1987); the Non-acceptance of Marital Termination (AMT) scale; the Beck Depression Inventory (BDI); and the Structured Interview (SI).

The key findings at time 3 are extremely important because they indicate long-term positive benefits from mediation. Most of the children in both groups continued to live with their mother (although 22% lived with their father). Contact with the non-resident parent (usually fathers) was higher in the mediation group than in the litigation group, where it was close to the national average (Seltzer, 1991). Only 11 per cent of the mediation group had had no contact during the previous year (as against 35% of the litigation group) and 30 per cent of non-resident parents were still in weekly contact with their children (as against just 9% of the litigation group). Non-resident parents in the mediation group saw their children and spoke to them significantly more often than those in the litigation group (Emery *et al.*, 2001). Moreover, contact between the parents was also higher, and non-resident parents in the mediation group were notably more involved in their children's upbringing and reported lower levels of co-parenting conflict.

When adjustments are made to limit sample attrition bias, there is clear evidence from this study that non-resident parents in the mediation group maintain higher levels of contact and involvement with their children than non-resident parents in the litigation group. This finding is even reflected in the accounts of resident parents, who typically underestimate the involvement of the non-resident parent (Braver *et al.*, 1991; Simpson *et al.*, 1995). There is evidence that the mediation parents were more flexible about living arrangements for their children; changes reflecting children's developmental needs and wishes also tended to be managed more informally by parents.

The twelve-year follow-up design provides significant insights into the relationship between co-parenting conflict, acceptance of divorce and adjustment to a new lifestyle. For fathers, there is a strong association between conflict and their ex-partner's acceptance of the divorce. Fathers in the study were generally less accepting of the end of the marriage, perhaps because of the perceived losses it engenders (Simpson *et al.*, 1995). Nevertheless, mediation parents reported decreased conflict at time 2 compared to litigation parents (Sbarra and Emery, 2008). Importantly, parents who

reported the greatest short-term decreases in conflict also reported the greatest long-term decreases and vice versa. Litigation parents who reported increases in conflict at time 2 evidenced the greatest increases in long-term conflict at time 3. Sbarra and Emery (2008) have concluded that mediation helps to reduce co-parenting conflict and also reduces the likelihood that parents will enter adversarial legal proceedings that could further inflame conflict.

The researchers note the selective attrition of their sample, which limits their ability to accurately measure longitudinal effects. Moreover, during the decade between time 2 and time 3, attitudes to post-divorce parenting shifted and the role of fathers has been acknowledged in more equitable outcomes in settlement decisions (Beck and Sales, 2001; Walker *et al.*, 2004). This suggests that were this study to be repeated now, the differences between the two groups may not be quite so marked. With a small sample size and participants confined to a specific location in Virginia, it would obviously be hazardous to generalise the results of this study, and to conclude that family mediation will always produce similar benefits in all contexts.

Mediation obviously does not account for all of the effects and influences observed over a twelve-year period such as that adopted in the aforementioned study. Careful research has begun to tease out the implications of an intervention which focuses not only on helping couples to reach agreement but also on addressing co-parenting issues, adjusting to the end of the marital/cohabiting relationship and reducing conflict. Mediation is not a panacea, as researchers in the field have pointed out, but if it is successful it appears to have significant advantages. The Virginia study offers support for a model of mediation which is not restricted to a single session and avoids making agreements under pressure.

One of the most important insights of the Virginia study is that mediation can reduce conflict within the co-parenting relationship, which in turn can facilitate parent-child contact and contribute to the well-being of children in a complex chain of mediated effects. A large body of research indicates unequivocally that conflict between parents is associated with an increased risk of psychological problems for children (Emery, 1982; Amato and Keith, 1991; Pryor and Rodgers, 2001). The Virginia study shows that conflict declined in the mediation group, and an average of five hours of mediation seems to have resulted in increased and sustained contact between non-resident parents and their children. As Emery *et al.* point out:

*Very few psychological interventions have been shown to produce such positive outcomes so many years later, even with the investment of large amounts of time, not a mere five hours. (2005, p. 31)*

However, the study did not find any group differences in the mental health of parents or children at time 3, despite other very positive outcomes. The researchers suggest that mediation might make an impact on mental health outcomes for parents and for children if it is packaged with other effective interventions that specifically target psychological outcomes such as parenting training or children's groups, particularly in the presence of high intra-familial conflict. They also used their data in an attempt to isolate the ingredients of family mediation which produced positive outcomes:

- parental co-operation
- parental education about emotions – their children's and their own
- developing business-like boundaries around an ongoing co-parenting relationship
- avoid becoming adversaries

## 5.2 Other Evidence

Although it does not use an RCT design, another interesting study was carried out in two juvenile and domestic relations courts in the USA, involving 76 couples/individuals who applied to the court to resolve child-related divorce disputes (Camplair and Stolberg, 1990). At a court intake session, parties were asked to complete a number of forms which included a range of measures including co-parenting questionnaires; the Family Awareness scale; the Dyadic Adjustment scale; the Family Adaptation and Cohesion scales; the O'Leary-Porter scale of Overt Marital Hostility. The parties were assigned to either mediation or litigation, and 36 couples participated in mediation, attending between one and five sessions. Twenty-three couples were assigned to the litigation group, as were a further 17 couples who rejected the offer of mediation. The time since divorce or separation ranged from one month to five years, with a mean of 15 months. Most parents classified their family's current functioning at the time of intake as moderate or poor. Three research areas were identified: the impact of mediation on psychological functioning, the factors which are associated with successful mediation, and the characteristics which distinguish mediating and litigating parents.

Mothers in the mediation group reported a significant reduction in hostility and dyadic adjustment, and spent more time with their children following mediation. Fathers did not report any adjustments as a result of mediation. Thirty-eight per cent of the mediation group resolved all of the issues in dispute and a further 31 per cent resolved at least one issue. Twenty-two per cent of the sample dropped out of mediation and eleven couples did not resolve any disputes.

It appeared that the content of the dispute influenced the search for settlements: child-custody disputes were usually resolved (83%), whilst only 62 per cent of child support disputes were resolved and 52 per cent of those relating to access/contact. If both parents agreed that contact was the most troubling issue, the chances of resolving this were higher than when only one parent described it in this way. It proved difficult to resolve disputes about contact if only one parent considered it to be the most troubling. By contrast, child support and custody issues were resolved in mediation most often when only one parent described them as the most troubling. Custody was more frequently cited as the primary dispute by couples in the mediation group, and was less likely to be resolved if both parents rated it as the most troubling issue. These subtle variations are important.

While settlement rates were consistent with those in other studies, the research showed that mediation relating to family functioning also yielded other benefits. Mothers reported greater improvements in family functioning and reductions in hostility, whereas fathers did not. This gender difference supports the view expressed by Emery and colleagues that fathers tend to be more dissatisfied both with mediation and with litigation, because for them divorce signifies substantive changes in living arrangements and losses relating to parenting activities. As a consequence, the salience of a particular issue may vary between fathers and mothers. Mothers were found to have resolved more of their primary disputes in mediation. There appear to be a number of issues, such as custody disputes, on which compromise is less likely and custody is an issue which fathers often cling to because of fears of losing their children. Economic issues seem to be resolved more easily if one party is strongly motivated to reach an agreement and the other party is more concerned about a different kind of issue.

These findings suggest that the interrelationship between children's issues and financial matters are complex, and resolving economic issues is difficult if it is seen as centrally important by both parties. The meaning attributed to the dispute by each parent appears to have a subtle influence on whether it can be resolved in mediation.



## 6 Research on Children, Domestic Violence and High-conflict Cases

Ideally, family mediation cultivates problem-solving capacities and in most respects is superior to adversarial sparring (Herrman *et al.*, 2006). Throughout this study, we have examined key data on procedural factors and outcomes, particularly from the point of view of the disputants who use mediation. The available literature demonstrates a sustained interest in understanding the components of effective mediation and a lack of consensus about the most appropriate models of mediation, the parameters of acceptability and the skills and knowledge needed by mediators in a variety of settings. Herrman *et al.* (2006) have attempted to build a model which defines and distinguishes between antecedent and process components of mediation, operationally defines indicators of effectiveness, and provides a framework for researchers and practitioners interested in studying short- and long-term outcomes and the links between them.

Looking at research across a range of mediation activities (not simply in respect of family law disputes), it is possible to conclude that settlements are more likely if disputes are less intense, if the disputants are motivated to settle, if the mediator is more experienced and adopts an active role during mediation and if disputants participate in a co-operative manner (Wissler, 2006). Nevertheless, it is evident from studies of mediation practice that it is “difficult to discern which particular characteristic plays a critical role in the mediation process or outcome” (Wissler, 2006, p. 140). It is important not only to examine what mediators do in mediation but also the timing, frequency and skilfulness of their interventions (Kressel *et al.*, 1994; Pruitt, 1995).

Robinson (2008) has argued that creative options are needed for dealing with an ever-greater variety of family conflicts and for working in partnership with colleagues from different professional backgrounds. He believes that the most effective mediation services in the future will be those that offer a range of flexible models – in addition to other alternative dispute resolution services – from collaborative law to contact assessments. His vision includes a process of assessment to determine the most appropriate ‘bespoke package’ for each case – fitting the process to the parties and drawing on a wide variety of mediation models and techniques. In this sense, family mediation would be engaged in extending its boundaries without compromising on its underlying values. A number of specific issues need to be considered as mediation practice moves forward, including the role of children, work with high conflict and domestic violence and the place of mediation within new initiatives.

### 6.1 Children in Mediation

Family mediation derived its impetus from concerns about children caught between their warring parents. Whether and when to include children in mediation has been debated for over thirty years without reaching any consensus. A number of authors provided compelling arguments in the early days of family mediation for including children directly in the mediation process (Saposnek, 1983, 1991; Drapkin and Bienenfeld, 1990; Wallerstein, 1985; Garwood, 1990). Family Mediation Scotland has been particularly keen to involve children, arguing that children have a right to know about and to participate in decisions which will have a dramatic impact on their lives (Garwood, 1990). Research suggests that the participation of children in decision-making about life issues that affect them brings substantial benefits, such as improved understanding, improved relationships with parents, enhanced feelings of competence and self-determination and better outcomes (Taylor and Adelman, 1986).

Nevertheless, the involvement of children in family mediation has been patchy and variable. Some mediators bring children into the final session to inform them of agreements reached, others interview children in order to solicit their views, wishes and feelings and a third group bring children

into mediation at different times, whenever an important issue emerges. Very few, however, routinely invite children to the mediation process as full participants. Some court-connected mediation services in England require children over a certain age to attend a conciliation appointment at the court, only to leave them sitting in a waiting room, calling them in only if negotiations between their parents reach an impasse (Walker *et al.*, 1990). None of the early community-based mediation services in England and Wales routinely invite children.

Not surprisingly, research on involving children in mediation has been sparse. Pearson *et al.* (1984) report that children of just 25 per cent of mediating parents meet a mediator, despite the fact that court-connected mediation services have a policy to involve children. Early research in Scotland found that children had been interviewed in 19 per cent of completed cases (Garwood, 1990). In England and Wales, children were interviewed in 13 per cent of cases in community-based services and in 15 per cent of cases using court-connected schemes (Ogus *et al.*, 1989). Research which obtains the views of children about mediation is even more limited. Saposnek (1991) concludes that the decision to include children in or exclude them from mediation appears to be based not on the needs (or rights) of children, but on arbitrary factors and the discretion of mediators. Mediators who are comfortable with, skilled in and adept at interviewing children are more likely to include them in mediation than colleagues who are uncomfortable with this (Walker *et al.*, 1990).

The increasing emphasis on the implementation of the UN Convention on the Rights of the Child has rekindled interest in including the voices of children in family law processes. While most practitioners appreciate the importance of defending children's interests and giving them a voice, there are very mixed views about when and how to do so. Strategies to involve children and young people are still being developed and some researchers believe that a culture shift is needed if their voices are to be routinely heard (Smart, 2002). Excluding children can lead to confusion, alienation, anger and distrust amongst adults, it is argued, whilst participation can empower children and enhance their well-being and sense of self-worth.

Research relating to information provision in England and Wales shows that parents rarely talk to their children about the separation and divorce process, preferring to "protect" them from hurt and disruption (Stark and Rowlinson, 2001). An evaluation of a new Family Advice and Information Service (FAInS) indicates that the views of children are rarely taken into account by lawyers, mediators or the courts (Walker *et al.*, 2007). Interviews with 18 children revealed the frustration experienced by children and young people, who felt excluded from processes which had the potential to fundamentally change their everyday lives (Richards *et al.*, 2007).

In a number of European legal systems, children have a legal right to express their views about arrangements for their care in court, but this right is rarely exercised, primarily because family law practitioners are ambivalent about it (Resetar and Emery, 2008). Many adults, it seems, confuse participation with autonomous decision-making and question children's competence to be involved in any family law processes (Murch *et al.*, 1999).

New developments in Australia and New Zealand provide an opportunity for mediators to revisit this thorny issue. A study of 28 Australian families, including 47 children and young people (Cashmore and Parkinson, 2008), compared one group of families who had resolved disputes through counselling and mediation delivered either by the Family Court Mediation Service or community-based mediation services, with another group whose members had experienced a more intensive level of engagement with the family law system, either going to court or having an independent external report prepared. Some 25 children had experienced contested proceedings and 22 had not. Three quarters of the children were living with their mother and 20 per cent with their father. Two boys in one family lived alternate weeks with each parent. All of the children were interviewed about their participation in

decision-making about residence and contact issues (time 1) and 35 were re-interviewed after 18-30 months (time 2). Thirty-two parents were interviewed at time 1 and 25 were re-interviewed at time 2. A further 58 parents were included in the study who had not given permission for their children to be interviewed.

The findings reveal that 60 per cent of children had some say in the arrangements. Just over half (52%) indicated that they had had little or no say and would have liked more: 79 per cent of children under 12 years of age wanted more say, as against 35 per cent of those over 12 (who had usually had more say than the younger children). Parents in 14 families indicated that their children had been instrumental in seeking changes to arrangements for residence or contact in the years following separation. Ninety-one per cent of children wanted to be involved, and children in the contested matters group were particularly vociferous on this issue.

Differences emerged between the two groups of children. Those whose parents settled matters via mediation preferred decisions to be taken in collaboration with their parents, whereas those in the contested matters group were much more likely to say that their views should predominate and that they should be able to make choices about future arrangements (Taylor, 2006). The researchers conclude that children and young people can be involved in a variety of different ways in the process of resolving parenting arrangements and that children do not feel the need to be “protected” from this (Parkinson and Cashmore, 2007; Parkinson *et al.*, 2007; Cashmore and Parkinson, 2008).

Another recent study in Australia compares outcomes from child-focused and child-inclusive divorce mediation (McIntosh *et al.*, 2008a). Outcomes were monitored over one year for two groups of separated parents who attended different forms of a brief therapeutic mediation for entrenched parenting disputes. Each intervention targeted the psychological resolution of parental conflict, enhanced parental reflective function and associated reductions in stress for their children. The child-focused mediation (CF) model actively supported parents to consider the needs of their children, but the children themselves were not directly involved. The child-inclusive (CI) model involved separate consultation by a specialist with the children and subsequent consideration of their concerns in conversations between the consultant and the parents. Repeat measures were used at baseline, after three months, and one year after the intervention to explore changes in conflict management, subjective distress and relationship quality for all family members.

Child-inclusive interventions evolved as a strategic response to the UN Convention and both this and child-focused interventions were developed using constructs from attachment theory. One of the key principles is that mediators are non-neutral when advocating the interests of children. In the child-inclusive model, as deployed by McIntosh *et al.* (2008a), child consultants worked alongside qualified mediators. The study was based on a group of parents who had presented with parenting-related matters at Relationship Australia mediation services in Adelaide, Melbourne and Canberra. A total of 181 families participated in the study (111 child-focused and 70 child-inclusive cases). Consent was obtained for interviews with 174 children (112 in the CI sample). There were no significant differences in demographic characteristics between the two groups (McIntosh and Long, 2006), and the research methods employed were rigorous. A number of scales were used with the children and data were obtained in a variety of ways from children, parents and mediators.

After a year, the child-inclusive group showed a greater reduction in acrimony between fathers and their former spouse and greater improvement in their parental alliance when compared with the child-focused group. Children in this group were more likely to report the emotional availability of their fathers to have improved, whilst mothers preserved or improved their relationships. The children and parents from this group showed greater contentment with care and contact arrangements and less inclination to change them, and this evaluation was reflected in greater

stability in care and contact patterns. The children showed lower anxiety, fewer fears and fewer depressive symptoms, suggesting that children's participation in mediation is a predictor of overall progress. Qualitative data supported these findings, and feedback from children via the child consultants was seen by the majority of parents as giving great assistance to the resolution of disputes. The children themselves were positive about the process: 86 per cent found their interview with the child consultant helpful.

A study of 17 families in New Zealand, recruited from the Family Court, also found a high level of satisfaction on the part of children and parents with child-inclusive mediation (Goldson, 2006). The majority of parents had experienced difficulties in establishing a constructive co-parenting relationship and the level of shared decision-making was very low when the parents entered the programme. The mediation model involved working with children, who were included with their parents in the mediation process. This small qualitative study mirrors the Australian findings cited previously and underlines the value of children's views, as transmitted by trained mediators. Parents can realise the effects of their conflicts and the need to have agreements in place. In this study, all parents had reached agreement by the end of mediation, with the active participation of children.

The overwhelming majority of couples who seek mediation in Ireland have children, and most of these children (92.7%) were born within the current relationship. One fifth (22.7%) of couples have just one child, 34.4 per cent have two children and 35.6 per cent have three or more (Table 6.1). In addition to caring for dependent children, 5.8 per cent of households comprise a son or daughter who is of adult age but continues to require support.

**Table 6.1: Dependent Children from Current and Previous Relationships**

Number of Children in Relationship	Children from current Relationship (%)	Children from previous Relationships			
		None (%)	1 Child (%)	2 Children (%)	3 or more Children (%)
none	7.3	6.5	0.4	0.2	0.1
1 child	22.7	18.2	2.9	1.1	0.5
2 children	34.4	31.8	1.9	0.5	0.2
3 children	22.5	21.2	1.1	0.2	0.0
4 or more children	13.1	12.6	0.3	0.1	0.0
Total	100.0	90.3	6.7	2.0	1.0

In total, therefore, the FMS dataset relates to 7,585 dependent children, and we have data on 7,495 of these (98.8%), roughly equally divided between male (50.5%) and female children (49.5%). The modal age group is 6-10 years (28.7%), followed by 11-14 (21.1%) and 15-18 (17.3%). With regard to their living arrangements, the majority (60.7%) of children live mainly with their mother whilst 27.6 per cent continue to live with both parents (Table 6.2).

**Table 6.2: Children’s Living Situation**

Current arrangements	(%)
Child lives with both parents in the same home	27.6
Child spends equal time with each parent	5.0
Child lives mainly with mother	60.7
Child lives mainly with father	4.9
Other	1.8
Total	100.0

Almost half (44.7%) of children were informed by both parents about the separation, 22.5 per cent were told by their mother, 11.8 per cent by their father; 17.8 per cent had not been told about the separation. The majority of children can see their maternal grandparents (78.7%) and paternal grandparents (69.5%), and just 8.6 per cent of those who have paternal grandparents do not get to see them (4.9% for maternal grandparents). More than half of the mothers (57.5%) and fathers (55.8%) believe their child to be coping well with the separation, although more than one fifth of both mothers and fathers feel that their child is having difficulties coping with this (10.0% of children are receiving professional help in relation to this).

The Family Mediation Service (FMS) is aware of its obligation towards children, and encourages parents to consider their children’s needs during mediation. Nevertheless, the voices of children are rarely directly heard during the mediation process in Ireland (O’Kelly, 2011), with each mediator having, on average, just one direct contact with children per year (Foley, 2006). This is confirmed by the FMS dataset, which confirms that only 1.1 per cent of families participate in a family session at the end of the mediation process. This session is offered to couples, with a view to providing a framework for new family relationships following mediation (Kearney, 2011), but the take-up rate appears to be very low<sup>4</sup>. Direct consultations between mediators and children occurred in less than one per cent of cases. On the basis of the available research, greater involvement of children would be a valuable goal, and the data collection process should arguably be extended to children, with a view to determining the impact of mediation on child well-being.

## 6.2 Domestic Violence

Over the last thirty years, two other issues have consistently emerged as problematic for family mediation: domestic violence and intense conflicts. Consistent concerns have been expressed by advocates of victims of domestic abuse about potential power imbalances in mediation and their potential effects (Hart, 1990; Grillo, 1991; Gagnon, 1992). There is evidence from many jurisdictions that abuse is an issue in many cases of separation, although it is not clear to what extent these cases are suitable for mediation. Many mediation services screen out domestic violence cases and legislation exempting women who have been abused from mandatory mediation has been enacted in many states in the US (National Centre on Women and Family Law, 1993).

Some mediators, however, have been reluctant to abandon mediation in domestic violence cases, arguing that litigation may not achieve better or safer outcomes for women. They have argued that careful screening, individual sessions and the involvement of partisan lawyers in mediation can

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<sup>4</sup> The reasons for this are not immediately clear, and this issue may merit further analysis.

mitigate concerns about safety and intimidation (Erickson and McKnight, 1990). Some mediation pilot studies have found that women themselves felt that they should not be excluded from the option of mediation (DiPietro, 1992). The need for mediators to understand the impact of domestic violence and to adopt procedures to ensure that domestic violence does not go undetected has been highlighted.

Services that offer the chance for domestic violence victims to opt out of mediation report that few people withdrew on these grounds. It is possible that mediation can mitigate the effects of power imbalances by giving support to the weaker party and monitoring for abusive behaviour (Ellis and Stuckless, 1996). At the same time, mediation can be dangerous in cases where mediators have not screened for domestic violence and/or lack the knowledge and skills to deal with this issue (Hester *et al.*, 1997). Family law practitioners increasingly recognise that different types of domestic violence require different interventions (Salem and Dunford-Jackson, 2008). Kelly and Johnson have defined a range of types in the search for a better understanding of domestic violence, considering the implications for interventions. They argue that it is imperative that screening instruments be used to identify intensity, frequency, timing and severity of conflict as well as the perpetrator(s) of violence, patterns of control, emotional abuse, intimidation, the context of the violence, the extent of injuries, fear and criminal investigations (Kelly and Johnson, 2008).

Assessing risk in this comprehensive way not only enables mediators to assess whether mediation is appropriate, but also provides preliminary guidance about the most appropriate parenting arrangements (Jaffe *et al.*, 2008). Ellis (2008) has suggested that family courts can play an important role in preventing and reducing domestic violence by increasing access to non-adversarial processes and providing mandatory risk assessment and mandatory education and training.

There is a considerable amount of international research on the role of domestic violence within marital relationships. McKeown *et al.* (2002) report that just over half (52.7%) of couples who present for relationship counselling have experienced violence on at least one occasion, although this is a major problem for only a small number of these couples. Where it occurred, domestic violence was mutual in nearly half of all cases (46%), female-perpetrated in three out of ten cases (30.0%) and male-perpetrated in one quarter of cases (24.0%). However, these findings do not tell us anything about the severity of the violence involved, the context, reason or initiation, and the extent of injuries that resulted.

Questionnaire data collected from FMS clients indicate that male abuse and violence is an important cause of separation/divorce for women in 11.4 per cent of cases. By contrast, just 4.3 per cent of men perceive abuse/violence by their partner as a reason for separation or divorce. Only 3.3 per cent of men and 1.8 per cent of women acknowledge their own abuse/violence as a major source of relationship difficulties. It is interesting to note that McKeown *at al.* found that couples presenting for marriage counselling were largely in agreement about whether violence had occurred within the relationship. However, when asked about the importance of this issue to relationship breakdown, the majority of FMS clients are not in agreement. In three quarters of cases (74.2%) where women identify male abuse/violence as a reason for separation/divorce, their partners do not agree, and a similar proportion (75.1%) of women do not view their own abuse or violence as a key factor in the failure of the relationship.

The FMS has a policy of providing clients with an opportunity to inform them about violence within the relationship at the onset of the mediation process, but mediators are aware that many clients do not make a full disclosure at this point in time. In mediation services more generally, if domestic abuse has occurred, the mediation process is often terminated (Lloyd 2011).

### 6.3 High-Conflict Families

The distinction between domestic violence and high-conflict families is fuzzy. Parkinson (2000) points out that one of the paradoxes of family mediation is that couples who are often in conflict are expected to sit down together and take part in rational, co-operative discussions. Expecting that each party will be reasonable at a time when they may be consumed with anger and disappointment is a tall order. Early in the development of family mediation, there was an implicit assumption that high-conflict cases would not be suitable for mediation. Increasingly, however, there has been a tendency to refer precisely these difficult cases to mediation, as the relatively 'easy' cases can often be settled without the help of a neutral third party.

Mediation with high-conflict couples needs more active and empowering interventions by the mediator and demands a careful structuring of mediation sessions (Parkinson, 2000). Two early studies of high-conflict parents contesting custody and care of their children in family courts in San Francisco provide some data about how mediators can work with these cases (Johnston, 1992; Johnston and Campbell, 1988, 1993). The 140 couples in the study had been separated for between 2 and 4 years, and the analysis was based on a battery of measures and observation in interaction with their children. Subsequently, all family members (including children) participated in counselling sessions, for between 20 and 25 hours.

The study found that 80 per cent of these high-conflict couples had a history of physical aggression, with both parents accused of being perpetrators. The researchers were able to identify five types of violence and patterns of interaction (Johnston, 1993). Parent-child relationships were found to be significantly impaired. Johnston argued that mediators need to acknowledge (not reject) the challenges posed by these families and to find mechanisms to address them. One of the implications for mediation practice is the need for other complementary interventions, such as counselling and/or parent education to form part of a package of intervention and support to resolve seemingly intractable disputes.

## 7 The Future of Family Mediation

### 7.1 Conclusions

This study concentrates on the short-term impacts of the Family Mediation Service. It does not attempt to evaluate the operational aspects of the FMS or its regulatory environment, nor can the study provide a statistical analysis of the role of family mediation within the wider context of marital and relationship breakdown. Nevertheless, the results are very interesting, shedding light on the characteristics and expectations of couples who enter mediation in an attempt to resolve their conflicts and documenting the achievements of the FMS over the past decade.

The results of the analysis draw strength from the large number of observations: 4,210 matched records containing information on participants at the beginning and end of the mediation process. In addition, the study situates these results in a wider context by reviewing the international literature on family mediation. This shows the similarities and differences that exist between the work of the FMS and similar organisations in other countries and highlights areas where further research is required in order to obtain a better understanding of the strengths and limitations of family mediation. In this chapter, we summarise the key findings of the study and provide recommendations regarding data collection in the future.

Family mediation has developed considerably over the past thirty years. Whilst it is clear that mediation is not a substitute for counselling, therapy or the legal system, it is now widely accepted as a viable form of dispute resolution with many beneficial effects. The Family Mediation Service in the Republic of Ireland is in line with international practices, methods and philosophies and the results that it has achieved over the past decade are similar to those reported for similar services in other countries. As is the case in other jurisdictions, mediation is chosen by a minority of separating/divorcing couples each year in Ireland. Between 2003 and 2010, about 800 couples participated in mediation each year, which accounts for roughly 12 per cent of the total. Without additional data, it is not possible to say whether this share is likely to increase or decrease in the future or to assess whether mediation is of broader potential benefit.

Clients who attend mediation in Ireland are generally between 30 and 50 years of age and of Irish nationality. Our analysis suggests that the employment situation of Irish mediation clients is broadly in line with that observed in a comparable subset of married couples. Moreover, careful analysis of client income suggests that the FMS does not attract higher-income couples, by contrast with findings reported in the international literature on the socio-economic characteristics of couples who voluntarily choose mediation in other countries. The FMS dataset confirms that mediation can be effective in helping parties to reach agreement and to develop a more co-operative approach to parenting. Just under half of separating/divorcing couples (47.5%) reach agreement, with another 3.8 per cent returning to their marriage or relationship.

From its inception, the FMS has engaged in all-issues mediation. Mediation agreements are generally multi-faceted, involving children, the family home, financial matters, assets and liabilities, pensions and succession. Overall, in more than half of all cases (56.0%), mediation contributed significantly to the clarification of issues, according to mediators' assessments. Over three-quarters (77.1%) of participants who reached agreement intend to use this as the basis for a legal separation or rule of court.

The available data do not allow us to draw any broader conclusions regarding the effectiveness of the mediation process. Outcomes are measured solely in terms of agreement by the end of the mediation process and little information is available on the long-term durability of these agreements. Above all,



the current system of data collection does not yield any information on the short-term or long-term impacts of mediation on the well-being of participants and their children.

The international literature on mediation has not provided any definitive responses to a number of key questions: Should mediation be mandatory? Should children be involved? Should cases in which there has been domestic violence be automatically excluded from mediation? When is it appropriate to mediate in high-conflict cases? Furthermore, it is not clear whether family mediation should be integrated with legal practices such as multi-disciplinary firms involving lawyers, counsellors and mediators. Are “purist” models of mediation appropriate when tackling the complex scenarios which increasingly appear in family courts? Is it necessary to develop more flexible and hybrid models to allow for a greater personalisation of services? None of these questions can be answered using the currently-available data. In order to answer these and related questions, we believe that it is necessary to undertake a comparative assessment of the short- and long-term effects of choosing different routes to separation and divorce. We will discuss this challenge in greater detail below.

Another important question relates to mediation models. Once a couple agrees to participate in mediation, mediators apply what they judge to be the most appropriate model of mediation. But little is known about which models of mediation might be most effective in different situations and which offer the most positive long-term outcome for the parties involved and for their children. FMS mediators are trained in a variety of mediation models and apply these accordingly, but no information is available for systematic evaluation. We believe that this gap should be bridged in the future in order to obtain detailed information on alternative mediation approaches and in order to make a potentially important contribution to the international literature.

In conclusion, regardless of the impressive size of the FMS dataset, comprising dyadic data on 4,210 couples who participated in family mediation over an eight-year period, it is now evident that this data source has significant limitations and cannot provide answers to many fundamental questions regarding the role of mediation in family conflict resolution in Ireland. This is mainly because the available data have little to say about the sustainability of mediation outcomes, the long-term effects of mediation on participants’ lives, the effect of separation and mediation on their children and, most importantly, the differences that exist between those who enter mediation, those who pursue an exclusively legal route, and those who separate or divorce without engaging in either process.

We believe that the development of an improved knowledge base on family mediation requires a wider family research agenda with three major axes: (i) improved outcome measures; (ii) collection of data on the nature of interventions and on the capacities of mediators; and (iii) the development of a comparable survey of couples who have chosen other paths to separation. For this reason, our recommendations focus on the improvement of data collection to provide a superior future knowledge base.

## **7.2 Recommendations for Future Data Collection**

As indicated in the introduction to this study, the FMS is currently at a crossroads, having moved from the Family Support Agency to working under the remit of the Legal Aid Board. This transition provides an opportunity to assess the appropriateness of existing delivery models and regulatory environment and to make changes to these where necessary. One of these changes should arguably involve a new approach to data collection, and its integration with the IT systems of the new parent agency.

We believe that without additional effort or expense, much more ambitious objectives can be achieved by the FMS by re-orienting the current approach to data collection towards more clearly-

defined objectives. This holds the potential of developing a stronger evidence base for improving services, achieving better outcomes for clients and children and making an original contribution to the international literature on mediation.

### **7.2.1 Computer-Assisted Data Collection**

#### **Current Situation**

A major drawback of the current approach to data collection by the FMS is that it is based on “pencil and paper” questionnaires. Despite the existence of an online administrative database which already contains information on each client (including the Client ID, FMS service and mediator, client address, the date in which mediation was initiated and completed, and the number and dates of all meetings attended), this information cannot easily be merged with the questionnaire data, and the latter cannot be accessed on a routine basis. This leads to a duplication of data and, more importantly, gives rise to a high risk of data loss. In the current study, for example, the authors experienced considerable difficulties in matching survey records due to inconsistency in client IDs and changes in the questionnaire instruments over time.

#### **Recommendation 1**

All questionnaires should be completed using a computer-assisted system of data collection and be automatically linked to a unique client ID.

#### **Recommendation 2**

Questionnaires should ideally be self-completed by clients as well as mediators. If a client is not confident enough to use a computerised system, the mediator could be authorised to complete the questionnaire in the client’s presence and on his/her behalf. In all cases, however, data should be entered directly into the online system, thus eliminating errors in subsequent data entry and ruling out (or greatly reducing) the risk of data loss.

### **7.2.2 Change from a Census Approach to a Sample Design**

#### **Current Situation**

Until now, all clients using the mediation service have been asked to complete questionnaires. In our view, this creates an unnecessary burden for mediators in terms of the time and effort they must dedicate to data collection. A well-designed sample survey would yield equally robust findings and would free up resources to concentrate on the collection of data in the all-important follow-up survey.

#### **Recommendation 3**

A sample survey would be preferred over a census of all clients, and should be based on collecting data from a random sample of roughly one fifth of clients (approximately 150 clients per annum).

#### **Recommendation 4**

Adopting a sample design implies a sharp distinction between the minimal set of data that are collected for each and every client, on the one hand, and the full set of data which are collected from clients who are selected to form part of the sample. The former largely coincides with the existing computerised case management system, but should also include all information currently obtained from the intake questionnaire and deemed essential by mediators in order to work effectively with clients. The database containing basic data on all clients should be used in order to construct a random sample of clients (e.g. every fifth couple might be flagged for inclusion). Emphasis should be placed from the onset on securing and maintaining accurate contact information, in order to enable mediators to contact clients for a follow-up interview in the future.

### 7.2.3 Emphasis on Data Collection during the Third Wave

#### Current Situation

The greatest shortcoming of the present system of data collection is the small number of survey forms that are completed during the follow-up survey. Out of 4,210 matched records from the first and last mediation session, just 293 (7.0%) clients participated in the third wave of data collection. As a result, this final (and crucially important) wave of data is essentially unusable due to the unpredictable effects of attrition bias. In addition to inquiring about the number of issues resolved at the end of the mediation process, it is essential to gather data on the durability of mediation agreements, as well as broader aspects of family relationships and well-being which can enable us to assess whether clients have been able to rebuild their lives after separation or divorce.

#### Recommendation 5

Data should only be collected at a given stage of the mediation process if it can be collected for all (or nearly all) clients. This implies the need to place new emphasis on actually achieving data collection targets during the follow-up survey. The shift from a census approach to a sample survey will free up considerable organisational resources and should enable mediators to dedicate the required effort to successfully completing the follow-up survey.

### 7.2.4 Inclusion of more Data on Mediators and the Mediation Process

#### Current Situation

The current questionnaires do not include items on the mediation techniques used by mediators or their qualifications/experience. The international literature points to the importance of adopting different techniques/models in accordance with the needs and circumstances of clients, and this aspect of the mediation process should also be monitored and evaluated.

#### Recommendation 6

Future data collection should include a questionnaire to be completed by each mediator. Examples of suitable staff questionnaires include the National Audit of End-of-Life Care in Hospitals in Ireland (McKeown *et al.* 2010) and the Evaluation of the National Early Years Access Initiative (McKeown *et al.* 2013), both of which collect information from staff members in order to identify factors that might influence outcomes for service users. We also recommend collecting data on the degree of satisfaction of clients with the various aspects of the mediation process discussed in this report, including:

- being heard and understood
- being respected and taken seriously
- being given a chance to express their feelings and concerns
- receiving information about what matters to children
- having a safe forum in which to communicate
- having mediators who are impartial and sensitive to difficult and emotive issues
- feeling empowered to find a solution
- being helped to manage personal affairs
- being able to focus on the needs of children
- having an opportunity to air grievances
- being pressured to reach agreements
- experiencing tension-filled and unpleasant mediation sessions
- feeling rushed
- feeling confused about the purpose of mediation

## 7.2.5 Inclusion of Data on Personal Well-being

### Current Situation

In the current approach, mediation outcomes are measured primarily on the basis of achievement of an agreement and adherence to agreements (third wave). We believe that a broader set of outcome measures should be considered, particularly as separation and divorce are amongst the most traumatic events that people experience during their lives, with the potential to seriously affect their health and personal well-being.

There has been a major growth in awareness of the importance of more holistic concepts of personal well-being both internationally and in Irish social science research over the past ten years, including major research initiatives such as *Growing up in Ireland* and *TILDA – the Irish Longitudinal Study on Ageing*. These studies show that multi-faceted measures of well-being can be operationalised in social science research and provide robust national benchmarks against which other studies can be compared.

Inclusion of a robust measurement of well-being has the potential to provide a critical outcome measure which can record the effects of relationship breakdown on partners and register the extent to which the mediation process (and resulting agreements) can contribute to restoring well-being. This is particularly important from the perspective of the third-wave follow-up questionnaire, as it would enable us to explore differences in the curve of well-being as adults and their children cope with the consequences of separation and divorce.

### Recommendation 7

We recommend that future data collection should include a comprehensive module on personal well-being, and that this be completed by clients during all three waves of the survey. Well-being measures should be self-completed by both partners and by the main carer in respect of at least one (randomly selected) child.

## 7.2.6 Suspension of Current Data Collection

In light of the above observations, we are of the opinion that little can be gained from continuing to collect data using existing procedures. The results of our secondary analysis do not reveal temporal trends and offer little in the way of new insights as far as the existing international literature is concerned. Consequently, adding further years of data generated by the same processes is unlikely to yield new knowledge.

### Recommendation 8

We recommend that the current approach to data collection be suspended until a new survey design has been developed, including (i) a sampling design, (ii) new questionnaires, (iii) a strategy for effective data collection spanning all three waves, and (iv) an integrated IT platform. Most importantly, a new survey design should build on a clear understanding of the key questions that urgently require a response.

**Recommendation 9**

The current system for the collection and management of key administrative data does not require drastic modifications, and should therefore be maintained, adding any information from the current intake questionnaire deemed essential to coordinating the mediation process itself.

**7.2.7 Parallel Survey of Couples seeking Legal/Adversarial Route to Separation**

It is clear from the literature review included in this study and the conclusion outlined in the previous section that the scope of the analysis of this service would be greatly enriched if a similar survey design were implemented at least with couples engaging in a legal/adversarial form of separation or divorce. In order to provide maximal gains in relation to policy-related research, an identical administrative platform and survey design should be adopted, which would also have the effect of making a matched survey highly cost-efficient.

If comparable data from a second population of separating or divorcing couples were to become available as a result of a matched survey, it would be possible to evaluate the relative effectiveness of these alternative approaches to conflict resolution, in terms of their ability to produce lasting agreements and in terms of the wider context of family relationships and well-being. In particular, this would help us to identify situations in which specific approaches to conflict resolution are more effective, as well as providing basic information on the cost-effectiveness of these alternative approaches.

It should, however, be noted that many clients – particularly those from lower socio-economic backgrounds – never engage with either the legal process or family mediation, and the future research agenda should be developed within this wider context.

**Recommendation 10**

We recommend that the FMS and Legal Aid Board explore the feasibility of undertaking a similar sample-based survey amongst clients who have taken the legal route to separation.

**Recommendation 11**

We recommend that future data collection be based on a clear definition of objectives and an awareness of the wider context of family research in Ireland.

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