Family Mediation - The Fundamentals

Lisa Parkinson

Aled: Hi, everyone. My name is Aled Davies, founder of MediatorAcademy.com home of the passionate mediator. This is the place where mediators, aspiring, new and accomplished, come and learn from experienced mediators, practitioners and thought leaders from around the world.

The mediators we interview are incredibly generous with their time. They share their knowledge and experience with you, so that you can learn, grow and improve your effectiveness, and hopefully be inspired to go out into the world, make a difference, leave a legacy, build your own success story. Maybe then you'll come back onto Mediator Academy and share your story with my audience.

My guest, today, has without doubt made a significant contribution to developing the field of family mediation in the UK and in Europe. In 1978, she cofounded the first family mediation service in the UK and, probably, the first in Europe. Bristol Family Mediation is still going strong today. She cofounded the first national association of family mediators in England and Wales, now called 'National Family Mediation,' and designed the first training programme in family mediation. She was the director of the Family Mediators Association from 1988 to 1994, and is currently their vice president.

She's also training director for CALM in Scotland and a member of the Family Justice Council Dispute Resolution Subcommittee and, further afield, she became a founder member of the European Forum for Family Mediation Training and Research.

She's also a founder member of The World Mediation Forum, and this is one of the interesting things, she's a member of the Hague Conference group of experts on The Guide to Good Practice for International and Family Mediation in Child Abduction Cases, and of the 1980 Hague Convention.

She's the author of several books and many articles on family mediation, most notably her first edition of the book 'Family Mediation, Appropriate Dispute Resolution in a New Family Justice System,' was published in five foreign languages, and the second editions are currently just published, all, I think, in preparation in Italian and Russian.

That's probably the longest introduction. I still don't think I've done my guest any justice today, but I'm delighted and I want to give a warm welcome to Lisa Parkinson. Lisa, welcome to Mediator Academy.

Lisa: Thank you, Aled, very much, and that's a very lengthy introduction. I hope it hasn't turned everybody off already.


Lisa: May I make a couple of quick corrections, in case anybody jumps in and says, 'Oh. That's not right.'
Aled: Okay.

Lisa: I was formerly Director of Training for CALM in Scotland, which is Comprehensive Accredited Lawyer Mediators, I'm no longer their Director of Training, I'm an honorary member and I still train for them, and I'm going up to Scotland next week, and The Hague Conference Group of Experts was an advisory group on their Guide to Best Practice in Mediation in Child Abduction Cases, and I was a member of that, and the guide has now been published and is available.

I'm still involved with an advisory group for International Social Service, based in Geneva. They're preparing a guide in French and English for parents who may be facing disputes or problems over relocation or possible removal of a child, without both parents' consent.

Aled: Okay. Well, thank you for those corrections.

Lisa: Good.

Aled: I mean, we talked briefly in the pre-interview, and I was saying I was really nervous about this interview, for two reasons. I'm interviewing a legend in family mediation.

Lisa: Oh, no. Goodness me.

Aled: There are family mediators up there who consider you . . . see you in that light, but, also, I was reflecting, as well, on the fact that most of my interviews have been with mediators who are civil or commercial mediators, some of them lawyers and the non-lawyer mediators, but I haven't interviewed anyone in the area of family mediation. I was thinking about that, and I guess my nervousness around the interview was, actually, I don't know very much about family mediation, and, I guess, what I'm thinking about family mediation is probably, well, it is way more established than civil and commercial. So, that's the root of my nervousness.

So, I thought, at some stage, soon, in the interview, I just want to find out a bit more about family mediation and the similarities and differences between family and civil and commercial and see where that takes us. But, before we go down that avenue, I want to come back to this 'Guide to Good Practice for International and Family Mediation in Child Abduction Cases,' and just find out a bit more about that work. Could you say a bit more about that?

Lisa: Yes. Well, as you know, there's so much mobility these days, so many parents going for work or other reasons, moving from one country to another, certainly across Europe and across the world, as well, and many more cross-cultural marriages. And if those relationships break down or one parent is required, because of their work, to move to another country, and the other parent says, 'I'm not going because the children are settled. I don't want to go,' and you can see that the stresses and pressures are enormous, especially if the parents come from different cultural backgrounds and they have different languages.
So, there is quite a high rate of breakdown, and if their communication breaks down and they can't reach agreements, then there is a risk that one parent may say, 'Well, I'm going to take the children back home, to my home, on holiday.' This is more often the mother, statistically, and then says, 'I'm not coming back. I'm staying.' Well, then, if it's the father, you can see that he is faced with the position of, 'Am I going to lose my children? Where are they?' etc, I mean, a huge emotion.

If both countries are signatories to the Hague Convention on Child Abduction, 1980, and/or if both countries are members of the EU, there is law on unauthorized removal of a child without the consent of both parents. But application needs to be made quickly, because time is really important and because the Hague Conference was aware that these cases were increasing and that the courts can take a long time.

Even if application has to be made quickly, there may be two or more jurisdictions involved, and the parents are in different countries and there may be different languages. It's very complicated. And, if it takes a long time, easily a year, a year in the life of the child, by that time, they may have forgotten the language of the other parent. So, mediation, if it's suitable if both parents are willing to accept it, can come in in conjunction with an application's court. It doesn't have to be either/or.

If a parent is traveling for an initial court hearing, for example, is willing to attend a mediation meeting, there is certainly the possibility of getting things worked out, with both parents. Agreements being made, arrangements for the child. It may concern residence and so on, that then can be endorsed by court orders.

Aled: Okay.

Lisa: Does that make sense?

Aled: It does make sense. So, what kind of training would a mediator, involved in that sort of work, need, that's different from more general . . .

Lisa: Domestic family mediation.

Aled: Yes.

Lisa: Well, I think they should be fully-qualified, accredited family mediators in their own country with substantial experience . . .

Aled: Okay.

Lisa: . . . and, then, they should take a specialist additional training, which has been developed in Europe, in two different languages, I would say, English and French. I've had some involvement with both. One was given in English and was based in Brussels but involved Germany. It was organised from Berlin, a specialist organisation in Berlin, involved the Netherlands and Belgium. There is a parallel training for French, Italian, mostly, more and
it builds on the knowledge and experience that you have for family mediation already. Essentially, adds knowledge of international law and conventions on relocation or removal of a child.

You need to know the law, which legislation is applicable and how you can work in these situations within the context of a complex legal system. So the Hague Conference published a guide about it, and I would say mediators need to know what literature is available and what additional practice is needed, including how to manage if there are different cultural values and different languages, maybe different religions.

If one parent, say, is Muslim or both parents are Muslim, there may be a need for different models, as well as different layers of knowledge and expertise, but it's still mediation.

Aled: It's still mediation.

Lisa: Yes.

Aled: That's fascinating. I learn something new every day, but it's striking, just the range of different types of mediation and how mediation can be used in so many different contexts.

Lisa: Yes. In fact, I'm shortly going to Sicily for a conference on mediation, so intergenerational mediation, including mediation over care of the elderly when elderly people are no longer able to take decisions for themselves and their children, who might be from different marriages, they have to reach decisions about them. I'm actually going to conference about that in Sicily, the week after next.

Aled: That's a bit close to home.

Lisa: Well, closer to me than you.

Aled: Well, I didn't mean geographically. I meant, recently . . .

Lisa: Oh, I thought you meant age.

Aled: No. I mean I haven't needed mediation, but just having . . . my mum's at an age in her life . . .

Lisa: Yes.

Aled: . . . where . . .

Lisa: Yes.

Aled: . . . she's having to make really difficult decisions and . . .
Lisa: Yes.

Aled: . . . you know, just having those conversations, at the moment. I think I'm quite reasonably emotionally intelligent and sensitive . . .

Lisa: Yes.

Aled: . . . and compassionate and so on, and I struggle having those conversations.

Lisa: It is difficult. Sorry. And if there are different family members of different interests and views, of course, it can get very stuck. So, I haven't done a lot of these mediations, because they're not covered by Legal Aid, in the way that separation, divorce issues are, . . .

Aled: Yes.

Lisa: . . . but I remember one where there were two elderly parents in different homes, different residential homes, care homes . . .

Aled: Yes.

Lisa: . . . and they each . . . they hadn't been married very long. I think they were sort of about 80. It was a second marriage for one partner, third marriage for the other, and there were two daughters, each from different relationships. They need to make the decisions about selling the family home to fund the care, . . .

Aled: Yes.

Lisa: . . . and they also needed to agree on what proportion the capital should be split, because it had actually belonged to one parent and the other one had moved in. So, you can see, there were all kinds of emotional and financial issues.

Aled: The complexity of those sorts of blended families . . .

Lisa: Yes.

Aled: . . . you know, fascinating.

Lisa: Yes.

Aled: All right. Well, thanks for enlightening me with that, with those two different areas of mediation. I mean, I get the impression, I did a little bit of reading around family mediation, to reduce my anxieties about this interview, and . . .

Lisa: You'd needn't have had any.
Aled: . . . I get the impression that family mediation is a bit further down the road, in terms of it being established and regarded as a credible profession, certainly in the UK, anyway. I think regardless of what some civil and commercial mediators might say, I think civil and commercial mediation in the UK is a long way off establishing itself. Also there are tensions, different perspectives, different ideological views, as well, and those tensions are manifesting.

I suppose, not knowing much about family mediation, it would be helpful for me to find out a bit more. What is family mediation? How is it different? How is it similar to civil or commercial? Just give me the basics, Lisa.

Lisa: All right. Well, shall I start with differences and then come onto what's similar? Because there are both.

In terms of what's different, I think there are at least half a dozen really important differences, probably more. The very fact that it's family mediation. That we're mediating with family members, which don't always include children, because it might be parents without children, or rather couples without children or couples without dependent children, but there often is indirect involvement of children and, occasionally, direct involvement of children.

Mediating on issues concerning children as well as, possibly, financial property issues, that's a different field from civil, commercial. I think, clearly, because children-, one needs to understand about children's needs and how to work and help parents with children. So, that's one big difference, I would say, which one can come back to in more detail, indirect and direct involvement of children.

Then, I think another important one is that after 20 years of campaigning for family mediation and explaining how it was needed and what its benefits can be, we finally got legislation and Legal Aid, public funding, for mediation. That's a big difference, because, once that came in, following the Family Law Act of 1996, then the take up of mediation increased enormously, because it became available free of charge to family members who qualified for it. Because the government was providing public money for it, they had a responsibility to ensure standards and, if you like, quality control.

So, there is since then, much more standards, regulation of standards, monitoring and annual requirements for renewal of membership of nationally recognized Family Mediation Association, and all of them are represented on the Family Mediation Council, which is responsible for policy and agreeing standards. So, there's probably more unified and consistent joint working to promote family mediation and to maintain the highest possible standards of practice.

Aled: Okay. So, family mediation is a bit like the umbrella organization.

Lisa: The Family Mediation Council is the umbrella.

Lisa: Yes. And there are about six national associations or organizations who are represented on that council.

Aled: Okay. And they collaborate?

Lisa: Yes. They do. I mean, there's been a history, obviously, of some rivalry, some competition. Some are composed, perhaps almost solely, of lawyers, and some more of mediators from, say, a social work, therapeutic background. There is some competition of who's a better mediator, but there's also mediations that are essentially cross-disciplinary.

My own Family Mediators’ Association is essentially cross-disciplinary, and it's about valuing what different mediators from different professional backgrounds bring, and how they work together. Not who is better than whom, but how you develop as a mediator.

I think another difference is that we use different models, I think, from civil, commercial. We don't have lawyers present, or rarely, not generally.

Aled: There’s a big cheer that has just gone out from the viewers.

Lisa: Really? Oh, well, we don't have lawyers present. We encourage people to take legal advice, so that they don't reach decisions ignorant of their legal entitlements or their legal position, but we don't have lawyers present. That would change it a great deal.

Almost always, as far as possible, once we have met with each separately, to make sure that they're willing to take part and that it's suitable for them to take part, I can come back to the subject of domestic violence, domestic abuse. But once we've established that they wish to take part, they wish to give mediation a try and they're not in fear or at risk, then we would seek to meet with them both together.

The object is to encourage direct communication that they can manage in the longer-term, when mediation ends. Because in civil, commercial mediation, once they've reached a settlement, that's that. They may go on working together but, in some cases, not.

Whereas, in family mediation, children go on growing. Parents need to go on talking to each other. They need to be able to change arrangements or adjust arrangements as children get older. So, it's not just about talking in a mediation room. It's being able to go outside and talk, go on talking.

Aled: Yes. So, typically, over how many sessions would you conduct a family mediation?

Lisa: Well, not very many. I would say not usually more than three sessions . . .

Aled: Okay.

Lisa: . . . of typically an hour-and-a-half. That's not counting the initial meeting with each of them separately, to to understand what their concerns or issues are and explain
mediation to them. That is a separate bit of process. But once they are both willing and agreed to take part in mediation, I would say, probably average, about three meetings, average an hour-and-a-half - it doesn't mean to say it has to end then. And they can be spaced either close together, because the family is in crisis, or they can be spaced out over some months, because parents want time to think about things, make some changes, maybe move home or something, and still continue mediation. So, it's flexible.

Aled: Yes.

Lisa: Sometimes you need more time. Sometimes, I find, couples come who are extremely co-operative, who have worked out most things already. They just need a little bit of help to be clear about how to put it into practice, or in one particular aspect. And well, I've seen couples, sometimes only once, and they been just a pleasure to work with, and they've got what they wanted and then gone away and, if necessary, entered into a legally binding agreement, or maybe just put their arrangements for their children into practice.

Aled: Yes. So, when you say that they've done most of the thinking, so they just want to come to find out how to put it into practice, how do you do that, as a mediator, without making suggestions or intervening, if that's the expectation?

Lisa: Well, if it's about children, then it's really about asking questions to help them be sure that they've just thought it through and that it's not one parent saying, 'This is how it's going to be. Take it or leave it,' . . .

Aled: Yes.

Lisa: . . . which you might discover that if you ask them both, the other one says, 'Well, actually, I'm not so sure,' etc., and then you can just ask more questions focusing on each child in the family. I think asking the question, 'So, how would it actually work? How often and how long and what would you do if . . .?' there are a whole range of questions, including hypothetical questions, which I think help parents to think through, themselves, and work out how they can anticipate the sort of difficulties that can come up.

So, it's not saying, 'You should do this because your child is four years old,' but saying, 'So, next year, when will they start school and who will take them to school and will you both go to the school?' and it's involving both parents in discussion.

If it's about finances, finance and property, then, again, it's, well, what options are they considering, what is possible for them, are they aware that there might be something else that is possible they didn't know was possible? So, we can give information, but we stress that's not saying, 'This is the best solution, but just some parents do this, some couples do this.'

If they say, 'Well, we think we will divide the proceeds, profit and sale of the house, in this proportion,' like, 'I'll have 80% and she can have 20%', we wouldn't say, 'No. You can't do that,' because the needs of the mother and the children, actually, she would get something very different in court. We would say, 'Have you taken legal advice on this?'
and see if they say 'Yes' or 'no,' say, 'Well, it's really important that you should take legal advice, because you don't want to enter into an agreement which you won't do with us anyway, because we don't actually enter into written, signed agreements, in mediation.' and say, 'It's really important that you don't go away, enter into agreement and then find out, later on, that there was some very different outcome you could've had if you'd known about it. We don't want you to say afterwards, "Well, the mediator never said there was anything wrong with that."' So, we don't say it's wrong. We encourage them to get information.

Aled: Okay.

Lisa: And we use a technique, which was developed, I think, by Fisher and Ury, at Harvard, called 'BATNAs and WATNAs,' which is best alternative, You probably know. Best alternative or worst alternative, to help people get an idea that there's a range . . .

Aled: Yes.

Lisa: . . . and that they might not get the best possible outcome, but they don't want the worst, either.

Aled: Yes. I just want to come back to the example you gave, earlier, about, you're helping the parents reflect on things that might happen in the future. So, I think use the example of, 'So, who's going to take them to school?' and so on. So, it sounds like that intervention is rooted in a place of you have some idea of the things that could trip them up further down the road, so you want to . . .

Lisa: Yes. I think it really does help. Not just to say, 'Right. So, you think you're going to have arrangements that means the children will spend a long weekend, every other weekend, or something very standard like that,' just say, 'Fine. That's good. That's great. I'll write it up for you and send it to you and then you can ...' I think it's really important and helpful to say, 'So, for the moment, this is how you think things would work. But Jimmy is . . . or the children, are growing up all the time, and, as they grow up, things are going to change. Their own activities change, and their friendships, as they get older, matter more and more, you clearly know, teenagers, adolescents. So, it's important that parents can touch base with each other and keep things under review. How would you do that? Would you be able to meet with each other every so often? What do you think, to be able to pick up things before they become problems?'

Aled: Yes.

Lisa: 'Because the last thing you want is for something to suddenly get into a really big problem and not be able to talk about it. Whereas, if there's a small concern, that you can talk with each other and say, 'Having noticed this? What are you doing about it? What do you think?' then, your children will be really well-supported by both of you and you'll be able to adjust as they get older.'
Aled: Right, and if you had a parent, let's say you had a mother, who said in the mediation or in your conversations or whatever, 'I don't think it's good that my child sees, his or her father,' and you don't have any concerns that there's any abuse going on. How would you intervene, particularly if you believe that it was healthy for them to have access and spent time with their father, or vice versa? I mean, again, how would you kind of intervene in that context?

Lisa: Well, as you say, most importantly, having already assessed carefully that there isn't any child protection issue, domestic abuse that the child has witnessed or overheard, if one can say there's nothing of that nature, because there may be, and, if so, that really needs to be understood and picked up. If indeed [sounds like 26:12] there's nothing like that, then, I think, there are questions to understand more about the nature of the mother's concern.

When she says, 'I don't think it's a good idea,' now, it could be that she thinks the child needs time to settle down, sometimes parents say that. But, then, if they're not going to see the other parent for a time in the child is going to feel rejected by that parent, I would ask, again, more questions. 'So, what have you explained to...?', depending on age, of course, 'What have you said?' I think helping parents to work out what they think needs to be explained to their children and what doesn't need to be explained . . .

Aled: Okay.

Lisa: . . . because I might sometimes say to parents, because they do often accuse each other of running each other down to the children. Now, of course, if one child is or children are getting, hearing constantly, awful things about the other parent, which some parents do. Children actually hate that. I mean, they may be drawn into it because they can't stand against the parent who looks after them, but, actually, afterwards, a lot of children say, 'What I hated most was hearing my parents run each other down.' . . .

Aled: Yes.

Lisa: . . . and a lot of parents can see that, actually, if you ask about it and say . . . 'It sometimes very tempting to say, how you feel about the other parent. . .

Aled: Yes.

Lisa: . . . but, as a parent, it's different from being an ex-partner. A lot of parents can see that, and one of the elements of agreement that we often, actually, encourage and get, is that whatever their own feelings, they won't express their own anger about the other parent or their own opinion to the child.

Now, that makes a lot of difference to how the child feels about seeing and spending time with the other parent.

Aled: Yes.
Lisa: You do get children, sometimes younger, but, say, adolescents, who say, 'I don't want to go.' Well, that, again, is something that needs to be explored more, because children have a legal right, if they're sufficiently old and mature enough, to have a say.

Aled: Yes.

Lisa: An adolescent, for example, if both parents agree, an adolescent can actually be consulted in mediation, in different ways, by a mediator who has, again, additional training, . . .

Aled: Yes.

Lisa: . . . and you can have a young teenager who can have very understandable reasons for saying, 'I don't want to go to my dad or my mum every other weekend, because then I can't play football,' or 'I can't go out with my mates, and then I get left out of things.' Well, that's really understandable in parents need to be flexible and adapt to the needs of the child, as they grow up.

Aled: Yes.

Lisa: So, I hope that gives you some flavour of . . . It's not saying right or wrong.

Aled: Yes.

Lisa: There was one example I had . . . Actually, it was a barrister who had been training as a mediator and we had been talking about different ways of asking questions and asking, sort of future focus questions like, 'How do you think it will be when your child is 16 or 24? What do you think they'll say then about what their experience of ... was, when you split up?' . . .

Aled: Yes.

Lisa: . . . to make parents think, 'What will they say then?'

This barrister was representing a mother in court who was wanting to prevent any contact for her child [inaudible 29:39] against it . . .

Aled: Okay.

Lisa: . . . and he said . . . He related this. He said, 'I thought I'd try a future focus question,' and he said, 'and I asked her, "So, when she's 16," the child was about three, 'and she's about 16 and she says to you, "So, why did I never see my father?" because the mother can't say the father, 'He didn't actually tried to see you, because, well, that wouldn't be true, because he was trying.' There was a long pause, and then the mother said, 'Actually, I never saw my father when I was growing up, and I think I missed him.'
So, I think it's trying to ask helpful questions. Not interrogating questions, but helpful questions that help parents to think and to talk. If they're interested, you can offer them some written material, as well. Parents, I find, are really grateful for suggestions on books they can look at with children.

Aled: I was going to say that, because I'm getting the impression that there's sort of a body of knowledge that you need as a . . .

Lisa: Yes.

Aled: . . . family mediator, to be . . .

Lisa: Yes.

Aled: . . . an effective-

Lisa: I definitely think so. I think you need a blend of knowledge, drawn from different disciplines, a sort of specific knowledge for mediation. You do need some legal knowledge, clearly, family law and private law concerning children.

Aled: Yes.

Lisa: You do need some legal knowledge. You need enough financial knowledge and expertise in relation to property and pensions and so on. Even though you're not advising, you need to have some grasp of it to know what questions to ask . . .

Aled: Yes. Yes.

Lisa: . . . and to gather information. Essentially, I think you need to understand and have knowledge about families, family dynamics, child development. You don't have to be an expert in child development, but you need to have some idea of what a two year old might need as opposed to a 12 year old . . .

Aled: Yes.

Lisa: . . . in order to have an intelligent conversation.

Aled: Yes. I imagine there are number of different theories on child development, depending on . . .

Lisa: Well, it's not so much theory. It's more as to, what at certain stages, child development. A very young child, say, under one, not yet verbal changing them from one place to another. The child's sense of time and attachments. It's not that you are going into giving expert advice, but I think it's having some understanding you can draw from to understand whether both [inaudible 32:25] involved in looking after a young child or whether the young child is actually not very familiar with the other parent, because they've always been away at work, they've hardly seen them and they don't know this place. So, it would
be very scary for a younger child to go to a strange place, they don't know how long for, with a parent they don't actually know very well.

So, it's really relating to the actual situation that the parents describe and asking them what would help, what would make it easier, what do they think would help the child? Actually, when they think about it, then usually one or both parents can say, 'Well, I think it would make it easier if . . . ' and, 'What would help? Can, you suggest something that you think would help.'

So, working like that, I think you're drawing from knowledge but you're not lecturing. It's the way you weave it in.

Aled: Yes. Yes. Okay. Okay. Okay. I can see that.

I was struck when you said the sessions maybe three hour-and-a-half sessions.

Lisa: Yes.

Aled: You know, if I think about some of the civil and commercial mediations, I mean things are just warming up.

Lisa: I know. I know. Well, it's intensive. If it's finance and property, which is a bit closer to civil, commercial, then we would normally have provided them with questionnaires to fill in, to have gone through with them what documents they need to collect and bring, and they do quite a lot of work between sessions.

Aled: Okay.

Lisa: So, we would say, 'Maybe you need to find out about such and such, or take advice about this aspect,' or, 'Have you found out about what mortgage you could raise?' and we would then do a sort of aide memoire of them, of sort of if you like, tasks, what they need to go and do before the next session.

Aled: Yes.

Lisa: So, then, when they come to the next session, they've done a lot of that. So, I suppose that makes it telescope some of the work in that they do, we hope that they do things in between.

Aled: Yes.

Lisa: If it's about children, it depends, really, on the level of conflict, level of difficulty. Sometimes, one needs to go step-by-step, and they can't suddenly reach a major decision quickly, and we wouldn't want them to . . .

Aled: Yes.
Lisa: . . . but we might say, 'Well, for the next month, what do you think would work for the next month?' or even the next week? And then, 'Would you like to come back and review how that's gone and whether there had been any other difficulties and then how you think the next month should be?' So, you can, actually, plan it like that. Sometimes parents work out arrangements for children. They say, 'Well, this is fine for now, but I'd actually like to reconsider it,' or, 'After we've moved house, it's going to change.' Well, they can re-refer themselves to mediation . . .

Aled: Yes.

Lisa: . . . and they may do. Some parents come back.

Aled: Yes.

Lisa: Now, that, again, is probably different from civil, commercial . . .

Aled: Yes.

Lisa: . . . and if there's been a break of more than four months, they can get Legal Aid again.

Aled: Okay. Okay. So, these are publicly-funded . . .

Lisa: This is where it's publicly funded for one or both. Sometimes one is eligible and not the other. Sometimes both are.

Aled: Right.

Lisa: But it makes a lot of difference, compared with going to court, . . .

Aled: Yes.

Lisa: . . . unless they go as Litigants in Person, but then they don't have any support.

Aled: Yes. Yes. And there's a problem, at the moment, with . . .

Lisa: Yes. Of course, they're getting clogged up with Litigants in Person.

Aled: Yes.

Lisa: Again, they're not helped to talk with the other parent. In court it's so different and so stressful.

Aled: Yes. I'm really curious, so how do you start the mediation? Do you have opening sort of statements? What do you say?

Lisa: Well, I vary it a bit, according to the understanding and rapport that I've got with each, I would say 'parent,' because I prefer to be working with parents. Well, then, as I said
before, some don’t have dependent children, and then it would be former partners, but I’ll say ‘parents’ because I want to focus on families.

I think it would depend on what I’ve understood from each of them about how angry they are, how distressed they are and what kind of issues or matters they need to discuss. So, I slightly vary my welcome and greeting and initial explanation to take account of that.

So, for example, if I can see they’re a very cooperative couple, who are well able to talk and work together, I would probably go quite quickly into saying, once they have both signed what we call ‘the agreement to take part in mediation,’ which sets out the principles and essential ingredients, elements of mediation, which they must both actually understand and sign, to show they’re willing to take part and they understand about confidentiality and so on.

Once you’ve done that bit, then I would probably say, ‘Well, I’ve think I’ve got some idea from having met with both of you before, but would you each like to say what your priority is today or what the main things are that you want to work out, and ask both of you, so that we can work out a kind of agenda for today . . . ’

Aled: Right.

Lisa: . . . and start there.

Aled: Okay. Okay.

Lisa: Okay.

Aled: And you also said that there are no written, signed agreements in family mediation.

Lisa: That’s really important. We took legal advice on this, right back in the ’70s, when we started Bristol and . . .

Aled: I was in nappies in the ’70s.

Lisa: Well, I’m a grandmother. And our legal advice, then, was that we must be extremely careful about encouraging people to enter into a signed agreement that could be regarded as legally-binding like a contract, when they hadn’t had legal advice and might not know what they’re entering into. That, therefore, what we should do is to help them work out proposals or provisional plans, subject to legal advice. That protects them. If they choose not to take legal advice, well, that is their choice.

Aled: Yes.

Lisa: But, if they can take legal advice, which they can get at least a limited amount under Legal Aid, under the Help with Mediation Scheme, even if they can’t afford to pay for it, at least a limited amount. So, that’s much safer for them that they can check it out and make sure they have understood it and they’re not being bulldozed into anything.
It's also protection for the mediator, because, if the mediator signed or let them sign something, they were selling some enormous asset and they didn't know what they were doing, then they could come back and sue the mediator. So, it's safer for everybody that we talk about provisional agreements or proposals for agreement, rather than, 'This is a final agreement.'

Aled: Yes.

Lisa: So, we write up . . . we may write up something that is pretty detailed, some pages long. We call it a 'Memorandum of Understanding,' not 'agreement.' They're encouraged to take it to lawyers if they need a full and final divorce settlement, and their lawyers can quite easily and quickly, from what I heard, turn our Memorandum into a Consent Order, which is sent to the court for the court to consider and endorse, if the court is satisfied with it.

Aled: I see.

Lisa: And that can save enormous legal costs and time.

Aled: Yes. An incredible amount.

Lisa: Yes. I mean, I had a question in my mind, right, about the challenging aspects of this kind of work, right, and I thought, 'I wonder what the rewarding aspects of it are?' and then I was thinking, and this thought has just occurred to me, right now. You know, the type of mediations that I do are mostly workplace, some civil or commercial, some community. The rewarding aspect of it is it's bringing people together. So, when people come together, when they reach a place of understanding, their relationships are improved, be it neighbours, workplace, commercial.

The idea with a family, actually, it's kind of-, they aren't necessarily coming . . . Okay. They're improving the way they communicate, but the outcome is that they're separating . . . or not the outcome. That's happening anyway. So, what can be rewarding?

Lisa: Oh. I'll say, it can be hugely rewarding for, I hope, them and not just for the mediator. First of all, I think, to see the reduction in stress. People come and they're extremely stressed and they're dreading actual loss of a child, meaning not seeing them. I mean, that's a terrible thing to be going through, and you can see parents, I've seen parents come to the second meeting and I've [inaudible 41:38] well, 'Is this the same person?' because they look so much less stressed.

Then, they say, 'Well, actually we've been meeting and talking since we last saw you, and what we've worked out is,' and then they're off. Well, that, in itself, is hugely rewarding, and it's seeing them still realising that there's still a family.

Okay. The parents may not live together, but they're still a family. I think once parents and children can see that 'we're still a family' . . . There's a lovely quote from a child, not a
child in mediation, but a child who spoke to a researcher, who said . . . she was asked, 'What is a family?' and she said, 'Families are for helping each other through life. Therefore, loving each other and crying together, laughing together, going through all the emotions together. Sometimes they live together,' and I think that's what it's about. You don't always have to live with the other person, but you can still be a family.

So, I've certainly seen parents who say, 'Well, we can take the children out together or we celebrate their birthdays together. We can meet together for Christmas and big events. We can do things as family. The children know we're not getting back together again.' Some, say, remarry, have new partners. A lot of parents can manage these transitions and children, sometimes on their own, without any outside support, sometimes with just a little bit of, it's really short term support. But just giving them that encouragement and some resources or suggestions about the kinds of help that enable them to get through this particular crisis or transition and manage really well. Which many parents do, and if you involve, sometimes, children, adolescents, well, actually, I find that the most rewarding part of it all, because they are such a delight, actually, and, if both parents and the child is willing. It's only done with full consent, obviously, but conversations with, usually, older children, teenagers, they have such good ideas.

There were two small, quite small boys, actually, that were in another meeting, who said . . . I'm quoting them. I wasn't working with them directly. 'Well, our parents couldn't have done it without our help,' and it's true. Some children have ideas. They can see what would work. Their parents have been so caught up with their own concerns and worries and anger that they haven't seen, actually, quite a straightforward possibility. Children may spot and say, 'Well, look. If we did it like this . . .' and parents can then say, 'Well, actually, I suppose we could do that.'

So, that is very rewarding, to see family members able to talk to each other and hear each other and enjoy things, because, in the middle of a separation, I think parents lose . . . You know, they don't have the energy or the strength to actually enjoy things much. You say, 'When did you last play with your children?' they look at you. 'I've been too stressed.'

Aled: Well, that's lovely. That's lovely to hear that.

I also want to touch on the challenging aspects of this work, and the reason I want to do that is, I think that's the bit that would preoccupy me most. A little story. A friend of mine, good friend of mine, separated from his partner, a few years ago now. They have two children, similar ages to my children, and it was a very amicable separation and he moved out and he found another place to live, and he was telling me about, yes, he's hired a van and he's moved, and I thought, 'Well, I'll help him.'

I couldn't . . . I was struggling with the thought of him just moving out and moving into somewhere, on his own. So, I said, 'I'll come over. I'll take the day off and I'll come over and help you move in,' and he said, 'Yes. I've arranged so there won't be anyone at home, so we can move things out,' and, of course, we were at home, carrying things into this van and his two children scooted down the street, and they come home with the 'child 9 bill' or something. I can't quite remember. And I remember his son or his daughter saying,
'Where are you going, daddy? Are you leaving us?' a question like that, and it was . . . I mean, I was struggling to hold it together, myself, not just for him and the whole situation, and I just thought, 'I would really struggle.' I don't know. I just saw my own two children and the pain and it was all that emotion.

Lisa: Yes.

Aled: So, I'm interested in what are the real challenging aspects of this work?

Lisa: Well, if the parents come to mediation, again, we mentioned anticipating - one hopes . . . A very natural thing in mediation, if one parent was going to move out. If they hadn't already moved out and they do come when there's still living together, then one can help them plan when, and the children will not be present, because it is distressing, very distressing for children to actually see the parent physically moving out.

So, if you're planning with both parents, first of all, what they do need to explain to the children, so it's not a shock, suddenly, out of the blue. What explanations and reassurances children need and whether they can give that to the children together [inaudible 47:25] separately, but at least if they can say the same thing.

So, preparing the children is a terribly important part, and planning the practicalities, when and how. I can think of one family where the children were going to be away on holiday with their mother and they knew that the father was going to be making his move during this time. They were well prepared, and it wasn't a shock.

And of course the parents need to agree and be very clear what the father is going to take from the home, or not. Because, otherwise, there can be huge rows about, 'You've taken such and you shouldn't have taken it,' and then that spirals into all kinds of other arguments.

So, if they come to mediation before they have, actually, physically separated. One could go into all that with them so they can manage it, at least in the least-distressing and most-constructive way. If they've already done it in that way, well, then there's probably some sort of damage and upset which needs to be picked up.

Aled: Yes. Yes. You touched on earlier, the process of establishing, early on, whether there is sort of abuse or power imbalances or something going on in the family that would mean that if you were to have a mediation, one party would be disadvantaged. I mean, you didn't quite say that, but I'm just sort of elaborating a little bit. Could you say a little bit more about how you would go about establishing that and when you would decide that mediation isn't appropriate and when you would say, 'I think mediation could work, but I would need to work hard as a mediator to redress, as far as possible, any imbalance of power'?

Lisa: Well, would you like me to talk about domestic abuse specifically or imbalances of power? Because, again, there's quite a lot that might need to be said about both. I mean, sending mediators in the initial what we call 'information meeting,' as well as explaining
what mediation is and what it isn't, we need to certainly be aware of the high level, in society, of different kinds of domestic abuse and different domestic violence. To be able to ask questions in a nonthreatening way that can go into the subject carefully to see if the person has experienced or is still experiencing, or is fearful of, some form of abuse or violence, over what period of time, whether it's just been a sudden, you know, both of them hitting each other because they had a row in the course of separating, or there's been a history.

There are very different kinds, which mediators need to inquire about, first of all, to see whether actually meeting together, in the same room, would be safe and whether both of them would feel comfortable enough about that. We can, again, vary the mediation to take account of whether there's some degree of anxiety, but not a clear red light, okay. Where there's some anxiety, but not risk, then we can think about one arriving earlier than the other, not arriving at the same time and sitting in the same waiting area, one leaving before the other, so that they can get away and they don't suddenly find they're having a row outside the door, possibly co-mediation.

We can plan it with them, in advance, so they say 'Yes. If it's like that, I'd feel okay. That would be all right.' If it should be heated, too heated, in the session and one's getting very upset, then I would say, 'Look. I'd really like to talk with each of you for a bit, on your own. Could one of you wait, and then we'll swap over?' That can also help.

If there are power imbalances, again, there are different kinds, many different kinds. I mean, whether it's verbal power and one talking the other down or control over children or knowledge of finances.

Actually, if you go into what different kinds of power there are, you may find that, whereas people say, 'Oh. Well, there's a power imbalance,' they're thinking of just one particular kind, like knowledge and control of finances. But, if you look at the different kinds there are and how they can shift in separation and divorce, and whether it's about getting information and support or whether it's about management of power in the session, there are these different aspects, . . .

Aled: Okay.

Lisa: . . . and, if it's about, in the session, if you already think one is more talkative than the other, one is going to talk the other down. Then I would propose some ground rules, really at the beginning, and say, 'I think it would be a help. I know you both are feeling very strongly. I know you're both anxious,' or something like that, or 'There's a lot of stress in the situation, I already know. I think it would help if I could put some questions to each of you, separately, and for each of you to answer, and could you manage not to interrupt each other? I know it's hard to listen if you hear something being said that you don't agree with, but if you could each answer the question I put to each of you, otherwise it's very confusing for me, and I need to understand from each of you.' and you do see people looking relieved when you suggest something like that, if they think the other one is going to talk them down.
I find if you establish a sort of ground rule like that, with their agreement at the beginning, they then kind of apply it to each other. If one does interrupt, the other one says, 'You're not supposed to interrupt. Stop interrupting,' and it is more manageable. And if one should use an abusive word, they really know that they're supposed to be civilised and it's constructive, if one does use an abusive word, I would say so and so, I would try not to be sharp, but I would be firm and say, 'Look. That's just not acceptable. I can't continue the mediation.' and I've had . . . Well, let's say people, I don't want it to be an agenda, biased, at all, say, 'Oh. Sorry,' and they don't do it. They don't go on doing it.

So, you do need to be quick and to intervene quickly or to see if somebody's getting very upset and you think they're going to rush out of the room and you need to intervene and say, 'I'm guess you're perhaps feeling you don't want stay here anymore,' and they look at you and say, 'No. I don't.' Say, 'Well, could we just do this,' and you make it manageable.

Aled: Okay.

Lisa: I'm not saying every mediation ends with everything being sorted out, but an awful lot end with a lot being sorted out.

Aled: Yes. So, when you've got some concerns that one party might sort of dominate the other, in terms of air time, . . .

Lisa: Yes.

Aled: . . . you can put sort of ground rules in place . . .

Lisa: Yes.

Aled: . . . to ensure that . . .

Lisa: Yes.

Aled: . . . both parties have a voice.

Lisa: You can, because you usually get an impression of that from meeting with each of them separately, because one may come across as very confident and the other one may tell you, 'Well, so and so, I don't really know about this, and so and so knows all about it, and I think they would just tell me what to do, or they have been telling me what to do and I don't know.'

Aled: Right.

Lisa: So, you help them see that they may need to get information or to understand the information that the other one provides, and you can reassure them, not that there's anything inferior. You just say, 'I may not understand it either, and I may want to ask some more questions to help me understand it. Then, if you have some more questions to help you understand it, we can ask questions. That's okay. It's important you both
understand it and then you can take it away, if it's a written document, and do you have any legal advice? You know, your legal advisor, if you have one, would need to look through it and advise you on it.'

You try to give them confidence, and sometimes I say to people who are anxious, 'I can be really firm if I need to be,' and they look at me and [inaudible 55:31]. They need to trust you as a mediator, that you don't just let anything go, and, then, if you need to see them separately, which sometimes I've found, within a joint session, if you can see we're not going to get anywhere, it's stuck, they're both getting too angry, depending on the time left, . . .

Aled: Yes.

Lisa: . . . I would say, 'Look, it feels a bit stuck,' or, 'I can see your both angry or upset. Would it help if . . .' and I would put a suggestion to them that, 'I'll talk to each of you for say ten minutes, on your own, and, then, if you're both willing, we'll come back together, for just another ten minutes, even if it's only to plan the next week so that you know what you're doing for the next week, even if you decide you've got to go to court, but at least so that you know before you leave here, what you're doing,' I find people usually go along with that.

Sometimes when you see them on their own, they're calmer, because are not winding each other up, and they may come up with something that is, actually, a breakthrough. Say, 'Well, I wouldn't mind doing such and such, if only they would not or would do X or Y.' Then go to the other one and sound them out, and because it's quieter and calmer, they may be able to think instead of just reacting, and then you may be able to bring them back together and say, 'Look. There seems to be a way forward like this.'

Aled: Yes.

Lisa: So, it isn't about one dominating, or certainly shouldn't be.

Aled: Yes.

Lisa: But I think you do need confidence. I think confidence does grow with experience, and I do a lot of training. Recently, well, actually, this year, I went to Kazakhstan, and all in Russian, with translation, and doing sort of rôlesplays, Russian, with translations, at the simplest, but we had a rôlesplay with two of the group, who were already trained in mediation, as co-rôlemediators. Two who volunteered to be the parents, and the one who had volunteered to be the mother went straight into rôle, and she started straight away. This was translated, of course to me, from Russian, 'Well, he's just dumped us. He's just left us. He's no good at all. He doesn't have any opinions about anything, and what I think is . . .' and she was well away, and the two co-rôlemediators were a bit at a loss as to how to control this woman, and you could see the father just sort of fading back into his chair.

There was something that needed to be done quickly. So, they'd already agreed, I could come in when I needed to. So, I just sort of came in and show them how I would hold the
mother, how I’d bring the father in so that he was involved and how I would shift the focus from her blaming him and saying everything he’d done wrong, to focusing on the children, and it really changed hugely, hugely.

I mean, she was rôleplaying, but it was so real. I could see she was on the verge of tears, and she said, 'What you said than about children loving,' she said, 'That really got me down here, and I was almost in tears.'

So, I think having a range of interventions that are mediation interventions it's not practicing therapy or giving advice. It is, essentially, mediation, but I think it's having a range of ways of intervening and having empathy, which I know you've mentioned in other interviews, is absolutely essential. I don't think you can do anything without empathy . . .

Aled: Yes.

Lisa: . . . and acknowledging feelings, not just saying, 'What's the issue?' but acknowledging feelings and concerns.

Aled: So, the kind of range of interventions you could make are, first of all, establishing some ground rules . . .

Lisa: And acknowledging feelings, if possible, mutualising them . . .

Aled: Right.

Lisa: . . . 'I know you've both been going through a very difficult time,' something that doesn't suggest that you're in any way taking a side of one of them, because they're very sensitive to that. You can say, 'This is a very stressful time for both of you.'

Aled: Yes.

Lisa: Well, that's usually true. You can say, 'I wouldn't say I understand you both,' because you don't necessarily understand, 'but I can see you're both feeling angry or showing anger or . . .'

Aled: Yes.

Lisa: ' . . . upset,' etc. 'I think it's really important to acknowledge feelings,' or, 'I can see there are fears, probably, for both of you. Can we sort of look at what's most important right now?'

Aled: Yes.

Lisa: So, moving to prioritising and needs of children and . . .

Aled: Yes.
Lisa: . . . helping them, if you like, disentangle the feelings from being an ex-partner from the feelings and concerns as a parent. Actually making that distinction that it's very difficult to separate out being a partner from being a parent, because, if you live together, it's all mixed up, but, when you separate, there are feelings as an ex-partner and feelings as a parent. They can still get mixed up, and now you can get transferred from one to the other . . .

Aled: Yes.

Lisa: . . . and it's trying to disentangle those two different kinds of rôle. You know, you're ending one and continuing another. That's incredibly difficult. And just saying that to parents, saying, 'Really difficult to end a very close relationship and yet continue another close relationship as a parent, that's an incredibly challenging thing to do,' and I've had a lot of parents look at me and say, 'Do you know, I've never thought about it like that and it's true.'

Aled: I mean, those are just some wonderful interventions. I do like the idea of kind of shifting the focus on to the priorities for the here and now and the children-

Lisa: Yes. And you need to think - sorry. You need to think about the longer-term, as well . . .

Aled: Yes.

Lisa: . . . because, often, people are very worried about their longer-term security. You know, questions of pensions and so on, they may be relevant too. So, again, it's been able to shift from the immediate and 'this week, next week' to 'and in the longer-term are you needing to make arrangements that are final arrangements or short to medium-term?' getting an understanding of that come because if they say, 'Well, we're divorcing. We need a final settlement.' You need to address both. Both levels, different time phases.

Sometimes because it's all so complicated, they're completely overwhelmed and swamped. Then, it may help to say, 'Well, would it help to divide it into different phases of time? . . .'

Aled: Yes.

Lisa: . . . because it's like this year you said you wouldn't be thinking of moving, this year. There could be different time phases and different arrangements needed for different phases of time. We could concentrate on them separately, Would that help.' So, you break it down a bit into manageable chunks . . .

Aled: Yes.

Lisa: . . . that people can think about without-, often, they jump, otherwise, from one to the other and say, 'What about my pension?' when they're just talking about, you know, next Saturday.
Aled: Yes.

Lisa: So, if you can help structure, to some extent, like that, that helps, and, when you said, 'What's rewarding?' I mean, I think it's important to mention that although it's a minority, there are some couples who actually decide to stay together or get back together.

I've known some who have gone through a whole mediation, worked out a divorce settlement, and then, you do wonder, and sometimes even raise and say, 'There do seem to be some ambivalent feelings,' and acknowledge there are, and I can think of some who've contacted me later and said, 'Well, we have a divorce settlement, but we never did anything about it, because, actually, we're still together.

So, I'm not saying we're trying to get them to stay together or trying to get them divorced. We're just trying to help them manage whatever it is that needs managing.

Aled: Yes. You know, Lisa, that's a lovely sort of . . . I want to end the interview with an uplifting sort of reflection and the thought. A couple of things are going around in my head. There's a lot of questions. I'm really mindful that we've gone over time. I know you've got an incredibly demanding sort of schedule of writing papers, presenting at conferences, travelling. So, you've been incredibly generous with your time, already.

Lisa: It's a pleasure, and I always enjoy talking about mediation, and thank you very much, Aled, for giving you the opportunity.

Aled: And, well, I really appreciate it, there also a trillion other questions. At some stage, I'll . . .

Lisa: Well, if you want to come back, by all means do. I'm always happy to talk about it and explore different ideas, different angles, because it's endlessly interesting.

Aled: It is. It is. It is, and I really, really enjoyed our conversation.

Lisa: Thank you.

Aled: Lisa, if people want to find out a bit more about the work that you do with these conferences . . .

Lisa: Yes.

Aled: . . . How can they- and reach out and say 'Thank You' to you, how can they do that? What's the best way of doing that?

Lisa: Well, I'm perfectly happy to provide my email address on the understanding that I may not be able to reply instantly, if there are a lot of emails.

Aled: Okay.
Lisa: Normally, I can keep abreast of them. I put an automated response if I'm actually out of the country, which I am, from time to time. You have my email address. So, I'm willing for that to be given. I can provide other website details, which I could do by email, if you like.

Aled: Okay.

Lisa: . . . because for example, National Family Dispute Resolution Week coming up, the last week of November, and that's a useful resource, and people could use that website to find out either a mediator in the UK or about different associations in the UK. If they contacted, well, one of us, but you're certainly welcome to contact me. I mean, I do have quite a network of contacts in other countries, which doesn't mean everywhere, but quite a lot.

Aled: Yes. Okay. All right. Well, there's a good start. Well, Lisa, let me be the first to say thank you. Thank you very much.

Lisa: Well, thank you, Aled. Thank you, and goodbye. We'll keep in touch.

Aled: Definitely.