Family mediator neutrality and impartiality in practice: The relevance of the ‘refleter’ discourse role

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Abstract

Family mediation is an interactional encounter in which there are three or more participants. In their institutional role, mediators are required to conduct themselves in a manner which is neutral regarding outcome and impartial regarding process. The discourse often includes the needs of absent others, e.g., the children of the couple.

This paper draws on concepts and applies the pragmatic of discourse roles and complex illocutionary acts to the language of family mediators and their clients. It focuses on a discourse role which I have termed ‘refleter’ and its relationship to mediator neutrality and impartiality.

Keywords: discourse roles; illocution; mediation; neutrality; refleter

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1 Introduction

Family mediation occupies the centre of a conflict resolution continuum which ranges from court enforced orders to arrangements which are agreed by the participants themselves without any form of third party intervention.

Client participation in the full mediation is usually voluntary, although such negotiations often take place ‘within the shadow of the law’ (Mnookin and Kornhauser 1979: 950). For couples who cannot agree a way forward on issues in relation to finances, property and children, the ultimate recourse is a court order. This is costly in terms of finances, time, conflict escalation and stress. In theory, clients attend mediation to avoid these costs and because they wish to work together to reach agreements with the help of a third party, the mediator, whom they can trust to be fair to both of them.

For the mediator, such fairness of conduct is specifically defined in the College of Mediators’ Code of Practice (2008: 2), as follows:

Mediators must at all times remain neutral as to the outcome of mediation. They must not seek to move the participants towards an outcome which the mediator prefers...mediators must at all times remain impartial as between the participants. They must conduct the process in a fair and even-handed way.

This distinction is complex and not always easy to maintain in practice. As we will see in the empirical part of the paper, a recurring kind of intervention captures some of the problems which arise and the ways in which mediators may seek to deal with them. This insight results from the application of the concepts of discourse roles and complex illocutionary acts to mediators’ verbal enactment of neutrality and impartiality. These sorts of mediator utterances do not easily fall into any of the existing categories of producer discourse role, hence my suggestion of the term ‘reflecter’. In what follows I also focus on the importance of complex illocutionary acts in maintaining the appearance of a mediator’s neutrality and impartiality.

There is little connection, other than generalities, between the theorising of linguistic approaches to talk and the theorising of family mediation. For example, there is no linguistic input to the core training provided by National Family Mediation in England and Wales, nor to their continuing professional development programme (www.nfm.org). And yet as Roberts and Sarangi (2005: 632) note: ‘Language does not just reflect or express intentions or decisions (the representational role of language); it makes them (the constitutive role of language). In institutional encounters, talk is work’ (italics in original).

In section two I review some of the salient literature in relation to mediation theory and practice; linguistic research into multiparty institutional interactions; and linguistic research into neutrality and impartiality. In section
three I discuss in detail the theoretical concepts of complex illocutionary acts, discourse roles and my proposed ‘reflector’ discourse role. In section four I outline methodological considerations before moving on, in section five, to present and analyse three extracts of dialogue between mediators and their clients. In section six, I conclude with some of the main findings of the research which has informed this article.

2 Family mediation as a profession

There is no single theory of family mediation, either in the UK or elsewhere in the world. Influential textbooks on the subject, for example Haynes and Haynes (1989), Parkinson (1997), Folberg, Milne and Salem (2004) and Roberts (2008) acknowledge this and note that this evolving field owes much to other disciplines, typically law, psychology, social work, family health, psychiatry and sociology. As Boulle and Nesic (2006: 3) point out, ‘Mediation is not easy to define’ – an observation which was also made by the American drafters of the Uniform Mediation Act who observed that ‘problems emerge in defining mediator and mediation so that the definition does not also encompass other processes, such as early neutral evaluation, fact finding, facilitation, and family counseling’ (NCCUSL 1999: 5).

The term ‘family mediation’ is often associated with the latter profession, family counselling, in addition to other therapeutic or counselling interventions related to children or couples. Family mediation does share some fundamental aims and techniques with various areas of counselling and therapy in that it seeks to enable and empower the clients(s) to find a way forward from their particular dilemmas or problems. It does not, however, offer any form of counselling or therapy, and such qualifications and expertise are not a requirement for training as a mediator in England and Wales. Indeed, if emotional or cognitive problems interfere with the mediation process then clients are given information about the relevant counselling agencies that can help them deal with these. This may be in addition to mediation, or may be a form of intervention which is altogether more appropriate to the clients’ needs and wishes at that time. My discussion, therefore, specifically excludes both the professional and linguistic research into these associated fields of professional endeavour in order to maintain a clear focus on mediation.

2.1 Linguistic perspective

I draw on linguistic (pragmatics) research which underpins the concepts of discourse roles and complex illocutionary acts in the dynamic creation of interactional meaning, for example Austin (1975), Goffman (1981), Brown and Levinson (1987), Levinson (1981 and 1988) and Thomas (1995). My research
also draws on linguistic literature in relation to institutional encounters which require the professional to conduct themselves in a manner which is neutral and/or impartial and which includes three or more participants in the interaction. The work of, for example, Heritage and Greatbatch (1991), Clayman (1992), and Greatbatch (1992), in relation to the setting of news interviews, offers insights which can be applied to family mediation. As Clayman (1992: 163) points out, whilst talking ‘interactants encounter a variety of assessable matters, matters about which they may express a viewpoint, interpretation, or perspective … There is one setting in which expressive caution is practiced [sic] with extraordinary consistency: the television news interview’. Such ‘expressive caution’ of viewpoints and perspectives is an essential component of the mediator’s task. The connection of news interview settings with mediation settings is the use of discourse roles to express viewpoints of others in order to maintain the professional’s appearance of neutrality and impartiality.

3 Theoretical and analytical framework

3.1 Discourse roles

The concept of discourse roles used in this article stems from the work of Goffman (1981), Thomas (1985) and Levinson (1988). My use of the term follows that of Thomas (1985) in that it separates the notion of the roles participants are taking, or being given, in relation to the talk, rather than, say, their social or institutional relationships with each other. Such a separation is somewhat artificial but it is productive. At the heart of these varying approaches is the notion that a producer of talk, that is the person who is actually uttering words at any one point in the interaction, may communicate ideas on behalf of others. This basic distinction gives rise to myriad forms of expression and subdivisions of the producer discourse role.

On a very simple level such subdivisions can be indicated by the choice of personal pronoun which the speaker uses, for example ‘I’, ‘we’, ‘you’, ‘he/she’ or ‘they’. In family mediation a practitioner will need to address the use of ‘we’ used by one client, as in ‘we want to sort out contact arrangements’ as opposed to the other client saying ‘he/she wants to sort out contact arrangements, but I want to…’ because this presents potential problems in agreeing an agenda. There is also the regular occurrence of the shift between any children involved being referred to as ‘my child/children’, ‘your child/children’ and ‘our child/children’. Each choice of possessive pronoun indicates a different dynamic between the parties which the mediator has to address; these language choices, and the shift in discourse roles which they indicate, are significant and cannot be ignored by the practitioner. Finally, the use of ‘we’ and ‘you’ by a mediator is complex. ‘We’ connotes the collaborative nature of mediation, as in ‘what
we need to try and focus on now is...’, whilst ‘you’ as in ‘you need to decide which issue we address next’ is a discourse role which shifts responsibility to the clients. Such shifts often occur when the mediator is seeking to balance impartiality and neutrality.

3.2 Complex illocutionary acts
The term ‘complex illocutionary acts’ is used by Thomas (1986) and builds on the works of Austin (1975) and Levinson (1981).

The concept of illocution refers to the idea that in many interactions, what speakers say is not necessarily what they mean; nevertheless, the hearer present understands, and responds to, what is meant but not said. ‘Illocution’ is a meaning which cannot be derived from the semantics and syntax of an utterance alone: the context of the situation is vital. So, ‘have you got the time?’ uttered by a person who does not have a watch or clock to hand is a question requiring an answer in terms of hours and minutes; in another context, for example a person who has asked for some help with a problem, it is a question requiring an answer in terms of ‘yes’ or ‘no’. These are simple examples but it is important to note that the answers to the same question, in different contexts, cannot be meaningfully exchanged.

The notion of complex illocutionary acts develops the idea of indirectness and inference and applies to those interactions in which there are three or more participants. In such interactional encounters an utterance may simultaneously encompass implicit (illocutionary) meanings which are different, overlapping or identical for each of the hearers, each of whom may or may not infer the speaker’s intended indirect meaning(s) for each or both of them.

For example, a mediator may say something along the lines of ‘would it help if we looked at x?’ ‘X’ is an issue which both clients have talked about, but with different perspectives in terms of importance, and it is an issue which has recurred. Client A’s response may be something like ‘Yes, I’ve been saying that all along’, whilst Client B remains silent. In that interactional moment the practitioner is faced with a dilemma which only he or she can resolve. The question was intended to be neutral and impartial but has produced very different responses from each of the clients, responses which seem to indicate that one client has found the intervention helpful and supportive, whilst the other has not.

3.3 Characteristics of the reflecter discourse role
I have chosen the unusual spelling of the term ‘reflecter’ in order to convey the two main elements of this producer discourse role: utterances within this role may directly reflect, like a mirror, what has been said by other participants in the interaction; or they may be utterances which a speaker in this role produces
following the distillation of, and reflection upon, many utterances from other participants present in the interaction.

The notion of ‘reflection’ as a professional technique is not new in the counselling or therapeutic literature, nor is it new to the practice of family mediation: it encompasses the notions of empathy and respect for the individual. There are many subtleties and variations involved (for example, the therapeutic techniques of ‘mirroring’ and ‘echoing’ discussed by Ferrara 1994) but, on one very basic level, the client is reassured that they have been heard and that the practitioner is paying close attention to what they are saying. The term ‘reflection’ is not used in the portfolio requirements of the Family Mediation Council (2004), although there are techniques specified which imply an element of reflection, for example the need to accurately rephrase, summarise, redefine, and reframe to the satisfaction of each party, to identify key words and phrases, and to redefine issues in a mutual rather than exclusive way.

This article seeks to offer an insight into some of the mechanisms by which reflection is achieved, through the analytical lenses of discourse roles and complex illocutionary acts, but only as they pertain to mediation. Whilst the reflecter role may well occur in counselling and therapeutic interventions, it is beyond the remit of this article to analyse this.

The key distinction between the utterances of this role and that of other producer roles relates to the presence, or not, of the originator or author of the message being conveyed. Levinson (1988: 164), in discussing his proposals for various categories of producer and recipient roles, reviews traditional schemes as distinguishing between ‘speakers who speak for themselves versus those that speak for absent others’ (italics in original). The reflecter role which I am proposing is specifically related to situations in which the original authors of what is being said by the current speaker are present in the interaction. As such, it is a discourse role which conveys information from the recipients themselves. In other words, whilst the other producer roles pass on information, the reflecter role passes back information.

A producer in this role can pass back information which they have received from the other party or parties present in one of three main ways, or a combination of them. In terms of manner of delivery, the mediator in the reflecter discourse role may pass back information using more or less the same words which the recipient has previously used; they may retain the full meanings of the words, that is ‘the propositional content’ (Thomas 1995: 123) but choose other words to express these meanings; or they may ‘filter’ the meanings of the recipient’s original utterances and pass back to them only selected elements.

One advantage of choosing to pass back the actual words used by another participant is that they may constitute a particularly eloquent or shocking expression of an idea. For any of us, the verbatim reiteration of something sig-
nificant which we have said usually has an impact. We are allowed an insight into the feelings which may be engendered in those on the receiving end of our utterances. It is, therefore, a powerful linguistic and psychological tool. When a mediator decides to use this discourse role it is usually with a clear understanding of its potentially provocative nature. The mediator will hope that either the author of the original message will rethink their position, or that what appears to be being ignored by one party will now be taken into consideration.

The advantages of re-phrasing or re-lexicalisation are fairly obvious, given the emotional and conflicted nature of discussions in mediation. It is often the case that what clients have to say is ‘associated with powerful, usually negative, feelings about each other, such as anger, resentment, betrayal, and so on’ (Roberts 1997: 77). The mediator may choose to keep the essential meaning of the message (essential for the purposes of the discussion) but choose to pass it back in words which are less inflammatory, that is in words which lose the interpersonal level of criticism. Practitioners may, however, decide to ‘lose’ much more of the original message when feeding back what has been said.

This will occur, for example, when a client has issued a lengthy diatribe, or embarked upon a detailed itemisation of past incidents, or conflated a host of grievances into one generalised attack against the other client. This use of the reflecter role tends to filter out a great deal more of what has been said, or perhaps implied. It thus implicitly rejects many issues which a party may have raised, whilst retaining the essence of the more significant matters at the heart of their disagreements. It is an intervention which requires considerable skill, if it is to be used successfully, and one which incorporates many mediation techniques, including those of clarifying, summarising and reducing/diffusing tensions. These techniques require the mediator to be aware of their professional requirement to filter out messages which are ‘unwanted’ for the purposes of mediation. This, of course, is a hugely subjective area and only one of which goes to the heart of mediator neutrality, impartiality and the deployment of the reflecter discourse role. It is also one of the key distinctions between mediation and counselling or therapy: in the latter two institutional encounters there are, in theory, no ‘unwanted’ messages between the practitioner and the client. If there are, then they are issues which can, indeed need to be, explored within the professional framework.

4 Methodological considerations

This article draws on the research findings of one setting, that of family mediation as it is practised in England and Wales. Furthermore, it draws on only one form of accredited practice, that which is certified by the National Family
Mediation Service in the UK. There are other routes to qualification; most of these, however, fulfil the requirements laid out by the Legal Services Commission in order to attract public funding for those clients who cannot afford the services of mediation, lawyers or the courts.

The research comprises approximately 22 hours of recorded data, gathered over a 12-month period. There was no attempt to preselect couples for the purposes of research: any couple who provided written consent was recorded. Eleven hours of recording were selected for full transcription. The basis for this selection was to provide a range of common interactional styles between clients, a range of typical mediation topics, and examples of both sole and co-worked professional practice. Further selection criteria are outlined at the beginning of the next section.

Like many other interpretive approaches to language in use, this research utilised the recording and transcribing of naturally occurring language as its database. An iRiver MP3 player was used to record sessions, and Goldwave software was used to edit these recordings in order to provide the basis for a broad orthographic transcription of selected sessions.

5 The interactional manifestation of the mediator’s reflecter role

The data which are presented in this section have been chosen to demonstrate the strategic importance of mediator interventions in the role of reflecter at critical moments in the mediation process. They highlight some of the difficulties of adhering to professional idealism in the context of real-time interactional dialogue. They also include a cross section of client variables which include: age, ranging from mid twenties to early sixties; topics, ranging from children’s issues or financial matters to a combination of the two; interactional styles, ranging from the overtly hostile, to the apparently cooperative, to the genuinely cooperative; and sessions which were attended by either one mediator or two mediators.

In the extracts, ‘M’ is used to denote the presence of one mediator, whilst ‘M1’ and ‘M2’ are used to denote the presence of two mediators. The clients are denoted by the use of ‘C1’ and ‘C2’: this is applied to their turns in the interaction, the substitution of their names in the transcripts, and the discussions concerning the analysis of each transcript.

The first example is taken from a co-worked session in which the two main issues were the former family home, and the division of house and personal belongings. The session had been going on for some time, with little progress. Both parties were displaying a lot of anger and recrimination towards each other, and neither seemed willing to let the mediators move the discussion on to possible solutions to their problems.
Data extract 1

1 M1 The contents of the house, or the stuff that belongs
2     to [Client 2’s name] – what’s happening with that?
3
4 M2 Did you not say earlier on that you were happy for
5     possessions to be collected at a time convenient …
6     to you… So, … shall we try and decide a
7     convenient time?
8 C1 Erm, but I’d like to know what she actually wants
9 M1 Well that’s my next question

The first point I want to make about the reflecter role is that it often encompasses other discourse roles. So, in line 3, M1 asks a question in the role of reporter: what she says carries the assumption, or report, gleaned from the previous discussions, that the parties cannot agree on a time. Her use of a ‘Wh’ question constitutes a ‘presupposition-trigger’ (Levinson 1985: 181) in that the ‘what’ of the mediator’s question presupposes a ‘something’. Such presuppositions ‘are not invariant to negation’ (Levinson 1985: 184, italics in original) and this is strategically important: in reflecting the preceding discussion in this way the mediator is, amongst other aims, seeking to create an opportunity for the clients to respond with ‘Nothing’. In lines 4 and 5 M2 adopts the reporter role, or perhaps the spokesperson role, toward C1, repeating almost verbatim the words which C1 has already used.

The reason that I class these utterances by both mediators as being in the role of reflecter, rather than straightforward reporter or spokesperson roles, is that no new information is being conveyed to any of the participants. All have been present throughout the preceding discussions and are aware of what has been said so far. The clients, therefore, are hearing from the mediators what they themselves have already contributed to the discussion. I believe that the reflecter role develops and refines some of the ideas of Levinson (1988) in relation to interactions of three or more people, and in which, at any point in time, an utterance may involve the author of a message also being its recipient, either in the addressee or audience roles.

The manner in which the two mediators deploy the reflecter role is slightly different. M1 chooses a lexical item, ‘stopping’, which gets to the propositional core of what has been happening, without reference to the arguments and accusations which have predominated (Thomas 1995). M2 chooses to virtually reiterate what C1 has said because, on the surface, it suggests a willingness to negotiate. But, as the exchanges in lines 8 and 9 reveal, the mediator was aware that C1’s willingness to negotiate was apparent rather than real. In other words, the mediators have used the reflecter discourse role to try and reveal whether there is a hidden agenda which the clients are not disclosing. This is a
vital part of the mediators’ influence on the process of the interaction: clients may often present their conflict in terms which avoid the underlying reason for their disagreement. From a mediation perspective, to secure agreements which do not address these underlying problems are agreements which are doomed to failure in the short or long term.

The mediators have also used the reflecter role to achieve a number of complex illocutionary acts. The question of M1 in line 3, ‘what’s stopping you …’ appears simple, but, whilst on the surface her utterance is a straightforward question, and carries the presupposition mentioned earlier, it has the pragmatic force of a challenge. She has listened to the couple’s arguments and, with this utterance, implies that nothing she has heard counts as a reason for their failure to agree a time. The challenge, therefore, is for both parties to agree that there is nothing preventing their agreeing a time or to provide another, more compelling reason. In a sense, the mediator is deliberately, but indirectly, countering the parties’ reliance on what Attardo (1996: 753) refers to as ‘the perlocutionary cooperative principle’, that is a level of inferential cooperative behaviour which takes place not only on the linguistic level, but also ‘outside of the linguistic exchange (maximizing the participants’ effectiveness in the world)’. Both C2 and C1 are seeking interactional effectiveness to convince the mediators that they are presenting persuasive arguments: the mediator’s question implicitly rejects this invitation to ‘cooperate’ with either version of events, that is to take sides. In fact, this sort of dynamic is particularly common in mediation.

On the interpersonal level there is an element of criticism, whilst on the discoursal level there is the suggestion that now would be a good time to move on. In terms of any hidden agendas, her utterance is an invitation to either acknowledge that there is nothing preventing an agreement, or, if there is, to state it openly. There are echoes here of Thomas’ (1990) notion of ‘interactional controllers’ that is utterances which ‘instead of silencing a subordinate … are used by the dominant participant in order to secure a particular “on-record” response’ (1990: 149).

The utterance of M2 is similarly complex and also has the pragmatic force of a challenge. Clients will often state that they are doing or not doing one thing, whilst repeatedly demonstrating the opposite. The reflecter role can be used particularly effectively in such situations, as it is here. Both mediators are aware that there is more to this issue than a disagreement about time, but neither party has been prepared to acknowledge this. The interpersonal meaning of the utterance of M2 is, effectively, to apply pressure to C1: either she shows that she means what she has said, or she will be forced to reveal that she does not. And again, as with the discoursal intent conveyed by M1, there is the implication that now would be a good time to get to the heart of the matter.
In terms of an observation by Haynes and Haynes (1989: 34), the mediator is relying on the notion that ‘movement usually results when the mediator uses questions that direct clients from the global to the specific’ (italics in original).

These interventions by both mediators, working in tandem, as it were, result in a move forward in terms of the process. C1 acknowledges that it is not the ‘when’ which is bothering her, but the ‘what’. It is important to note that the mediators had to decide upon a way forward at this point in the interaction, and one which was neither neutral nor impartial. A neutral approach by the mediators regarding the outcome of the negotiations would have left the couple arguing about the ‘when’ and the ‘what’; or they could have declared an impasse. The latter course of action, however, would have compromised their professional requirement to help couples address any hidden agendas. In facilitating discussion about the ‘what’, the mediators were unavoidably prioritising one party’s wishes over the other party’s wishes in order to achieve a professional goal on behalf of both parties.

The following example of the reflecter discourse role occurs in a session in which the couple has agreed an agenda, namely what to tell their children (both in their late teens) and finances. They disagree, however, on which item to discuss first. C1 has expressed concern that C2 has started to divulge items of information to the children about the impending separation and possible divorce without C1’s knowledge.

**Data extract 2**

1. M1 … And I’m hearing that, you know, that things have
2. been said and [C1’s name], well, that you didn’t
3. know that it was being said. So maybe this, today,
4. is an opportunity for you to consider ways in which
5. you are going to say things, and what you’re going
6. to say - so that there isn’t one saying one thing,
7. and the other maybe having to pick up the pieces
8. and stick a plaster over it. You need to be together
9. on this, because they’re your children
10. M2 And in terms of minimising any emotional harm, the
11. least conflict they’re presented with, the better.
12. And they don’t need to be hearing different things.
13. So in that sense, you both need to be giving the
14. same messages to them

The starting point for each mediator’s intervention is information which C1 has relayed regarding the situation with the children and what is being said to them. In this sense, there is an emphasis on C1’s contributions, although C2 has acknowledged her concerns as valid and as an area for discussion.
Both mediators’ interventions are examples of what Greatbatch and Dingwall (1989: 617) describe as ‘selective facilitation’, that is the way in which practitioners steer discussions ‘through the positive power of encouraging discussion in specific directions’.

The initial utterance of M1 in line 1 is a fairly conventional politeness device in which a speaker ‘gives gifts’ to a hearer, not only in the literal sense of proffering physical objects, but also in the sense of fulfilling ‘human-relations wants such as … the wants to be liked, admired, cared about, understood, listened to, and so on’ (Brown and Levinson 1987: 129). Whilst the phrase is routine in nature, it is pragmatically and discoursally quite complex. It is a self-referential statement but is not strictly typical of either metalinguistic utterances, for example, ‘So what I’m saying is such and such’, or metapragmatic utterances such as ‘That’s an order’.

The speaker is commenting on her own behaviour, but not as a speaker: she is commenting on her behaviour as a listener. Perhaps the phrase could be classed as a ‘metapoliteness’ device. This sort of statement also seems to perform a discoursally deictic function, although again not in the usual form of utterances such as ‘the former, the latter’ (Thomas 1995: 10), or ‘however, moreover, besides, anyway, well, still, furthermore, although, oh, so’ (Levinson 1985: 128). I am using Levinson’s (1985: 85) description of discourse deixis which includes ‘a number of other ways in which an utterance signals its relation to surrounding text … (Such signals are deictic because they have the distinctive relativity of reference, being anchored to the discourse location of the current utterance.)’. The phrase carries more interpersonal meaning than a simple reference to ‘the former’ or ‘the latter’, and yet is more direct than the use of ‘however’ or ‘so’. It is also a phrase which can be used to preface a disagreement, as in ‘I hear what you’re saying, but…’. In the latter case it would still function as a politeness device but not in the same way as illustrated in this example. As an indicator of an ‘oppositional move’ which entails a ‘pre-disagreement’ (Corsaro and Rizzo 1990: 53), it could be classed, in terms of preference organisation, as a ‘dispreferred’ response: such responses are typically ‘indirect, structurally elaborated, and delayed’ (Pomerantz 1975, 1978, 1984; Brown and Levinson 1987: 38).

The rest of M1’s utterances are an implicit direction of the discussions. In the mediator’s selection of information to feed back is the suggestion that, in her opinion, the topic in question is important enough to warrant further discussion. At the level of discoursal intent, the message is the same for all present, something along the lines of ‘I think we should discuss this now’. At the level of interpersonal meaning there is support for C1 and a challenge to C2 in terms of topic prioritisation. This raises the question of an utterance encoding two opposite aims and the politeness dilemma with which mediators are routinely
faced. It is a dilemma, which is encapsulated by Leech’s (1983: 132) ‘agreement maxim’, namely ‘Minimize disagreement between self and other’ and ‘Maximize agreement between self and other’ (italics in original). The tension for the mediator (self), who is working with two hearers (others), is that in adhering to the maxim in relation to one hearer/other, they may contravene it in relation to the second hearer/other. Nor do the politeness strategies of Brown and Levinson (1987) help in this regard: whilst such discoursal manoeuvres on the part of the practitioner attend to the needs and wishes of one party, they inevitably (where there is conflict) impinge upon the needs and wishes of the other.

These complexities are reinforced in lines 6–8 when M1 paraphrases the concerns which C1 has previously expressed. C1 is anguished about the messages which C2 is communicating to the children without her knowledge or agreement, when she states, for example, ‘we need to be clear between us how we answer questions’ and ‘I would welcome a discussion … about what we’re going to say to the children and how we’re going to answer their questions’. In the interaction up to this point, C2 has distanced himself but does, occasionally, talk in terms of ‘we’ in relation to the responsibility they each have as parents to their children. In order to reduce the bias implicit in what she has been saying, M1 chooses to ignore the details of the parties’ disagreements with each other and reflect one recurring element which she summarises as the ‘need to be together on this’. With this last utterance the interpersonal meaning switches to one of support for both parties. As Parkinson (1997: 72) points out: ‘mediation is stressful work which demands a high level of concentration. There is a great deal of information to absorb and multiple tasks to carry out’. It is part of the skill of a mediator to register and retain utterances, and the nuances of any multiple meanings, by each party, allocate them to opposing and consensual categories, and bring them back into the session, very often a considerable time later and after many topic changes, in order to direct the discussions.

The utterances of M2 continue the theme of hurt or damage introduced by M1 in her metaphorical use of the ideas of ‘picking up pieces’ and the need to ‘stick a plaster over it’. M2’s use of the term ‘harm’ is not reflective because she is not addressing M1. Her continuation of the metaphorical theme, does, however, achieve a number of discoursal and professional aims. From a co-working perspective what she says carries the interpersonal meaning for her colleague of ‘I agree with you’. From the perspective of the clients, M2’s utterances serve to reinforce and elaborate upon what M1 has just said.

The utterances of M2 are, however, a little more complex than this. Whilst M1 has reflected the ideas presented by the clients in terms of repairing fractured communication, M2 chooses to develop the theme in a way which
directly introduces the notion of harm to the children. She does this by adopting the discourse role of spokesperson for the children and uses this role to present information which is new when she says in lines 10 and 11 ‘and in terms of minimizing any emotional harm the least conflict they’re presented with, the better’. There is nothing ‘reflective’ about the notion of ‘emotional harm’ as there has been no direct, or indirect, mention of this in the session so far. I include it in this section because M2 chooses to introduce this powerful and emotive phrase in the middle of a series of utterances which are reflective.

In amongst the generally reflective nature of what is being said, which is geared towards a consensual change of topic, M2 introduces an idea which draws on her ‘expert’ knowledge of the damaging effects of conflict on the children of separated or divorced parents (Kalter et al. 1989; Johnston 1994; Kelly and Emery 2003). So, sandwiching this idea between already accepted views enhances its chances of, indirectly, becoming part of the general consensus about what the children need from their parents. There is also an element here of fusing ‘common sense reality’ with ‘expert’ knowledge. I believe that the implicit power of the utterance stems from the notion that, in the search for a fully robust realism we need to explore those instances ‘when the fictive point that serves as the locus of the objective gaze encodes not what we all have in common but the interests of privilege that have come spuriously to be accepted as universal’ (Sluga and Stern 1999: 387). I am not, of course, arguing that there is anything ‘spurious’ about the claims of M2. Nevertheless, she is making a statement which presupposes certain ‘facts’ from the subjective perspective of a family mediator and member of a society in which ‘emotional harm’ to a child is considered to be a ‘bad thing’ and to be an inevitable consequence of conflicted parents.

The final extract is taken from a session with a couple whose interaction provides an example of a common problem in mediation, that of one party not ‘hearing’ what the other party is actually saying. The subject is child support payments.

Data extract 3

1 M Right, so it seems – I don’t know how it seems to you [C1’s name] - but the message to me, pretty clearly, is, it’s not a question of [C2’s name] saying ‘I’m not paying for my kids’ - because we do get that here – erm, that’s not it [at] all, erm, and [C2’s name] is not even particularly going to quibble over the amount, but he wants to feel that it’s not leaving him shorter of cash than it is you
As is often the case, the reflecter role here comprises other discourse roles but, as mentioned before, it is distinct from such roles in that no new information is being conveyed. The mediator has decided, however, that the information which C2 is trying to convey is being misinterpreted by C1: she takes his unhappiness about the amount he is paying as a reluctance to pay anything at all. Such misunderstandings are a common feature of mediation and, indeed, an important reason for couples deciding to attend mediation in the first place. Both parties appear to be floundering in the kind of impasse which occurs ‘when there has been either an inadequate assessment or insufficient clarification of the underlying interests and needs’ (Benjamin 2004: 263). This is understandable: when such important emotional issues are at stake it is not surprising that effective communication becomes a casualty.

The resolution of such misunderstandings is a common motivation for a mediator’s use of the reflecter discourse role. In terms of mediation techniques, the practitioner is seeking to clarify the issues. The couple has been ‘going round in circles’ for some time, each talking about their own perceptions without taking cognisance of the other person’s perceptions. This results in two separate monologues, rather than a dialogue. It is precisely this sort of exchange which requires the presence of a third party and which gives some of the authority for mediator intervention.

The mediator’s utterances also summarise her perception of what C2 has been saying. She is, in effect, bringing matters to a head for both parties: her interpretation of what has been said so far is open to challenge by either party. If there is no challenge then the point of clarification has, hopefully, been made and the discussion can move on to the salient issues, in this case not the principle of child support payments but the detail. This, of course, is part of the mediator’s overall task of ‘managing the process’ of mediation. This particular extract is taken from the early stages of the meeting when the mediator is focussed on establishing and exploring the issues with the parties, before moving on to discussing possible solutions.

It is the nature of mediation techniques that they are ‘fuzzy’. This is not surprising as language use itself is difficult to ‘pin down’ in any absolute sense. In lines 1–2, the mediator inserts an open question to C1 within the overall flow of her reflection of, and upon, the points C2 has been making. This is an implicit invitation to C1 to challenge the mediator’s summary and appears to be an effort to exercise impartiality: the mediator is aware that, at this point, she is concentrating on C2’s contributions and C1’s apparent misunderstanding of them, and does not wish to appear to be siding with C2 against her. There is, therefore, an element here of the practitioner seeking to equalise the possible power imbalance of a perceived ‘two against one’ scenario.
On the other hand, the mediator is also trying to bring into the open what she perceives as C2’s unhelpful vagueness, and therefore neutralise the power imbalance such tactics afford the interactant who is avoiding decision-making, whilst appearing to be co-operative. In the session, C1 is clear and open about the amount of child support which she feels is fair, but C2 refuses to commit to a ‘yes’ or ‘no’ answer. As Benjamin (2004: 263) observes, ‘negotiation involves choices and requires taking responsibility for decisions; these elements necessarily entail taking the risk of being “played for a fool” and losing (Pagels 1995)’. This is a perennial minefield in mediation, and one through which mediators need to pick their way with considerable care, creativity and ingenuity.

6 Conclusion

The premise of the research which underpins this paper is that discourse research is relevant to the practice and theory of family mediation: such mediation is language use in some of its most dynamic, constrained and creative forms. The family mediation discussed here addresses issues which arise from a number of interactional variables: three or four party dialogue; the reference to absent others; the divide between the language of professional idealism and that of unpredictable practice encounters; the attempt to exercise implicit power and control; and the bias which is inherent in these attempts.

The analytical framework of complex illocutionary acts and discourse roles has revealed the following:

- the existence of a discourse role, reflecter, which has not been explored in the linguistic literature;
- the relevance of this discourse role to the disparity between the professional ideals of neutrality and impartiality and actual practice;
- a method for explicating some of the reasons for this disparity;
- a method for providing some insight into the complexity of the linguistic demands placed upon mediators in seeking to meet their professional ideals.

These findings go the heart of the professional identity of family mediators. A detailed analysis of the actual words used by practitioners and their clients, in the context in which they occur and the interrelationship which pertains on a moment by moment basis, is the catalyst for far more profound considerations in relation to power and politeness and the fracture between professional intent and practice reality.

Sarangi (2002: 129) makes an observation which reflects one of the main motivations of the research which underpins this article, and its preliminary endeavours to apply linguistic insights to professional practice: ‘The onus is
on discourse practitioners to present themselves as a "community of interprofessional practice" in order to make their research both credible and socially relevant across professional boundaries.

The illuminating data are out there. It is imperative that discourse researchers access these data and do so in a way which is of clear and accessible benefit to those practitioners and clients who are willing to share their talk. The most informative data occur when clients are at their most vulnerable or hostile and, as a consequence, practitioners are most challenged. The interactional realities presented by such challenges are precisely those subjects upon which many professional ideals and practice guidelines are most silent.

About the author

Chris Hill received her PhD in pragmatic linguistics from Bangor University, Wales. She is a qualified practitioner in probation, social work and family mediation and continues to practice as a mediator. She is currently working on a Postdoctoral Fellowship application with Professor Srikant Sarangi, Cardiff University, Wales and has delivered several language workshops, one of which has received continuing professional development accreditation. Her address for correspondence is: Cae Newydd, Aberdesach, Gwynedd, LL54 5EP, Wales, UK. Email: chris@O2.co.uk

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