



The importance of apology to mediation: A mixed-methods study of role, effectiveness and implications for practice

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Abstract

This paper explores the role of apology in the resolution of conflict through mediation. The paper outlines the distinctive features of mediation that contribute to its unique potential to help restore relationships, with apology forming a potentially transformative aspect to this.

However, not all apologies are the same and not all apologies are effective. Working from the literature, this article seeks to clarify the characteristics of apology that are likely to make it effective in mediation. A review of the literature also reveals a range of moderating factors that can further impact the effectiveness of apology. Particular attention will be paid to these moderators in considering what contributes to a template of apology effectiveness in the context of mediation.

In this study, the first of its kind in an Irish context, empirical data from an online survey of 97 practicing mediators along with in-depth interviews with a sample of 24 organisational mediators is analysed, in relation to five core questions aimed at determining the fundamental nature of apology in mediation. While the mediators who were interviewed operate in the 'organisational' context, the mediators we surveyed practice across a range of mediation contexts, including civil, workplace, and family. Therefore the



context, in this case, was not controlled. Nonetheless, the analysis yields insights that support the view found in the literature that an apology can, in certain circumstances, be an effective means of transforming the mediation process.

A summary of these findings indicates that:

- (a) Practicing mediators confirm that apology is a prominent feature of mediation, and that the process represents fertile soil for apology. This represents a challenge to the mediator where apology is not forthcoming.
- (b) Where an apology is forthcoming but hesitant, skilled mediators can act as a conduit of apology between parties.
- (c) The data also suggests that a high-quality apology, issued spontaneously, can have a transformative effect on the dispute, particularly where the relationship is on-going.

The main contribution of this paper lies in its potential to inform mediation practice, by illustrating the potential impact of apology and by offering role guidance to practitioners who wish to facilitate such potential where circumstances allow. The paper also contributes to the literature through insights offered by the research respondents which shed new light on existing themes.

Ultimately this research argues that mediation can accommodate apology as a potent means of repairing relationships, and that the mediator can play a key role in this. The paper will make the case for a nuanced, yet structured approach to apology, one that needs to be reflected in mediator training and practice. The case for further research is presented at the end.



Key words: Apology, conflict resolution, mediation, ADR theory

Introduction

.... showing the different types of apology, the elusiveness of apology as an object of exchange, and the variety of factors that contribute to the effects of apology, demonstrates that apology is not a simple solution but rather a delicate interaction that merits more consideration from its detractors and more care from its champions. (Levi, 1997:1169)

The acceptance of an apology can signal that disputing parties share a sincere willingness to move past their conflict. It can also be a strong indicator that they will consider the matter closed at that stage. The process of arriving at this point is rarely an easy one, but it can be facilitated by mediation.

Mediation is one of a number of processes that can be applied in order to attempt resolution of conflict. There are numerous models and definitions of mediation. Following Roche et al., (2014), we prefer the definition advanced by Moore (2014), as it contrasts mediation with formal dispute resolution processes, as for example when adjudicators or arbitrators are involved in the decision-making process.

Mediation is a conflict resolution process in which a mutually acceptable third party, who has no authority to make binding decisions for disputants, intervenes in a conflict or dispute to assist involved parties to improve their relationships, enhance communications, and use effective problem-solving and negotiation procedures to reach voluntary and mutually acceptable understandings or agreements on contested Issues. (Moore, 2014:24)



Other dispute resolution processes include conciliation, negotiation, arbitration and litigation.

A widely cited benefit of mediation is its capacity to repair and improve relationships (Banks and Saundry, 2010; Latreille, 2011; CIPD survey cited in ACAS, 2013). Unlike more formal procedures, mediation can actively seek to rebuild relationships between disputing parties (Bennett, 2013). Its open, collaborative approach facilitates the exploration of underlying concerns and emotions (Bollen and Euwema, 2013) and allows the parties to address deeper issues beyond what is presented as the main issue, but which might not be aired through alternative processes (Ridley-Duff and Bennett, 2011).

It has been suggested that mediation allows a more *nuanced* approach to dispute resolution, one that takes account of complex inter-relational dynamics (Jameson, Bodtker and Linker, 2010; Sargent, Picard and Jull, 2011). Such an approach can promote understanding and reconciliation between the disputing parties (Ridley-Duff and Bennett, 2011). This nuanced approach can lead to the levels of sensitivity required that might make the likelihood of an apology greater.

Some of the specific features of mediation that have a direct influence on levels of sensitivity are:

1. It is informal – the location is congenial, and the process tends to be as relaxed as possible.
2. It is private – only the disputants and mediator get to hear what is said during the process.



3. It is voluntary – from start to finish there is no pressure on either party to commit to any action, including apology, if they do not wish to, whether the other party requests such an action or not.
4. It is confidential. An apology, its nature or its circumstances would only be made public with the prior consent of both parties.
5. There is an opportunity for the claimant to voice their grievance in front of the alleged perpetrator.
6. In mediation the past is acknowledged, but the focus is on the future. An apology can be part of a wider constructive strategy.
7. The parties retain autonomy over outcomes – ‘Nothing is agreed until everything is agreed.’
8. The mediator role – as expert facilitator – can create the conditions necessary for an apology that may not have been possible in other dispute resolution arenas.

Should these features realise an apology, its effect on the mediation process can be dramatic.

It can be a ‘game-changer’ in its ability to dissipate the intense emotions that led up to the apology:

Mediation offers an ideal venue for the increased use of apology. The use of apology, with its power to restore relationships, offers hope for more successful mediations, where the goal is often to preserve existing relationships. (Bolstad, 2000:578)



This study seeks to determine the nature of this power through an empirical analysis of mediators' experiences of apology, interpreted through an exploration of the broader theory of apology.

The nature of apology

Why do people choose to apologise? Why do they sometimes resist if apology is directly requested?

Apology is a term loaded with societal and cultural connotations and these span from concepts of healing and reconciliation to attitudes of loss and weakness. The act of apology can be seen as an incident of potential social exchange, in addition to the exchange of power and shame for acceptance and/or forgiveness. In apologising, the offending party exposes their vulnerability by handing over the power of acceptance to the victim and replacing it with shame for the offence caused. (Schneider, 2006)

Research by Wagatsuma and Rossett, (1986) finds that, despite important cultural contextual differences, a genuine apology will have a number of core components.

These we summarise as that:

1. the offender acknowledges and names the offence
2. accepts responsibility for it
3. acknowledges and names the effect on the offended party
4. expresses regret/remorse
5. offers explanation without defence
6. puts himself at the mercy of the offended party



7. gives a commitment that the offence will not be repeated
8. makes practical attempts to repair the damage caused to the relationship

Lazare (1995) views apology as the repayment of debt, whether that debt be emotionally, physically or financially, motivated in four distinct ways. The first two motives – “to salvage or restore the relationship” and “to diminish or end their pain” – are considerate of the relationship and the other party. Lazare describes the second two motives – “to escape punishment” and “as relief from guilt” – as “not so lofty”.

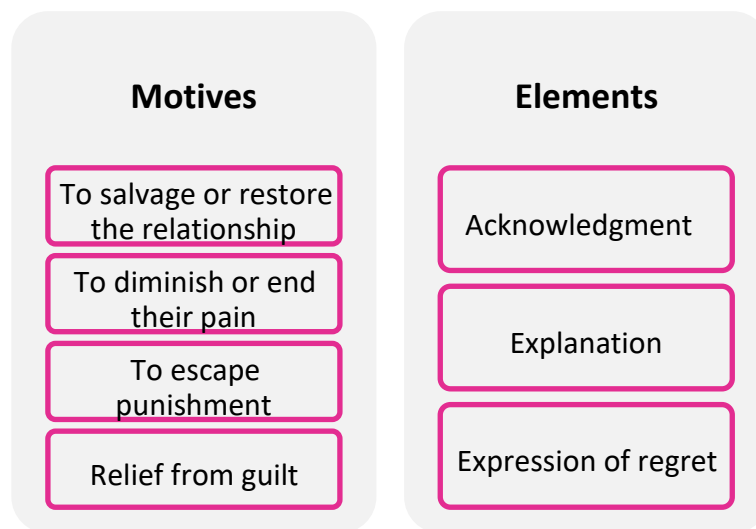


Figure 1: *Apology – Motives and elements adapted from Lazarre, 1995*

These motives can be either to restore the relationship with “someone you love, enjoy, or just plain need as your ally” (1995:42), or to genuinely empathise with the person’s hurt and attempt to ease it. Alternatively, the motives might be a cynical attempt to diminish or avoid punishment or to simply to ease one’s



conscience. Lazare (1995) refers to the integral elements of apology as ‘acknowledgment’ (recognition of the injury caused), ‘explanation’ (offering some reason for the transgression), and ‘expression of regret’ (evidence of the effect on the apologiser).

Apologising is a critical social skill and yet, as Lazare acknowledges, we are rarely taught to apologise and the act of apology is in many ways “antithetical to the ever-pervasive values of winning, success and perfection” (1995:76). He argues that society tends to view an apology as a sign of weakness when, in fact, the opposite – it requires greater strength to apologise as it “subjects us to the emotional distress of shame and the risk of humiliation.... at the hands of the person we offended.” (Lazare, 1995:78) According to Lazare, an apology is an instance of communication that offers the promise of reconciliation in human relations:

A genuine apology offered and accepted is one of the most profound interactions of civilized people. (Lazare, 1995:40)

O'Hara and Yarn (2002) define essential apology elements as “identification of the wrongful act, remorse, promise to forbear, and offer to repair”. According to Lee Taft apology is a “performative utterance”, the “centrepiece in a moral dialective between sorrow and forgiveness”, which serves to “lubricate settlement discussions” (2006: 1139, 1143, 1148).

Schneider (2000:214/5) names the elements of apology as: ‘acknowledgement’ (recognition of the injury caused), ‘affect’ (evidence of affect on the apologiser), and ‘vulnerability’ (apology offered without defence). Slocum et al. (2011:84)



label the components of apology as ‘affirmation’ (recognition of the injury caused), ‘affect’ (evidence of affect on the apologiser), and ‘action’ (the apologiser makes some concrete reparation). According to Dhami a ‘full’ apology contains five components:

- 1) Admitting responsibility for the behaviour and outcomes
- 2) Acknowledging the harm done and that it was wrong
- 3) Expressing regret or remorse for the harm done
- 4) Offering to repair the harm or make amends
- 5) Promising not to repeat the behaviour in the future and to work toward good relations (ie forbearance) (2012:32)

Slocum et al. further suggest that writers on apology often refer to the acknowledgment and affect components but rarely to the action component “and those who mention it do not appear to consider it of great importance” (2011:90). Their rationalisation for this is that what is required by the offended party differs across individuals and with particular circumstances such as the strength of the prior relationship, perception of the degree of wrong-doing by the aggrieved party (including what principle was violated), and the level of responsibility attributed to the offender.

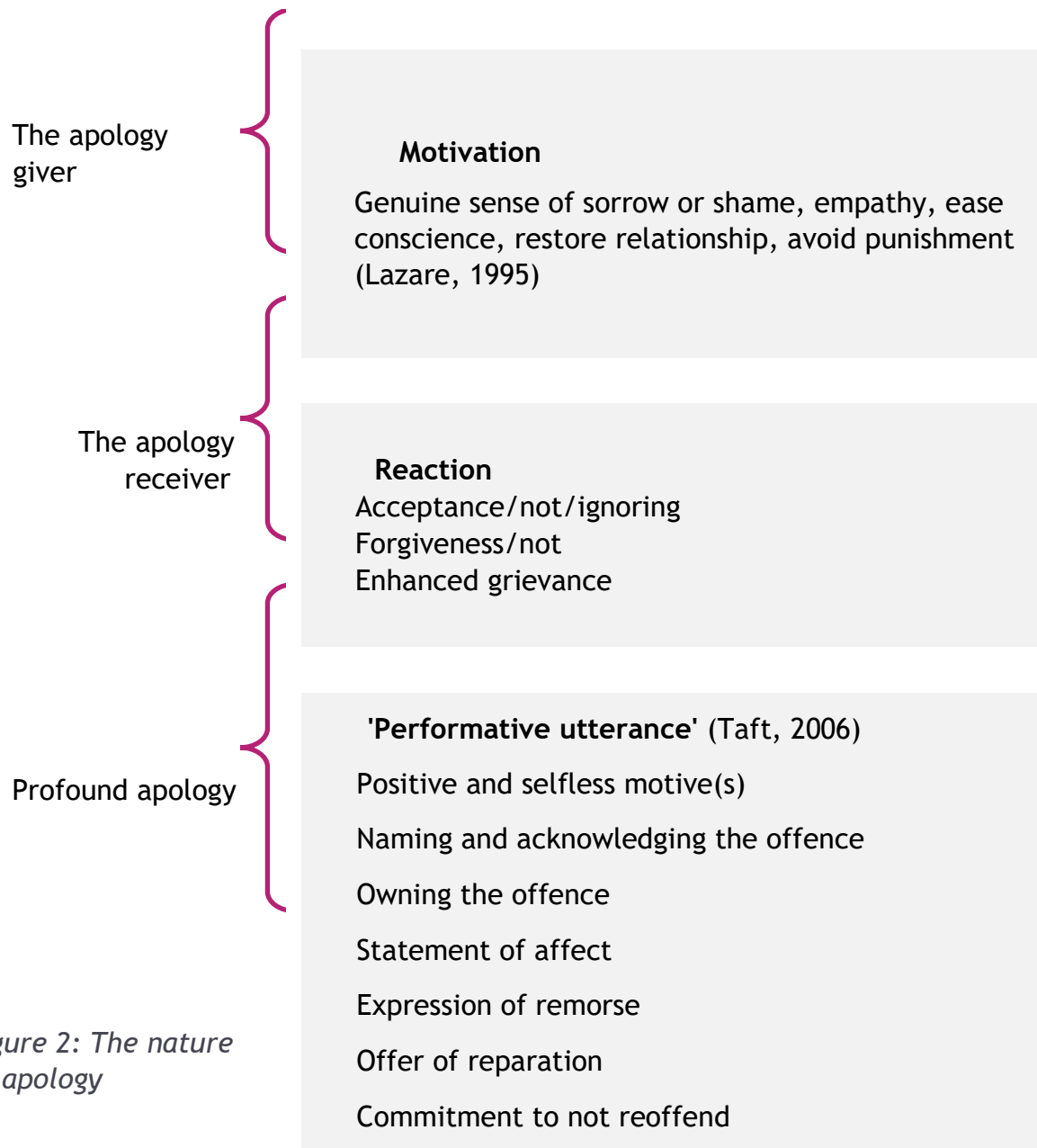


Figure 2: The nature of apology

Taft (2006:608) explores apology in the context of tort law, where clients have experienced serious injury and taking a broader perspective, he views apology as merely an utterance, ‘the voice of repentance’, and a necessary but insufficient step towards forgiveness and reconciliation. Besides apology, the other core elements of repentance are remorse, restitution and changed behaviour. The



vocalisation of apology can occur in the absence of remorse, restitution or behaviour change but, under such circumstances, forgiveness is less likely to be forthcoming or reconciliation achieved:

When I say “I am sorry” I may be sincerely communicating remorse, but that alone, uncoupled from the remaining elements of repentance, does not really address the harm inflicted. (Taft, 2006:606)

Apology effectiveness

According to Schneider (2000), an effective apology is the core requirement to repairing damaged relationships. Lazare (1995:77) argues that words may not be enough to compensate for the hurt inflicted and the offended party may want some action by the offender to redress the wrong. In some cases, this may be a small, symbolic act. It may also involve a more significant action that is deemed to equate with the original offence. Taft claims to be a proponent of the “full, unprotected apology” in which the offender “admits wrongdoing, accepts responsibility for the wrongful act, and promises future acts of compensation, including acts of reparation” (Taft, 2006:603).

Sincerity seems to be a fundamental component of an effective apology. The injured party must be convinced that the apologiser understands the impact of their words and their actions. They must be willing to accept responsibility; they must feel and express regret. Tavuchis (1991) argues that regret, through the expression of distress by wrongdoers about their wrongful behaviour, is an essential element of apology.



Many dispute scenarios involve a fundamental breakdown of trust. A genuine apology can start the process of rebuilding that trust;

The past is not erased, but the present is changed (Kastor, 1998)

Apology acceptance

Not only does an apology have to be offered before the cycle of distrust can be broken, it also has to be accepted. The acceptance of apology and reciprocation with forgiveness is central to repairing relationships (Taft, 2011, Della Noce, 2012). However, it is clear that for an apology to be considered genuine, it must not be conditional on, or tailored to, acceptance. Its ‘independence’ in this regard, its reliance on itself, ultimately serves both parties – the apologist can be confident of authenticity and that the apology has not added to suffering. At the same time, the injured party can be confident of their freedom and autonomy in deciding whether to accept or reject the offering.

Consequently, making an apology involves an element of risk. The apology may be rejected and may even backfire in terms of effect. If offered insincerely, or proffered in a poor way, it can lead to destructive outcomes such as inflaming anger, further damaging trust and reducing the prospect of agreement. Getting it wrong can perpetuate and accentuate the hurt and lead to life-long grudges and bitter recriminations (Lazare, 1995:76).

Lazare (1995:77) highlights the common reasons for ‘failed’ apologies, the most common of which is the offender’s pride and their fear of exposing their vulnerability. Other reasons include an egocentric inability to see the situation



from the other's perspective, trivialising the impact of the offence, an unwillingness to show weakness or admit guilt and, finally, poor timing. Small offences between two parties may require an immediate apology. More serious offences between parties, communities, or even nations, may require the passage of time before it is appropriate to offer an apology.

As outlined, a key ingredient of a genuine apology is the offender's *acceptance of responsibility* for their wrong-doing. Kichaven (2005) claims that many people are reluctant to accept responsibility and admit they have wronged another. They will frequently offer excuses or rationalisations to justify their behaviour, rather than offer an unqualified apology.

A high-quality apology can lead to better outcomes in a dispute resolution process. However, a poor apology can be worse than no apology at all. Robbenolt (2006:343-44) found in her experimental studies, that when an apology was given, 73% of respondents claimed they would accept the settlement offer. When no apology was given, 52% claimed they would accept the offer and when a partial apology was given, only 35% claimed they would accept. Smith (2013:44) reports on evidence from medical malpractice cases in the US indicating that the likelihood of legal action falls by 50% "when an apology is offered, and the details of a medical error are disclosed immediately".

Moderating effectiveness and acceptance

An apology does not occur in a vacuum and there is extensive coverage in the literature of the factors that moderate the effectiveness and likely acceptance of an apology (see Levi, 1997:1168-9, for example). These factors include: the



nature, context and perceived severity of the dispute; the characteristics of the parties; the nature of the prior relationship and the approach, style and skill of the mediator.

Table 1: Moderating factors as depicted in the literature

Moderating factors of apology	
1	Timing (<i>Bolstad, 2000</i>)
2	Intentional/unintentional transgression (<i>Zheng, 2016</i>)
3	Openness of the parties to apology/pride (<i>Pavlick, 2003</i>)
4	Gender (<i>Pavlick, 2003</i>)
5	Motive for apology (<i>Zheng, 2016</i>)
6	Nature of the prior relationship (<i>Zheng, 2016</i>)
7	Trust
8	Predisposition of the parties (personality, socialisation, religion etc.) (<i>Pavlick, 2003</i>)
9	Mediator style/approach/experience/competence
10	Mediator skill at 'carrying the gift'
11	Nature/intensity of the dispute
12	Perceived genuineness
13	Perceived balance of responsibility for the offence
14	Power-balance (<i>Zheng, 2016</i>)
15	Culture (national and professional) (<i>Pavlick, 2003</i>)
16	Empathy/attribution theory (<i>Davis and Gold, 2011</i>)

So, from a review of the literature, multiple factors influence the triggering, timing and impact of apology while the quality of apology itself goes some way



towards determining its impact. Going beyond a mere expression of words, alongside a genuine expression of affect by the offender, whether it be guilt, remorse or regret, seems to constitute a necessary precondition.

The next section turns specifically to the role apology plays in mediation.

Apology in mediation and the role of the mediator

We have seen that an apology is a multi-faceted and complex construct in human communication. Theory tells us that there are gradations of apology ranging from a contrived, reluctant, superficial and less than genuine offering, to a spontaneous, heartfelt, genuine and unconditional apology.

When it comes to creating the conditions for an acceptable apology, mediation is an excellent dispute resolution process as, while the disputing parties struggle to convey their emotions and articulate their issues to each other, the role of the mediator in managing both sides' movement towards resolution – their continual de-escalating, focusing, reframing – all help to keep the conversation productive. We contend that these same conditions facilitate in apology-making when seen as a positive contribution to the dispute resolution process, an argument supported by the literature. Pavlick (2003: 857-8), for example, cites mediation as the “likely forum for apology” because of its private, voluntary, confidential nature along with its focus on interests and “parties' full self-expression”. In mediation:

[Apology] helps to subtract the insult from the injury, thereby minimizing the injured party's anger toward the offender. Without an apology, what might have been a minor offense may escalate into a major dispute....

Through apology, formal recognition of the victim occurs, and the balance



of moral power is restored. With recognition, the healing process can begin, and the victim can be made whole. (2003: 864-5)

Bolstad (2000: 578) also argues that “apology, with its power to restore relationships, offers hope for more successful mediations, where the goal is often to preserve existing relationships”.

In a litigious process, the defendant will often be dissuaded from offering an apology on the basis that it could be construed as an admission of guilt and consequently open the respondent to increased liability. Mediation, however, operates in a way that can accommodate an apology “because of its position outside the traditional structures of the adversarial system and because of its oft-stated goal of reconciling parties and preserving relationships” (Bolstad, 2000:545-6).

Mediators should be alert to the possibility of an apology and need to be ready to highlight the seeds of apology that may be missed by the other party. They may even choose to use probing questions in order to encourage the profferer “to convert an incomplete apology into a full one” (Mediation Foundation article).

In some cases, a declared apology and acknowledgment of wrong-doing may be all that is required and the mediator can facilitate the parties in working out the wording of an apology until it is mutually acceptable. While the potential for genuine apology may be there, it may go unsaid until it is ‘coaxed into existence’ by the mediator.

Cloke (1993) explains in detail the properties of forgiveness and argues that mediation provides an excellent way through which forgiveness can be facilitated,



in which the mediator – as a process manager – can build a *framework* of apology, to which the parties can supply *content*;

The mediator helps both parties imagine forgiveness, then creates a path that leads there, step by step. There is no single technique capable of producing such magic in all cases. The human mind is too subtle and determined for that. It is more a question of listening with the heart, of painful honesty, and of the empathy that comes with asking, "What if it were me?" (Clove:1993:77)

In this way the mediator is acting ethically and authentically. The parties are not led to apology, yet the barriers to apology can be redesigned into manageable stages through mediator intervention. Cloke also outlines 50 practical techniques that the mediator can use “to move parties from anger and a desire for revenge, in the direction of forgiveness and reconciliation”. Not all of these techniques are required in all cases and the skill of the mediator involves choosing which techniques to use when, and to best effect. Some of Cloke’s techniques are listed as follows (1993:73-76);

Asking each party to say what they would have done differently, in hindsight, to avoid the conflict happening in the first place

Asking each party to describe the pain of being in conflict. Acknowledge each person's pain and ask the other party if they have anything to say in response. It is important that acknowledgment, sympathy, or apology be voluntary and genuine and come directly from the other party



Asking the parties what they think would happen if they genuinely forgave each other.

What would happen if they did not? Which would they prefer?

The literature also highlights some concerns, issues and challenges regarding apology in mediation.

Taft (2006) refers to the frequent reference to apology in media and public discourse as 'apology mania' and cautions against the 'commodification' of apology in civil mediation.

...the opportunity to commodify apology has been noticed and used by lawyers.... In this worldview everything becomes a part of the exchange process, and everything has a price. (p1146)

McNeill et al.'s article (2014) reconstructing David Cameron's apology for 'Bloody Sunday', argues that an apology can be interpreted in different ways, depending on the agenda of the recipient(s). Bolstad (2000:571) claims that apology is "potentially exploitative of a weaker, more dependent party" and that this places an ethical responsibility on the mediator. Pavlick (2003) sees possible problems with apology in mediation as including interference from client representatives (lawyers, union reps and employers reps), the style and competence of the mediator, and the opaqueness afforded by confidentiality.



Mediators need to be aware of the potential of apology and their role in facilitating apology. Dhimi (2012) makes the point that apology can be counterproductive and can negatively impact mediation outcomes. Apology recipients, she claims, have three choices – to ignore, reject or accept an apology. Only the latter can lead to positive impacts in mediation.

Given the potential of mediation and its prevalence, it is imperative to understand the mechanisms by which mediation may or may not be effective. One key mechanism that has been frequently proposed but under researched is the offer and acceptance of apology. ...the opportunity to offer or receive an apology may be a strong motivation for individuals to engage in the mediation process. (2012:110)

Research methods

This paper reports on both quantitative and qualitative data collected from practicing mediators in Ireland. The research instruments were:

1. Survey responses from 97 members of the Mediators Institute of Ireland (MII)
2. Interviews conducted with 24 experienced workplace mediators.

Survey data

Addressing the core aim of the study, an online survey was designed by the authors that targeted specific themes from the literature. The survey was distributed to members of the MII, facilitated by MII administrators with management approval, along with a notice from the authors about the purpose of the study and how the



data would be stored and used. Ninety-seven mediators completed the survey which contained eight questions:

Table 2: Online survey questions

Question
1. How often does apology feature in mediations you have conducted?
2. In your experience what role (if any) does apology play in mediation?
3. Which of the following do you consider as 'essential' elements of a genuine apology?
<i>['Essential' in this context means that without this element it is not a genuine apology] ¹</i>
4. Can you think of another essential element of a genuine apology that is not listed in question 3?
5. What role, if any, does the mediator play in apology?
6. The following process-related factors are considered important for facilitating an effective apology in mediation. In your opinion, how important are they?
7. The following factors are also considered important for facilitating an effective apology in mediation. In your opinion, how important are they?
8. Are there other factors that could be added to the lists in Question 6 and Question 7?

Survey findings

¹ Essential elements of apology: (i) Expressing remorse, (ii) Owning the offence, (iii) Naming the offence, (iv) Commitment to not re-offend, (v) Positive and selfless motive, (vi) Offer of reparation.



Question 1 – The prevalence of apology in mediation

In an emphatic response to the prevalence of apology in mediation, 93 of 97 (96%) of respondents said that apology was a feature of mediations they had conducted sometimes, often or very often.

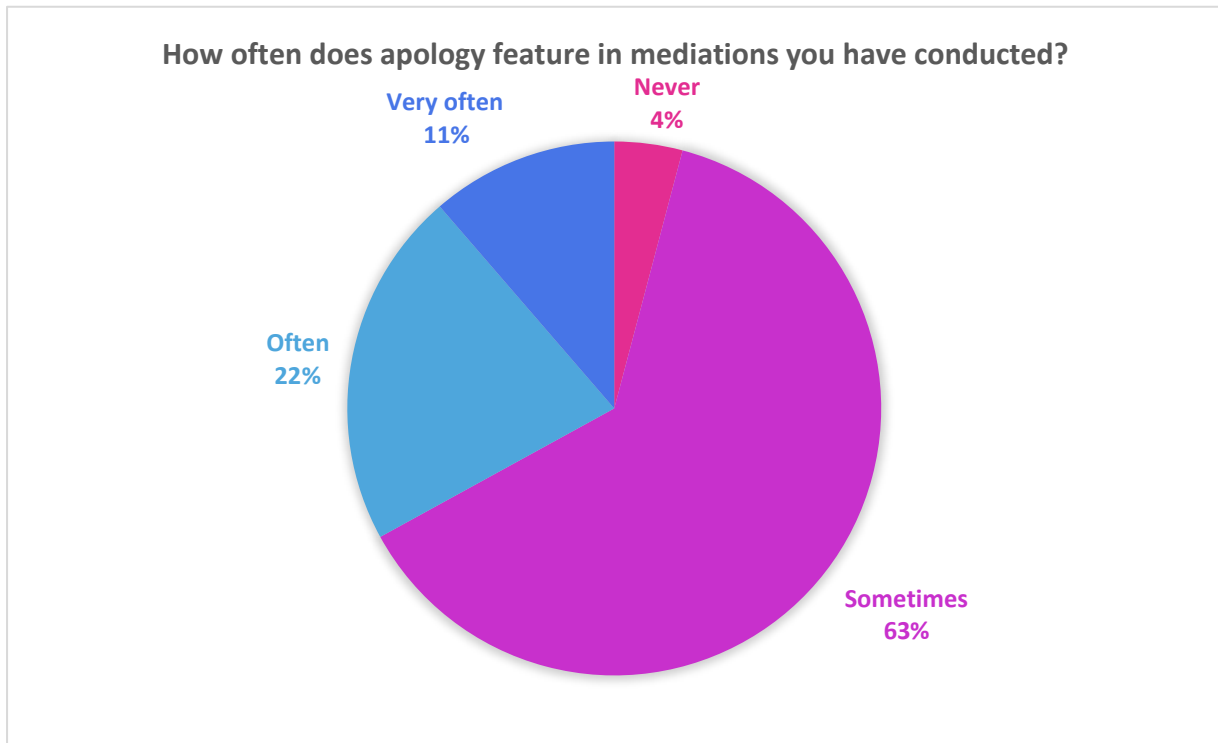


Figure 3: Responses to Q1 - The prevalence of apology in mediation

Question 2 - The role of apology in mediation

All 97 survey respondents addressed this open question and the depth and variety of the insights volunteered by the participants reflected the potency and congruity that apology has in mediation.

All respondents agreed that apology had a role to play in mediation, in some cases a ‘pivotal’ or ‘transformative’ role. We have grouped responses into three



categories (below), but there are some general observations that are useful to highlight in advance.

Many of the respondents referred to the distinction between a ‘genuine’ apology and one that is not. A genuine apology was seen to lead to an abundance of positive outcomes (see categories), but a false apology was seen to be counterproductive and potentially damaging to mediation process, outcomes, and participant relationships.

A small number of factors were highlighted as impacting the role of apology including: the timing of the apology in the process [i.e. that it shouldn’t be offered too soon], the issues in dispute, the context of the dispute, and the type of mediation (commercial, family, workplace etc.). There was a sense that ‘action speaks louder than words’ when it comes to apology. Of particular interest to practice was the way in which the mediator was sometimes seen as having to “carry the apology” in circumstances where heightened emotion prevented the apology from reaching its destination.

A number of respondents referred to what they saw as the challenge presented when clients issue a ‘demand’ for apology at the outset, in some cases as a pre-condition for proceeding. Most felt that a skilled mediator could facilitate a form of words that would address the need for apology without the word ‘sorry’ being used. An acknowledgment of hurt, an expression of regret, could often suffice.

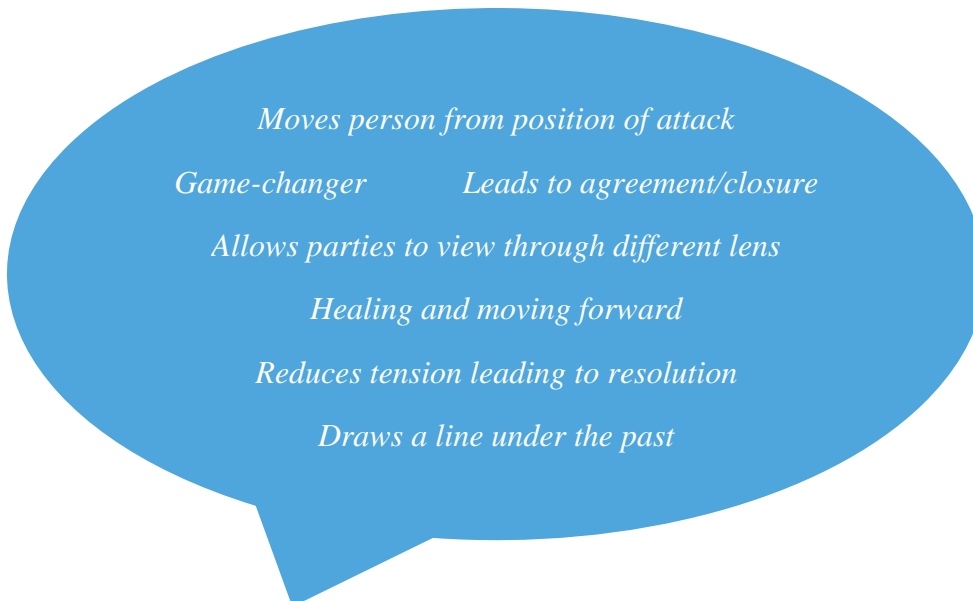
As stated earlier, responses were categorised into three emerging themes that described the role of apology in mediation.



Apology as a process facilitator [sample of comments]



Apology as a catalyst for change [sample of comments]





Restorative elements of apology [sample of comments]



So the data gathered in this research provides a strong endorsement for the role of apology in mediation. The next section begins to explore what an apology ‘looks’ like.

Question 3 – The essential components of an apology in mediation

The participants were asked to select, from their experience, the essential components of an apology in mediation. Of these, expressions of remorse rated highest among the group, followed by ownership of the offence, naming the offence, a positive and selfless motive and – interestingly – lastly offers of reparation.

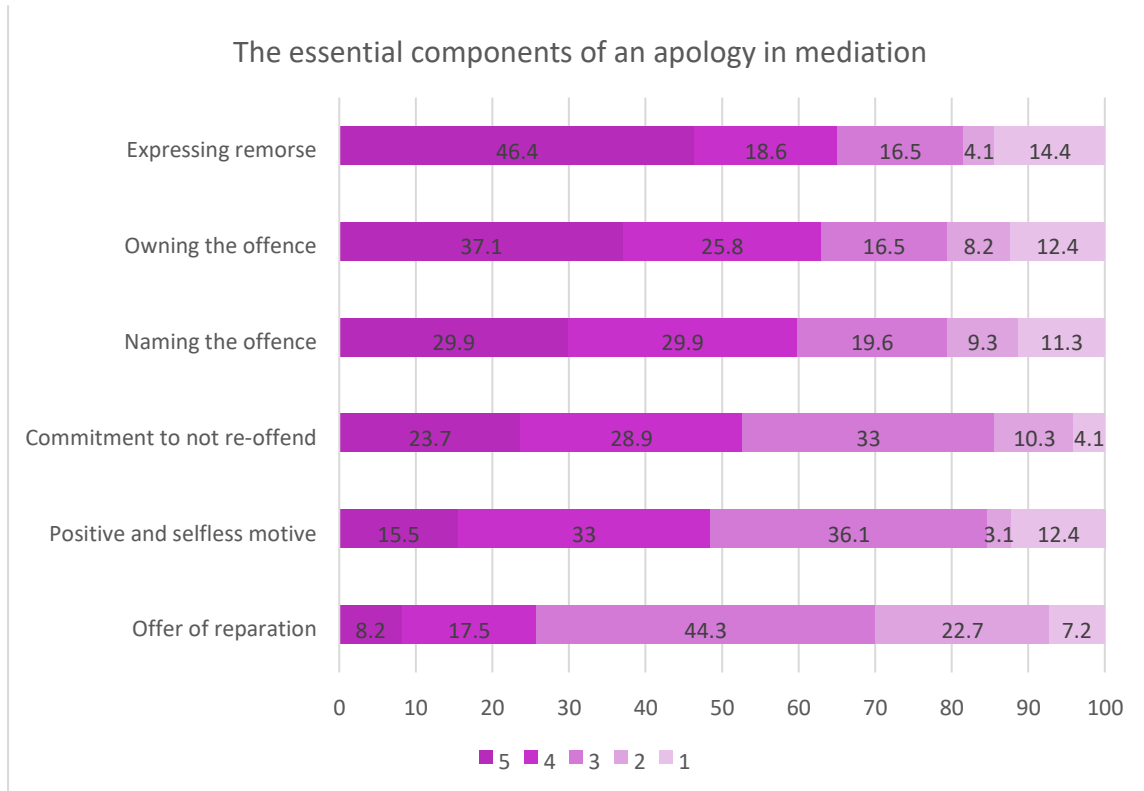


Figure 4: Responses to Q3 – The essential components of an apology in mediation

Question 4 - Additional prerequisites of an effective apology

The respondents were asked in Question 4 about other essential elements of a genuine apology not listed in the previous question. A common additional essential element of apology centred around a stated understanding of the offence caused along with an acknowledgment of the impact or hurt experienced. Respondents also referred to the importance of tone and body language (and in particular eye contact) when expressing apology. Empathy, sincerity and humility were mentioned by a number of respondents, along with the view that the apology must be voluntary.



Question 5 – The role of the mediator in apology transactions

In Question 5 the MII members were asked to give their opinion on the role of the mediator in generating an apology. For the purposes of directly channelling these insights into practice, some of the more compelling quotes are reiterated *verbatim* below:

The mediator must be perceptive to a party if they start moving down a path towards giving an apology and clear that path of hurdles. The mediator must acknowledge and praise the party if they make an effort at an apology. A mediator should accentuate the positives of an apology and highlight them to the recipient.

The mediator is the midwife to the delivery and reception of an apology, holding open and creating maximum space for it to resonate to maximum effect. The skill of the mediator is key in enabling a sincere and respectful apology.

The mediator's role in apology can be to illuminate the path towards the parties meeting, allowing them see their respective positions by subtle probing questioning. An apology is not the destination, rather one of many views *en route* to the ultimate destination.

It can be a very delicate verbal 'dance' where parties come together to apologise and the mediator's role is to assist the communications to allow people to be clear about what they say and what they hear. It is often open to interpretation or may be questionable. The mediator has a critical role here to help the parties to distinguish meaning – what they want to say and



what they understand is said. There is also a task to help the parties assess what the apology means in the conversation.

In addition to these statements the following three trends emerged from the participant responses;

- Mediator voicing and managing the potential of an emerging apology (46%)
- Mediator facilitating the survival of the proffered apology among the parties (29%)
- Mediator testing the strength and sincerity of the apology (25%)

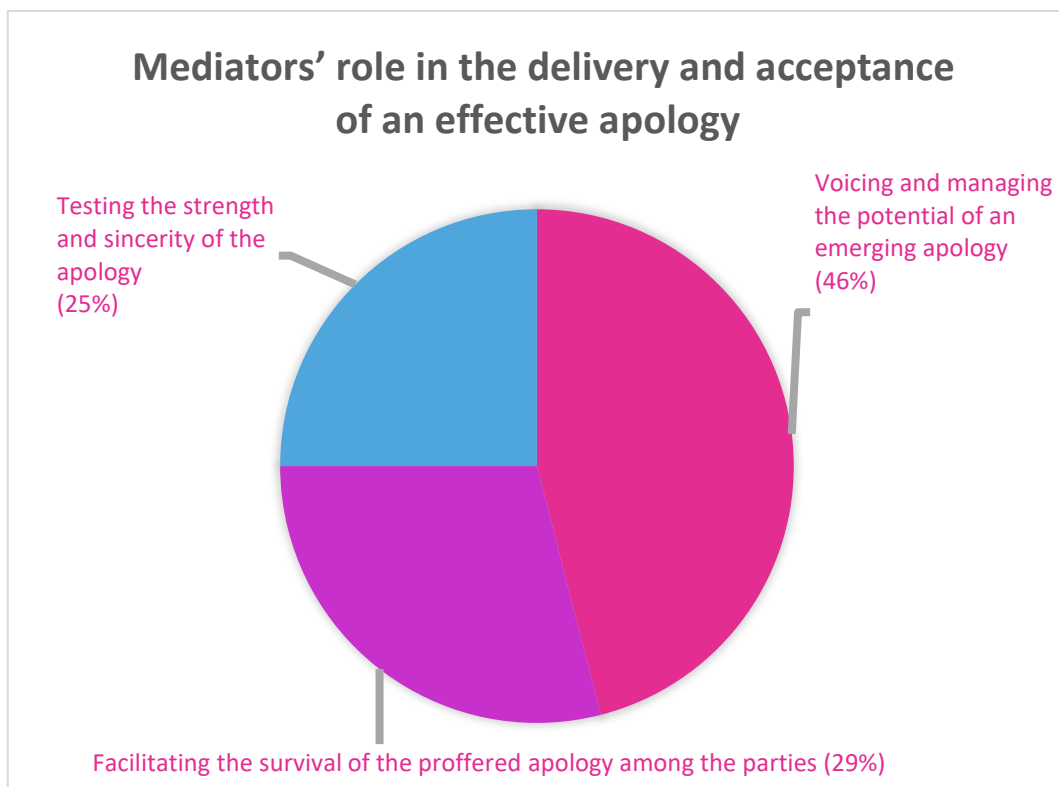


Figure 5 Mediators' role in the delivery and acceptance of an effective apology



Question 6 – A hierarchy of process-related factors

The participants were asked to rate the process-related factors they believed to have the most influence on a successful apology transaction. They responded emphatically that the experience and skill of the mediator in competently delivering the right approach to the apology was the most important factor. The second-most important process-related factor was the timing of the mediation followed jointly by the nature of the dispute, the power balance between the parties and the culture of the dispute.

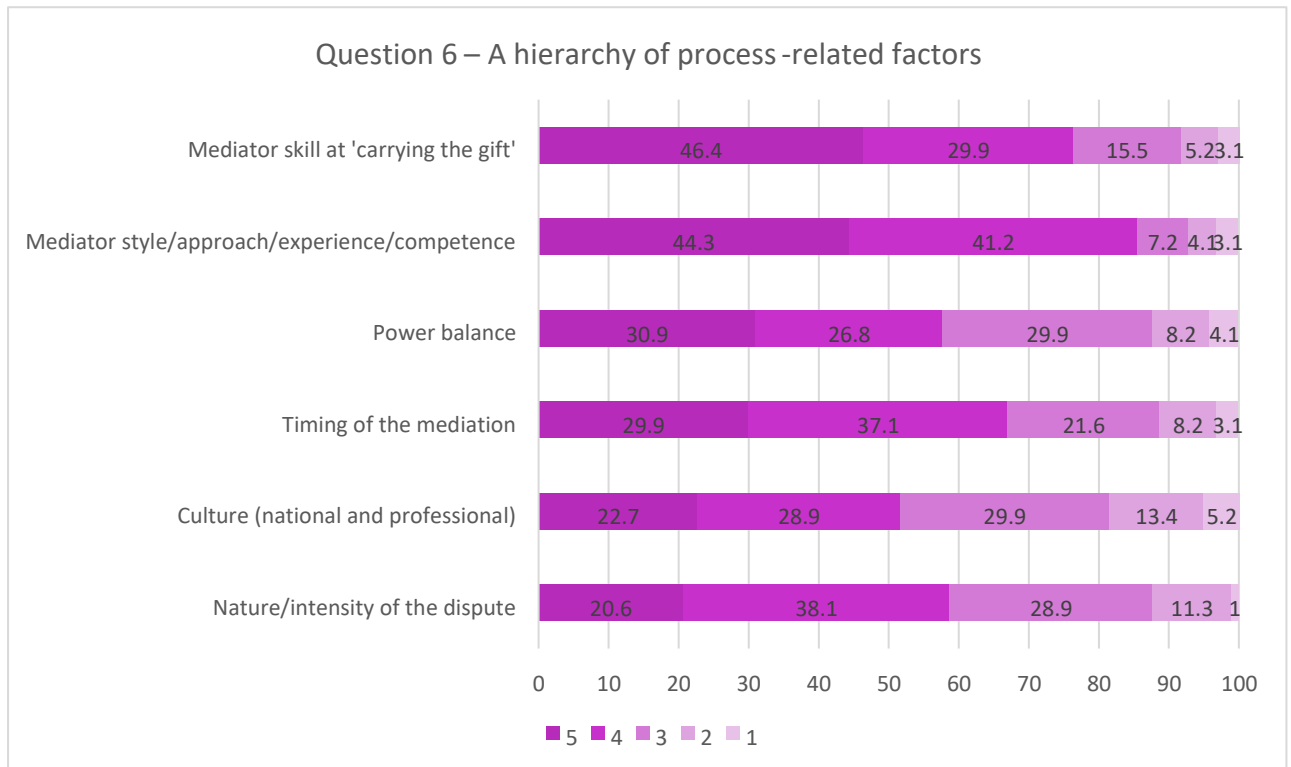


Figure 6: Responses to Q6 – A hierarchy of process-related factors



Question 7 – Additional process-related factors

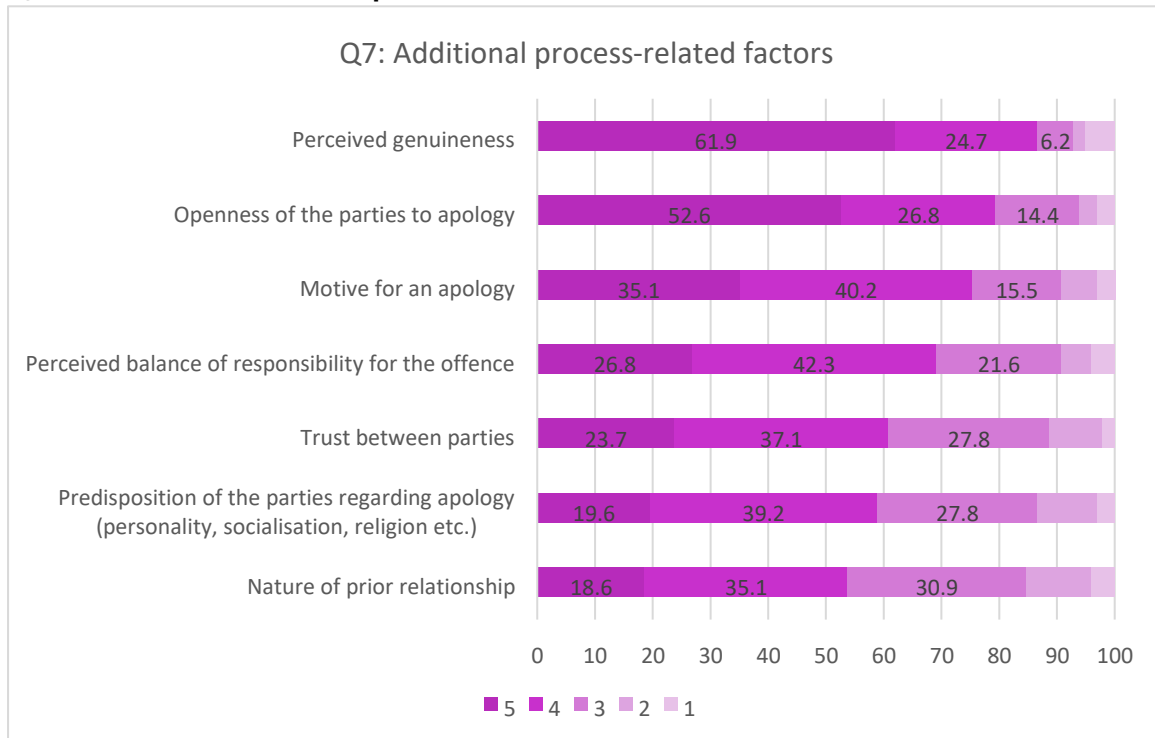


Figure 7: Responses to Q7 - Additional process-related factors

Perceptions of procedural fairness and intentionality were also deemed to be strong facilitators of apology in the mediation process, according to the survey group. Authenticity, impartiality and receptivity scored highest among these factors. Surprisingly, trust and the relationship between the parties, while important to the process, were considered less impactful.

Question 8 – Additional factors raised by respondents

Respondents were invited to add their thoughts on additional factors that may impact upon the effect of an apology in mediation.



Respondents added that a demand for apology can be counterproductive, and focusing on apology may distract from the business of addressing the substantive issues.

Timing and sequencing of apology in the process was considered important, with a belief that the parties should have had time to tell their stories of what happened and the impact that resulted before any apology is offered or considered.

The body language, words, and tone of the person apologising were deemed important. One respondent noted that apology in mediation does not have to be face-to-face but any other medium (phone, virtual, written) makes this more challenging.

Future conduct post-apology is important, and the mediator should ‘reality test’ in terms of future conduct by questioning the person apologising about how they intend to conduct themselves. The mediator also has a role in setting the (safe) scene to facilitate the possibility of apology, and this includes balancing power in the room.

Context matters. The culture and influence of the organisation behind the parties may impact the possibility of apology. Finally, the perceived importance in getting the dispute resolved was mentioned as a factor, as well as a possible gender dimension.

Interview data

Interviews were also conducted with 24 practicing mediators in which they were asked a single question about their perspective on, and experience of, the role of apology based on their practice. The specific question asked was: *What role does*



an apology play in mediation in your experience? All of the mediators responded in free-flowing depth and their responses were recorded and coded. The interviewed mediators were sourced from either the state-funded employment mediation service, an organisation's internal mediation service, or independent mediation consultants.

In the cases of the state-funded mediators, access was granted by the organisation as part of a broader study of employment mediation. For the internal mediators, access was negotiated by the researchers. The independent mediators were sourced through a snowball sampling method where mediators suggested others to be included.

Table 3: Profile of respondents and contexts

<i>Context</i>	<i>State-funded</i>	<i>Service Internal mediators</i>	<i>Independent mediators</i>
<i>Number of mediators</i>	12	6	6
<i>Professional background</i>	Civil servants Industrial relations &/or legally qualified	Human Resources, Nursing, or Union rep	HR, Industrial Relations, or Solicitor
<i>Mediation experience</i>	5-15yrs	5-10yrs (except 1 with < 5yrs)	10-15yrs
<i>Service funding</i>	State funded	Costs covered by the organisation	Costs covered by the contacting employer

Interview findings

Based on a thematic analysis of the interview data, the following insights represent the aspects of apology that emerged as significant to the group.



Consistent with the literature, 20 (83%) of the mediators said the issue of apology features strongly in their mediations.

I would say that 7 or 8 times out of 10 that one of the things that the alleged aggrieved party is looking for is an apology. (State Mediator)

An apology would feature very highly. Very, very high! Very high! I'm thinking of the ones I've done in the last couple of months and an apology would feature in nearly every one of them. (State Mediator)

Often a party will express a strong position regarding an apology at the outset and this can be explored by the mediator, preferably in pre-mediation, to ascertain the underlying needs behind that position. All of the mediators in this study use pre-mediation as part of their process. Premediation is a preliminary meeting (telephone or face-to-face) between the mediator and each of the parties prior to the joint session. Part of the purpose of pre-mediation is to explain the process to the parties and to clarify their goals and expectations at the outset.

As the process develops, a need for apology, expressed at the outset in pre-mediation, can be balanced with other needs that emerge through the process, and a 'form of words' can usually be found to satisfy the need for apology without the other party feeling over-exposed.

It's not unusual that people would declare a need for apology at the outset and I would have a conversation with them about what does apology mean, and why it's so important, and we'd weigh that up with what else they need. Generally, in the discussion, they realise they'd like an apology but



it's much more important that [the problem] stops. (Independent Mediator)

Many of the mediators felt that if a party were to hold out for apology it could impede the process, although the mediator is usually able to avoid this scenario. On the other hand, there are cases where a genuine apology is all that it takes to settle a case.

It can be a bit of an impediment if the person holds out for a full apology because companies are very reluctant to give that. (State Mediator)

If a genuine apology is given it can be very powerful but it's probably relatively rare. I've seen messy and big cases settle on no money at all and nothing but a really genuine heartfelt apology. (State Mediator)

Reflecting the theory of mediation, just over half of the mediators in this study referred to multiple features of apology in their responses and clearly distinguished between genuine and non-genuine apologies. The features referred to included empathy, acknowledgment of hurt, and understanding of the other's perspective. One mediator, for example, described what he believes to be the three components of a genuine apology.

The first is a recognition that the behaviour was inappropriate. There is acceptance that it did cause a problem for the other person, be it stress or confusion or hurt. And the third component is, in making the apology,



there's an undertaking that the impugned behaviour will not reoccur.

(Independent Mediator)

Seven of the mediators stressed that a dubious apology did not help the process and, in effect, often hindered it.

Twelve of the 24 mediators claimed that, in their experience, an apology could be transformative, while 10 of the mediators claimed that apology could be so pivotal to settlement that it makes the mediator redundant.

A genuine apology is like a tsunami. You're like – that's it I'm packing my bags! I'm outta here! It just does it! And it works at the emotional level. It happens because hearing the other person tell their story for the first time can have that effect. (Independent Mediator)

You can see people move from – “I want an apology in writing and I want it pinned on the notice board in the office canteen highlighted in pink” and by the end of the process that could have diluted down to – “I'm happy now that you've acknowledged that you were causing me problems and that I wasn't cracked when I was thinking this was going on.” (Internal Mediator)

Where people realise that they have caused upset and harm, and they realise that in a conversation that's not about blame, very often people make a spontaneous and very genuine apology, which is wonderful and it's amazing what that does in a mediation session. (Independent Mediator)



Most of the mediators stressed that they would highlight any attempt at apology once offered, as this can often be missed by the other party. One mediator described this as “carrying the gift of apology”. Another felt that highlighting the attempt at apology can often lead the person making it to go even further in its repetition. It can also lead to what was referred to as an ‘apology trade’ where the other party responds in kind by offering their own apology. This acknowledges the fact that a black and white victim-offender dichotomy doesn’t always reflect reality and almost inevitably there is fault on both sides. In some cases, “each person will play both roles”. (Brown, 2004:669)

Well I would always, always stop the mediation.... if somebody apologises and if it's not being picked up immediately.....I wouldn't let them pass it. That would never happen. (State Mediator)

Sometimes a party will say: “I'm really sorry. That shouldn't have happened.” But the other party is so engrossed in their story that they've missed it and I'll say - Hold! What have you just heard? (Internal Mediator)

If I hear something that resembles an apology, or even an acknowledgment, I come straight in and I amplify it. And I check that the other person has heard it. That can often turn into a better apology, because they come back to it, and often they go that bit further. (Independent Mediator)



Seven of the mediators interviewed stated they would refrain from seeking an apology. By contrast, two mediators said they would raise the issue of apology if the parties seemed at an impasse.

What I don't do is fish for apology, because if you do that, and someone gives an apology, it's not at all genuine. (Independent Mediator)

... sometimes if they're really really stuck and they don't know where to go, I might say "well, would an apology solve it for you?" (State Mediator)

That is not to suggest that the mediator cannot facilitate an apology by using their skill to promote mutual understanding.

What I do seek is to generate understanding on all sides because.... if each party gets a better understanding of the other, in all of their complexities and nuances, rather than the two-dimensional person that they have come to see them as, that's where change happens. That's where possibilities emerge. It is not unusual that an apology arises from that.

(Independent Mediator)

Finally, seven of the mediators referred to reluctance to apologise that was influenced either by culture or by advice received from their legal team.

Table 4 below summarises the key themes emerging from the interview data and the frequency of reference to each theme by the respondents.



Table 4: Summary of the themes emerging from the interview data

Themes emerging from the data (n=24)	Frequency
<i>Apology features as a significant aspect of mediation</i>	20
<i>Mediators acknowledge that a genuine heartfelt apology can be pivotal to settlement, and/or can be transformative</i>	22
<i>Mediators see apology as a complex construct made up of different components</i>	14
<i>Mediators referred to finding a form of words to satisfy the need for apology without using the words ‘sorry’ or ‘I apologise’</i>	13
<i>Mediators will highlight any move towards apology</i>	11
<i>Mediators don’t seek apology</i>	7
<i>A culture of non-apology &/or legal advice can mitigate against apology</i>	7
<i>An non-genuine apology can be counterproductive</i>	7

The mediators’ perspectives that were gathered, via the survey and interviews, provide support for themes in the literature presented earlier, and offer important insights into the role of apology in mediation. This can allow practitioners to begin to develop awareness of how to increase the potential of apology in their mediation practice. The next section will elaborate on the themes emerging from the data.

Discussion

The results of the mixed-method analysis can be summarised as follows:



1. Apology is frequently encountered in mediation and this has implications for training and practice. All our respondents had witnessed apology and were impressed by the effect it had on the process.
2. The data exhibits a strong resonance between apology, as it occurs during mediation, with the essential features of apology in general as outlined in the literature. Aspects of apology as observed by the respondents align closely with the theoretical elements of apology potential, construction, delivery and acceptance. In comparing and contrasting these views, an accurate template for apology effectiveness is one that combines tests for true remorse, authenticity and sincerity with an engagement by the recipient to ensure the apology is accepted.
3. When managed effectively, apology can have a transformative effect. In the wider dispute resolution process, the role of apology can be seen as both catalytic and cathartic. By providing evidence of understanding and appreciation of sorrow and empathy, it can release tension and calm emotion. It can facilitate healing and help parties to move on, building trust and repairing relationships.
4. Mediation training can provide practitioners with the skills necessary to capitalise on apology potency and mitigate the effects of non-genuine or non-proffered apologies. As conduits for the construction, deconstruction or reconstruction of apology, mediators can play a critical role in assessing the calibre of an apology. Most importantly, they can help retain its deployment until the conditions are optimal for its acceptance and then can help its recipient in evaluating the apology against their needs and expectations.



5. At a fundamental level, apology is a form of words that has *the capacity to convey a sincere message from one individual to another*. The objective of this form of words is to heal or repair harm that the apology giver has taken responsibility for. The motivation for doing this might be self-interest, interest for the other or interest for the relationship – or it may be any combination of these. Whatever the intention behind the apology, the structure of this form of words will invariably be heavily scrutinised in terms of the following elements:

1. Its perceived genuineness
2. The level of ownership and responsibility adopted
3. The timing of the apology
4. The level of trust between the parties

The mediator in turn will be evaluated for their part in ‘carrying’ the apology from giver to recipient.

Conclusion

Mediation, by its nature, presents fertile ground for apology and, as the theory tells us, apology has the potential to contribute to the relationship building and repairing potential of the process.

Highly emotive disputes often involve a breakdown of relationships and a loss of trust. Mediation may be the first time an aggrieved party has a hearing and an uninterrupted opportunity to narrate their grievance and its impact on them, face-to-face with the source of that grievance. That hearing alone can be enough to prompt reconciliation through apology.



This paper demonstrates that, from both theoretical and practical perspectives, apology is a potent, complex and multi-faceted construct, and that a number of factors need to be aligned for an apology to be effective. The informed application of mediation skills can create the types of conditions necessary for such alignment.

The paper argues that the mediator has a crucial role to play in guiding emerging elements of apology between the parties and ensuring that attempts at apology do not go unheard.

The mediator also needs to listen carefully for indicators of apology so that these can be highlighted and developed in a way that nurtures an apology to fruition.

Our research illustrates an awareness that apology can also be used cynically, either by being compelled externally or in order to avoid sanction, which has ethical implications for mediation practice. We suggest that this is not apology at all, in fact, but exploitation – of the mediator, the mediation process, the issues at hand and, most importantly, the injured party. It is critical to mediator training and practice that such distinctions can be quickly and effectively ascertained and appropriate measures taken. This is of particular relevance to some of the state mediators interviewed for this study because of their remit in mediating complaints of workplace discrimination pursued under Irish legal protections.

None of the mediator respondents identified apology as a barrier to settlement.

The empirical evidence from mediators suggests that apology plays a significant role in the mediation process and its outcomes. At times it can have a truly transformative effect and, once it occurs, the mediator's job is all but done.

Because of its potential to transform not just the mediation process but the



parties' future relationship, mediators should remain attuned to the possibility of apology and be well-versed in the ingredients of an effective apology as highlighted in the literature.

There is evidence to suggest that some parties are reluctant to apologise either through cultural disposition or because of advice from their legal representatives. This echoes the expression of Taft (2006) of a valid concern relating to apology in cases of legal rights. Referring to the evidence that receiving an apology can reduce a claimant's likelihood to pursue legal action or reduce their demand for compensation, Taft's worry is that "claimants are being duped into relinquishing valuable legal rights" (2006:609).

The empirical data presented in this paper suggests that mediators, through training and experience, are well versed in the key themes from the literature that relates to apology. This type of research is valuable in providing evidence for what we think we know. It also identifies gaps for further research. It would be interesting, for example, to explore the role of apology in mediation from the perspective of the parties. It would also be valuable to move beyond apology and explore the impact of mediation on the restitution/reparation aspects of Taft's (2006) Cycle. Finally, it would be interesting to explore the relative importance of apology across different mediation contexts: family, workplace, civil, commercial and elder mediation.



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