Mediation Advocacy in UK Environmentally Related Planning Disputes: Professional Judgment and Emotional Intelligence among Legal Practitioners

Thesis by:

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Declaration

This thesis is the result of the author's original research. It has been composed by the author and has not been previously submitted for examination which has led to the award of a degree.

Signed:

Date: 11th April 2026

Abstract

This thesis advances a socio-legal account of Emotional Intelligence (EI) as a constitutive dimension of legal advocacy within mediation in environmentally related planning disputes in the United Kingdom. Although mediation has been promoted as a means of addressing the limitations of adversarial litigation in planning and environmental governance, its role within public law remains unevenly embedded and ethically contested. Existing scholarship has focused primarily on questions of institutional design, participation and procedural legitimacy, while paying limited attention to the emotional and relational work undertaken by lawyers representing clients in mediation. This thesis addresses that gap by examining how EI is understood, enacted and constrained within the professional role of mediation advocacy. The study adopts a critical realist and pragmatic framework. It employs a sequential mixed methods research design comprising four empirical phases. These include a national survey of legal professionals, qualitative interviews examining engagement with alternative dispute resolution, in-depth interviews focused specifically on EI in mediation advocacy, and a triangulation survey assessing the wider resonance of the qualitative findings. This design enables an integrated analysis of structural contexts, professional norms and lived legal practice. The findings demonstrate that EI operates not as a personal disposition or optional interpersonal skill, but as a form of relational legal judgement structuring mediation advocacy practice. Lawyers draw on emotional awareness, empathy, emotional regulation and reflexivity when preparing clients, managing stakeholder relationships and navigating the procedural and ethical uncertainties of mediation in public-interest disputes. However, the capacity to enact emotionally intelligent advocacy is shaped and frequently constrained by adversarial professional culture, procedural fragility, power asymmetries and limited formal recognition within legal training and professional standards. The thesis concludes that emotionally intelligent mediation advocacy strengthens constitutional legitimacy when exercised within accountable institutional structures, yet also exposes the risks of relocating public law scrutiny into negotiated spaces if relational judgement operates without structural oversight. It therefore argues that affective reasoning should be recognised as a form of professional legal judgement within mediation advocacy, while remaining embedded within institutional frameworks that preserve public law accountability.

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Abbreviations

ADR: Alternative Dispute Resolution

EI: Emotional Intelligence

EQ-i: Emotional Quotient Inventory

GDPR: General Data Protection Regulation

KC: King's Counsel

MSCEIT: Mayer-Salovey-Caruso Emotional Intelligence Test

PEBA: Planning and Environmental Bar Association

RLJ: Relational Legal Judgement

RQ: Research Question

SPSS: Statistical Package for the Social Sciences

UK: United Kingdom

UKELA: United Kingdom Environmental Law Association

Glossary

Adversarial Legal Culture
A professional environment that prioritises competition, legal argument, and litigation rather than cooperation.

Affective Legitimacy
The extent to which legal processes feel fair, respectful, and meaningful to those involved.

Alternative Dispute Resolution (ADR)
Methods of resolving disputes outside formal court proceedings, such as mediation, negotiation, and arbitration.

Constitutional Accountability
The principle that public authorities must act within the law and remain answerable for their decisions.

Critical Realism
A research approach that recognises that legal and social systems are shaped by underlying structures, but are also interpreted and applied by people in practice.

Emotional Awareness
The ability to recognise emotional cues in oneself and others during professional interactions.

Emotional Intelligence (EI)
The ability to recognise, understand, and manage one's own emotions and those of others. In this thesis, EI is treated as part of professional legal judgement.

Emotional Instrumentalism
The use of emotional understanding mainly as a strategic tool, sometimes beyond appropriate ethical limits.

Emotional Labour
The effort involved in managing emotions as part of professional work, especially in roles involving interaction with others.

Emotional Reflexivity
The ability to reflect on one's own emotions and understand how they influence decisions and behaviour.

Emotional Regulation
The ability to manage and adjust emotional responses in professional situations.

Emotionally Informed Advocacy
Legal advocacy that incorporates emotional awareness, relationship management, and ethical judgement.

Empathy
The ability to understand and respond to the feelings and perspectives of others.

Empathy–Manipulation Boundary
The distinction between using empathy to support understanding and using it to influence or control others.

Institutional Constraint
Limits placed on professional action by legal rules, procedures, and organisational structures.

Institutional Fragility
Weaknesses in systems or processes that reduce their stability, clarity, or effectiveness.

Institutional Support Gap
The lack of formal structures or training to support practices such as mediation or emotional competence.

Legal Professionalism
The values, standards, and expectations that guide how legal practitioners behave and make decisions.

Litigation Default
The tendency to rely on court-based dispute resolution as the primary or standard approach.

Mediation
A voluntary process in which a neutral third party helps disputing parties communicate and reach a mutually acceptable agreement.

Mediation Advocacy
A form of legal representation in mediation where lawyers focus on negotiation, client support, and managing relationships rather than adversarial argument.

Mediation Uptake
The extent to which mediation is used in practice by legal professionals and institutions.

Normative Complexity
Situations where different values (such as environmental protection and economic development) conflict and cannot be easily resolved.

Power Asymmetry
An imbalance in resources, influence, or authority between parties in a dispute.

Procedural Justice
The fairness of the processes through which decisions are made.

Procedural Legitimacy
The perception that a process is fair, transparent, and follows accepted rules.

Public Participation
The involvement of individuals or communities in decisions that affect them, especially in planning and environmental contexts.

Relational Legal Judgement
The central concept of this thesis, referring to how lawyers use emotional awareness, empathy, and reflection to guide their professional decisions during mediation.

Relational Professionalism
An approach to legal practice that combines legal expertise with ethical awareness, emotional understanding, and effective relationship management.

Resource Asymmetry
Unequal access to financial, legal, or technical resources between parties in a dispute.

Sequential Mixed Methods
A research design in which qualitative and quantitative methods are used in stages, with each phase building on the previous one.

Structural Constraint
Limitations imposed by broader legal, institutional, and organisational systems.

Triangulation
The use of multiple methods or data sources to strengthen the reliability and validity of research findings.

Voluntariness (Mediation Context)
The principle that parties choose to participate in mediation freely, without coercion or undue pressure.

Chapter 1: Introduction

1.1 Background and Context

Environmentally related planning disputes in the United Kingdom arise within a complex regulatory landscape in which legal, environmental and social considerations intersect. These disputes frequently concern housing development, infrastructure delivery, renewable energy proposals, and industrial land use. They involve a diverse range of stakeholders, including developers, local authorities, statutory bodies, community groups, and environmental organisations. They involve both technical disagreement over planning merits and environmental assessments, and value-based conflicts linked to land, ecology, identity, and participation. Yet the legal frameworks governing these disputes continue to treat emotion as extraneous to professional judgement, maintaining a rationalist conception of advocacy that sits uneasily with the affective realities of public law conflict.

The traditional mechanisms for resolving such disputes have relied predominantly on litigation and statutory appeals, particularly judicial review. These procedures ensure legal accountability and regulatory compliance. However, they are often criticised for being adversarial, limiting participation and prolonging or escalating conflict. As environmentally related planning disputes have grown more complex and multi-stakeholder in nature, policymakers and scholars have increasingly considered the potential role of Alternative Dispute Resolution (ADR), particularly mediation, within the planning system.

Despite this policy interest, ADR remains only partially established in the UK planning field. Unlike in commercial and construction law, where statutory frameworks and industry practice have normalised ADR, the planning regime does not provide systematic structures for mediation or for other forms of facilitated negotiation. Professional and policy debates often question whether ADR is appropriate in disputes involving public duties, regulatory discretion and distributive environmental impacts.

These disputes are marked by pronounced emotional and relational complexity. Community opposition may reflect attachments to place, fears of ecological degradation or exclusion from planning processes, while authorities and developers face competing regulatory and political pressures. Such emotional dynamics shape how parties interpret information, perceive fairness and engage in dispute resolution. Mediation advocacy involves a distinctive form of legal representation in which lawyers support clients through a facilitated process rather than an adjudicative one. It requires constructive engagement with opposing parties, careful management of client expectations, and attention to both verbal and non-verbal cues.

Emotional Intelligence (EI) is commonly understood as the ability to recognise, understand and regulate emotions in oneself and others. This thesis analyses how lawyers deploy emotional awareness, empathy and regulation as components of mediation advocacy. It also examines how these capacities are shaped by professional norms, institutional expectations and structural inequalities.

Within this context, the study examines mediation advocacy as a site where legal representation intersects with relational and emotional dynamics in disputes involving public participation, regulatory discretion and contested environmental values. It examines how EI is understood and enacted by lawyers in this setting and how institutional and cultural features of the planning system shape what emotionally attuned advocacy can look like in practice.

Against this background, the thesis argues that mediation advocacy in public law planning disputes cannot be adequately understood through rationalist models of legal competence alone. Instead, it introduces the concept of relational legal judgement to explain how emotional intelligence operates within mediation advocacy. This concept forms the central analytical lens of the thesis and is developed in detail in Section 1.1.1.

1.1.1 Central Argument of the Thesis

This thesis addresses a structural tension within public law mediation in environmentally related planning disputes. Although such disputes are marked by relational complexity, contested legitimacy, and affective intensity, mediation advocacy within this field continues to be analysed predominantly through rationalist models of legal professionalism. These models treat professional competence as doctrinal reasoning, procedural knowledge and strategic argumentation, while positioning emotion as peripheral or potentially disruptive.

The thesis identifies a conceptual gap within this framework. While EI has been discussed in legal education and negotiation literature, it has not been theorised as a form of professional legal judgement embedded within public law mediation advocacy. Emotional reasoning remains undertheorised within accounts of legal authority, legitimacy and professional responsibility, particularly in disputes involving statutory duties, regulatory discretion and public participation.

Against this background, the thesis advances the claim that EI operates in mediation advocacy as a structured form of relational legal judgement, through which advocates interpret conflict dynamics, calibrate strategy, and sustain procedural legitimacy under institutional constraint. The concept of relational legal judgement therefore provides the organising analytical lens through which mediation advocacy is analysed in the chapters that follow. It captures how mediation advocates draw on emotional awareness, empathy and regulation as elements of professional legal judgement. It is not treated as personality, therapeutic skill, or managerial rhetoric. Nor is it reducible to generic negotiation technique or interpersonal "soft skills." Rather, it is analysed as a context-sensitive professional capacity through which lawyers interpret affective dynamics, calibrate strategic decisions, manage ethical boundaries and sustain procedural legitimacy within structurally constrained public law settings.

The significance of this claim is that it reframes legitimacy in public law mediation. Professional authority in mediation is shown to depend not solely on doctrinal coherence or procedural neutrality, but also on affectively calibrated judgement exercised within constitutional and institutional limits. EI is therefore examined as both enabling and constrained: it may enhance relational legitimacy while simultaneously introducing ethical risk. In this way, the thesis reconceptualises mediation advocacy as a site where legal and affective rationality are structurally co-constituted.

The core conceptual relationship underpinning this argument is illustrated in Figure 1 below.

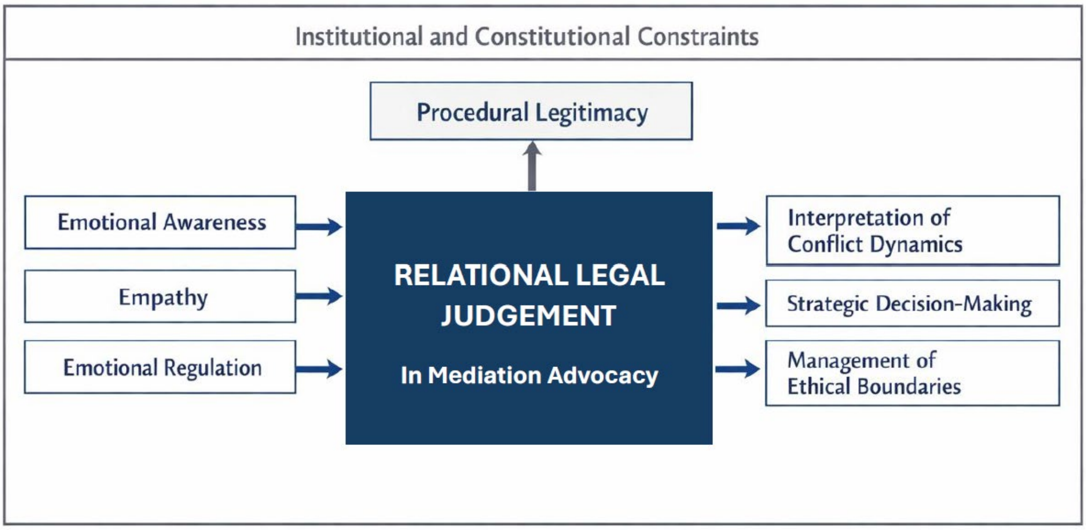

Figure 1: Conceptual Framework of Relational Legal Judgement in Mediation Advocacy

This figure illustrates the central conceptual claim of the thesis: that emotional intelligence operates not as a personal trait or ancillary skill, but as a structured form of relational legal judgement. Emotional awareness, empathy, and emotional regulation inform how mediation advocates interpret conflict dynamics, make strategic decisions, and manage ethical boundaries. These processes contribute to the maintenance of procedural legitimacy, while remaining shaped and constrained by institutional and constitutional conditions.

1.2 Problem Statement

The resolution of planning and environmentally related disputes in the United Kingdom continues to rely primarily on formal legal processes, particularly judicial review and statutory appeal mechanisms. Although these procedures offer legal clarity and uphold statutory obligations, they often struggle with multistakeholder disputes that are value-laden and emotionally charged. Traditional legal pathways have limited capacity to address the social and environmental complexity of modern planning disputes. These disputes are best understood as public law conflicts. They are characterised by regulatory duties, statutory constraints and diffuse environmental and community interests.

The deployment of mediation within such public law contexts raises important constitutional questions. First, there is a concern that negotiated resolution may risk displacing or diluting judicial scrutiny, particularly where disputes implicate the lawfulness of administrative action or compliance with statutory duties. Judicial review functions as a supervisory mechanism designed to uphold legality, rationality and procedural propriety; mediation cannot substitute for that constitutional role. Second, negotiated outcomes may sit uneasily alongside non-delegable statutory obligations and the structured exercise of regulatory discretion. Public authorities remain bound by legal duties that cannot be compromised through consensual settlement. Third, questions arise as to whether mediation strengthens or weakens public participation norms. While facilitated dialogue may enhance voice and recognition, it may also risk relocating decisions affecting diffuse public interests into less transparent, less formally accountable spaces. These constitutional tensions underscore the need for careful examination of mediation advocacy within public law planning disputes.

Despite this recognition, ADR remains unevenly embedded in the planning system. Unlike commercial and construction contexts, planning law provides limited institutional support, incentives or routinised pathways for mediation, and mediated outcomes may sit uneasily alongside regulatory discretion, public duties and questions of enforceability. As examined through doctrinal and policy analysis in Chapter 3 and through practitioner interviews and survey data in Chapter 6, these constraints contribute to uneven uptake of mediation and interact with resource and expertise asymmetries, limiting effective participation and reinforcing scepticism about ADR's legitimacy in disputes with distributive environmental and democratic consequences.

Alongside these structural challenges, mediation advocacy in this field also raises questions about how lawyers handle emotion, trust and relational dynamics in professional roles that are traditionally framed as detached and rational. This thesis examines how EI is (or is not) recognised within legal training and professional expectations, and what implications this has for mediation advocacy in public law disputes.

1.3 Research Gap

This thesis addresses three distinct gaps in existing scholarship on mediation advocacy in public law planning and environmental disputes: an empirical gap, a theoretical gap and a doctrinal gap.

First, the empirical gap. There has been no sequential mixed methods study examining EI within mediation advocacy in UK planning and environmental disputes. Existing empirical research has focused predominantly on mediator competence, community participation or institutional design, with limited attention to the emotional, relational and ethical demands placed on lawyers representing clients in mediation. No study has mapped emotionally intelligent practice across different professional roles, such as solicitors, barristers, mediators and in-house counsel, within this field. As a result, there is no systematic account of how emotional reasoning is enacted, patterned and constrained within mediation advocacy in UK public law planning contexts.

Second, the theoretical gap. While EI has been discussed within legal education and negotiation literature, it has not been conceptualised as a form of structured legal judgement embedded within advocacy practice. Much of the existing scholarship treats EI as an individual behavioural attribute or interpersonal skill rather than as a professional capacity shaped by institutional norms, regulatory duties and ethical constraint. Socio-legal analyses of legal professionalism have rarely integrated emotional labour, care ethics, procedural justice and affective legitimacy into a coherent account of mediation advocacy. Consequently, the role of emotional reasoning within the architecture of legal authority remains under-theorised.

Third, the doctrinal gap. Mediation within public law planning disputes remains under-theorised in accountability terms. Although debates exist regarding ADR's appropriateness in disputes involving statutory duties and regulatory discretion, there is limited sustained analysis of how mediation interacts with constitutional principles such as legality, supervisory judicial review and public participation norms. The relationship between negotiated settlement and non-delegable public obligations has not been systematically examined within planning mediation scholarship. This leaves unresolved questions about how mediation advocacy operates within, rather than outside, the constitutional structure of public law.

Together, these gaps reveal the absence of an integrated socio-legal account of emotional judgement in mediation advocacy that is simultaneously empirically grounded, theoretically coherent and doctrinally attentive. While ADR and mediation scholarship has examined institutional design, participation and dispute resolution outcomes in environmental and planning contexts, it has not systematically analysed how EI operates as a form of professional legal judgement within mediation advocacy in public law disputes. This thesis addresses that absence through a sequential mixed methods design combined with interdisciplinary conceptual analysis.

1.4 Aim and Objectives of the Study

This study investigates how EI operates within mediation advocacy in environmentally related planning disputes in the United Kingdom. The term "environmentally related planning disputes" is used inclusively to capture planning conflicts in which environmental considerations, public participation and regulatory discretion intersect, whether explicitly or implicitly. The research examines how legal professionals understand, enact and negotiate the emotional, relational and ethical demands of mediation in a field characterised by institutional constraints, power asymmetries and significant public and environmental interests.

To address the empirical, theoretical and doctrinal gaps identified in Section 1.3, and to investigate how emotional intelligence operates within mediation advocacy, the study is structured around the following objectives:

1. To analyse how legal professionals perceive and engage with ADR in environmentally related planning disputes, with particular attention to the institutional, cultural and procedural factors that shape its legitimacy and use.
2. To examine how EI is understood and enacted by lawyers acting as mediation advocates, focusing on empathy, emotional awareness, emotional regulation and boundary management in mediation practice.
3. To explore how structural, organisational and professional conditions enable or constrain emotionally intelligent forms of mediation advocacy within planning and environmental dispute contexts.
4. To assess the extent to which qualitative insights into EI resonate across the wider professional community through a confirmatory national survey.
5. To integrate findings across all empirical phases in order to develop a socio-legal account of emotionally attuned mediation advocacy within public law dispute resolution.

Table 1.1: Alignment Between Research Gaps and Study Objectives

Research Gap Identified in Section 1.3	Description	Corresponding Objective(s)
Empirical Gap	Absence of empirical research examining how emotional intelligence operates within mediation advocacy in UK planning and environmental disputes.	Objective 1, Objective 2, Objective 3, Objective 4
Theoretical Gap	Emotional intelligence has not been conceptualised as a form of professional legal judgement embedded within mediation advocacy.	Objective 2, Objective 3, Objective 5
Doctrinal Gap	Limited analysis of how mediation advocacy operates within constitutional principles of legality, accountability and public participation in public law planning disputes.	Objective 1, Objective 3, Objective 5

The alignment shown in Table 1.1 demonstrates how the study objectives were developed directly in response to the empirical, theoretical and doctrinal gaps identified in Section 1.3.

Table 1.2: Sequential Relationship Between Research Objectives and the Overall Research Aim

Objective	Purpose in the Research Process
Objective 1	Establish the institutional, cultural and procedural context of ADR in environmentally related planning disputes.
Objective 2	Examine how emotional intelligence is understood and enacted within mediation advocacy.

Objective 3	Explore the structural, organisational and professional factors shaping emotionally intelligent mediation advocacy.
Objective 4	Assess the extent to which qualitative findings are reflected across a wider professional population.
Objective 5	Integrate findings across all phases to develop a socio-legal account of emotionally attuned mediation advocacy.
Overall Research Aim	Explain how emotional intelligence operates within mediation advocacy in environmentally related planning disputes in the United Kingdom.

Table 1.3: Alignment Between Research Objectives and Thesis Chapters

Research Objective	**Relevant Chapter(s)**
Objective 1: To analyse how legal professionals perceive and engage with ADR in environmentally related planning disputes, with particular attention to the institutional, cultural and procedural factors that shape its legitimacy and use.	Chapters 3 and 6
Objective 2: To examine how EI is understood and enacted by lawyers acting as mediation advocates, focusing on empathy, emotional awareness, emotional regulation and boundary management in mediation practice.	Chapters 4, 5 and 7
Objective 3: To explore how structural, organisational and professional conditions enable or constrain emotionally intelligent forms of mediation advocacy within planning and environmental dispute contexts.	Chapters 3, 5, 6 and 7
Objective 4: To assess the extent to which qualitative insights into EI resonate across the wider professional community through a confirmatory national survey.	Chapter 8

Objective 5: To integrate findings across all empirical phases in order to develop a socio-legal account of emotionally attuned mediation advocacy within public law dispute resolution.	Chapter 9

Table 1.3 demonstrates how each research objective is addressed throughout the thesis and indicates the principal chapters in which the objectives are developed and analysed.

1.5 Research Questions

While the research objectives identify what the study seeks to achieve, the research questions provide the specific lines of inquiry through which those objectives are investigated. The questions therefore operationalise the objectives and guide the collection, analysis and integration of empirical and theoretical evidence throughout the thesis.

1.5.1 Primary Research Question

How is EI understood, enacted and constrained within mediation advocacy in environmentally related planning disputes in the United Kingdom?

1.5.2 Sub-questions

To address this overarching question, the study investigates the following sub-questions:

1. How do legal professionals perceive the role, value and limitations of ADR in environmentally related planning disputes, and what institutional and cultural factors shape these perceptions?
2. How do lawyers describe and navigate the emotional, relational and ethical demands of mediation advocacy when representing clients in environmentally related planning disputes?
3. What structural, organisational and professional conditions enable or restrict emotionally intelligent forms of mediation advocacy within this field?
4. To what extent do the qualitative insights on EI resonate across the wider professional community, and how are these insights reflected in patterns identified through a national survey?
5. What integrated socio-legal understanding of EI in mediation advocacy emerges when qualitative and quantitative findings from the four research phases are brought together?

These questions collectively structure the inquiry undertaken in subsequent chapters, guiding both the empirical design and the theoretical development of the thesis.

1.6 Conceptual and Theoretical Framing

This study draws on a series of conceptual and theoretical frameworks that together provide a foundation for analysing EI within mediation advocacy in environmentally related planning disputes.

A first strand of the conceptual foundation concerns the legitimacy and institutional positioning of ADR within the planning system. Chapters 3 and 6 examine ADR in this field in the context of regulatory obligations, uneven power relationships and significant public interest considerations. The literature on procedural justice, legitimacy and stakeholder participation highlights the ways in which structural asymmetries influence both the uptake and the perceived fairness of mediation.

A second strand involves the conceptualisation of mediation advocacy as a socio-legal practice. Unlike adversarial advocacy, mediation advocacy requires lawyers to engage with clients and opposing parties in a manner that is relational, adaptable and responsive to emotional cues and shifting dynamics. A socio-legal perspective highlights how this work is shaped by professional norms, organisational expectations and role identities. This framing supports the analysis of how EI functions as part of everyday professional judgement rather than as a purely individual or psychological attribute.

A third strand concerns EI itself. While EI is often defined as the ability to recognise, understand and manage emotions, this thesis treats it as a concept that can be examined in relation to professional practice in mediation. Chapter 4 reviews key approaches to EI, while Chapter 5 examines how emotional capacities may be shaped by institutional and ethical context in mediation advocacy, including empathy, emotion regulation, interpretation of affective cues and boundary management.

Finally, the thesis engages with interdisciplinary literature on care ethics, affective justice and the sociology of emotion, which is discussed in Chapters 4 and 5 in relation to trust, vulnerability, recognition and ethical tension in public law mediation. Chapters 3–5 develop the doctrinal and conceptual foundations, Chapters 6–8 present the empirical analysis, and Chapter 9 integrates the findings.

1.7 Methodological Overview

The study adopts a methodological framework grounded in critical realism and pragmatism, reflecting its focus on the interplay between institutional structures, professional practice and individual capacities. Critical realism provides the ontological basis for recognising that environmentally related planning disputes are shaped by underlying social, legal and organisational structures that influence how mediation and legal practice unfold. Pragmatism offers the epistemological orientation needed for examining how EI is enacted in practical contexts and for selecting methods that best illuminate the relationships between experience, behaviour and institutional conditions.

The adoption of a critical-realist and pragmatic orientation is justified by the nature of the research problem. This study seeks to examine how emotional intelligence operates within mediation advocacy as both an individual professional capacity and a socially situated practice shaped by legal, institutional and organisational structures. Critical realism provides an appropriate framework for analysing the underlying mechanisms and structural conditions that influence mediation advocacy, while pragmatism supports the use of multiple methods to investigate how these processes are experienced and enacted in practice. Together, these perspectives enable the study to move beyond purely behavioural or doctrinal explanations and develop an integrated socio-legal account of emotionally informed professional judgement within public law dispute resolution.

A sequential mixed methods design was used to explore EI in mediation advocacy from multiple angles and to develop an integrated understanding of the phenomenon. The design unfolds across four empirical phases. The first phase consists of a national survey of legal professionals working in planning and environmental law, which captures baseline attitudes toward ADR and identifies structural and cultural influences on its use. The second phase comprises semi-structured interviews with practitioners, offering deeper insight into how lawyers understand ADR, how they navigate its institutional constraints and how professional norms shape their engagement with mediation.

The third phase involves in-depth interviews focused specifically on EI in mediation advocacy. These interviews explore how lawyers describe and manage emotional, relational and ethical complexities when representing clients in mediation. The fourth phase consists of a triangulation survey designed to assess the extent to which themes from Phase 3 resonate across a wider practitioner group and to support integration across the empirical phases.

Sequential integration informed the design of each phase, enabling refinement of conceptual focus as empirical patterns emerged. This iterative approach aligns with the study's critical-realist and pragmatic orientation. The methodological design aligns with the study's analytical aims by enabling EI to be examined as both individual capacity and socially situated professional practice within institutional constraint. Through its mixed methods approach, the study provides an empirically grounded account of EI in this complex area of legal practice.

1.8 Contribution to Knowledge

This thesis makes four original contributions to scholarship on public law mediation, legal professionalism and dispute resolution in environmentally related planning disputes. These four contributions are analytically interconnected. The conceptual contribution establishes the theoretical framework of relational legal judgement through which Emotional Intelligence is understood within mediation advocacy. The empirical contribution provides systematic evidence of how this form of judgement is enacted and experienced by legal professionals in practice. The methodological contribution demonstrates how such emotionally embedded professional practice can be examined through a sequential mixed methods socio-legal design. Finally, the normative contribution situates these findings within broader debates about legitimacy, accountability and ethical responsibility in public law mediation. As a whole, these contributions provide an integrated account of emotionally informed mediation advocacy within environmentally related planning disputes.

1. Conceptual Contribution

The thesis develops and empirically examines the concept of relational legal judgement, introduced in Section 1.1.1, to explain how emotional intelligence operates within mediation advocacy in public law contexts. The concept reframes emotional intelligence as a dimension of professional legal judgement exercised by advocates within institutional and constitutional constraints. By locating emotional judgement within legal authority and procedural legitimacy, the thesis advances a socio-legal account of advocacy integrating affective interpretation, ethical boundary management and strategic reasoning.

2. Empirical Contribution

Empirically, the thesis provides one of the first systematic mixed-methods studies examining emotional intelligence in mediation advocacy within UK environmentally related planning disputes. Drawing on national survey data, semi-structured interviews and triangulated corroboration, the research offers systematic evidence of how lawyers understand, enact and negotiate emotional and relational demands in public law mediation. It also maps variation across professional roles and institutional contexts, thereby extending empirical knowledge beyond mediator-focused studies to include the perspective of legal advocates operating within structurally constrained regulatory settings.

3. Methodological Contribution

Methodologically, the thesis demonstrates the value of a critical realist and pragmatic sequential mixed methods design for examining emotionally embedded professional practice. By integrating quantitative pattern mapping with in-depth qualitative analysis and confirmatory survey testing, the study shows how EI can be examined not as an abstract psychological construct, but as a situated dimension of socio-legal practice.

4. Normative and Ethical Contribution

Normatively, the thesis clarifies the role and limits of EI in public law mediation. It demonstrates that emotionally intelligent advocacy may enhance relational legitimacy and procedural trust, yet does not displace structural inequities, statutory constraints or constitutional accountability requirements. Emotional judgement is therefore presented as necessary but insufficient: it introduces heightened professional responsibility and ethical risk rather than moral superiority or institutional solutionism. By articulating these limits, the thesis positions EI within a framework of structured accountability rather than managerial or neoliberal self-discipline.

As a whole, these contributions establish a contextually grounded and empirically supported framework for understanding emotionally informed mediation advocacy within UK public law planning disputes.

1.9 Structure of the Thesis

The remainder of this thesis is organised into nine chapters, each of which contributes to the development of the study's argument and empirical findings. Reflecting the practice-led and iterative character of the research, the methodology chapter appears before the substantive literature review, enabling the empirical design and critical-realist–pragmatic orientation to be understood prior to the detailed conceptual analysis. Chapter 2 outlines the methodological framework, explaining the study's critical-realist and pragmatic foundations and detailing the sequential mixed methods design through which the four empirical phases were conducted. Chapter 3 examines the nature, evolution and current viability of ADR within environmentally related planning disputes in the UK, highlighting the structural and institutional factors that shape ADR's limited integration in this field.

Chapter 4 introduces the conceptual foundations of EI, reviewing relevant theoretical models and considering the relevance of emotional competence within legal practice. Chapter 5 develops this analysis by examining EI within mediation, focusing on negotiation dynamics, legal professionalism and the ethical considerations that arise in environmental dispute contexts. Chapter 6 presents the findings from the first two empirical phases, analysing legal professionals' engagement with ADR and identifying the cultural, procedural and institutional factors that influence its perceived legitimacy and use.

Chapter 7 develops the qualitative analysis from the third empirical phase, examining how lawyers understand and enact EI in mediation advocacy. Chapter 8 develops the analysis of the triangulation survey, examining how themes from Chapter 7 are taken up across a wider professional population. Chapter 9 synthesises the findings from all empirical phases, integrating them with the conceptual and theoretical frameworks and developing a socio-legal account of EI as a relational, ethical and strategic dimension of mediation advocacy.

Chapter 10 concludes the thesis by consolidating its central argument, articulating its theoretical and empirical contributions, reflecting critically on its methodological and conceptual limitations, and identifying avenues for future research in planning, environmental law and legal professionalism.

Chapter 2: Research Methodology

2.1 Introduction

This chapter outlines the methodological framework used to examine Alternative Dispute Resolution (ADR) adoption and the role of Emotional Intelligence (EI) in mediation advocacy within UK environmental and planning law. The study adopts a sequential mixed methods design to analyse institutional engagement patterns and practitioner experience in mediation advocacy. EI is treated as a relational and professional dimension of legal judgement enacted within mediation advocacy. It is not treated as a psychometric construct.

The study is structured into two parts, each comprising two research phases:

Part 1: ADR Adoption and Mediation Advocacy

- Phase 1: A survey of environmental lawyers to assess ADR adoption trends and institutional barriers.
- Phase 2: Semi-structured interviews exploring mediation advocacy and professional perspectives.

Part 2: EI in Mediation & Meta-Inferential Integration

- Phase 3: In-depth interviews investigating EI in mediation advocacy.
- Phase 4: A follow-up survey with Phase 1 respondents to examine patterned resonance and refine research findings.

2.1.1 Key Concepts in the Methodology

Four key concepts underpinning the methodological framework of this study are introduced below:

- Mediation Advocacy: Legal representation within facilitated dispute resolution processes, requiring negotiation strategy, relational judgement, and responsiveness to institutional constraints [1, 2].

[1] Norling Law, 'Mediation Advocacy Skills - What's Required?' https://norlinglaw.co.nz/blog-posts/mediation advocacy-skills-whats-required/ accessed 6 May 2025.
[2] Jennie Johnson, 'The Role of Emotional Intelligence in Legal Advocacy' (date unknown) https://jenniejohnson.com/bestjobs/the-role-of-emotional-intelligence-in-legal accessed 8 May 2025.

- EI: Treated in this study as a relational and professional capacity involving emotional awareness, regulation, and responsiveness within mediation advocacy [3, 4].
- Institutional Barriers: Structural, regulatory, and professional conditions influencing ADR uptake, including litigation incentives, training gaps, and firm culture [5].
- Mixed-methods research design: Integration of survey and interview data across four phases, enabling analysis of both institutional patterns and practitioner experience [6].

2.1.2 Structure of the Chapter

This chapter proceeds by outlining the study's epistemological and ontological foundations (Section 2.2), justifying the adoption of a sequential mixed methods design (Section 2.3), detailing the two-part, four-phase empirical research structure (Section 2.4), explaining the data analysis approach (Section 2.5), and addressing ethical considerations and methodological limitations (Section 2.6). The chapter concludes by situating the methodology within the broader socio-legal framework of the thesis (Section 2.7). The empirical findings generated through this methodology are subsequently presented in Chapters 6, 7 and 8, before being integrated and discussed in Chapter 9.

2.2 Epistemological and Ontological Considerations

This study adopts a critical realist ontological stance combined with a pragmatic epistemological orientation, enabling analysis of ADR as both structured institutional practice and enacted professional judgement.

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[3] Lauren Landry, 'Why Emotional Intelligence Is Important in Leadership' (Harvard Business School Online Blog, 3 April 2019) https://online.hbs.edu/blog/post/emotional-intelligence-in-leadership accessed 12 May 2025.

[4] Jharna Jagtiani, 'Emotional Intelligence in Mediation' (28 December 2024) https://mediate.com/emotional-intelligence-in-mediation-by-jharna-jagtiani/ accessed 15 May 2025.

[5] London Solicitors Litigation Association, *Response to the Civil Justice Council ADR Working Group Interim Report on ADR and Civil Justice* (2018) https://www.judiciary.uk/wp-content/uploads/2018/02/lsla-response.pdf accessed 19 May 2025.

[6] Theertha Raj, 'Mixed Methods Research: How to Combine Qual and Quant for Better UX Insights' (Loop Panel Blog, 18 November 2024) https://www.looppanel.com/blog/mixed methods-research accessed 22 May 2025.

2.2.1 Critical Realism and Pragmatism as the Study's Epistemological Foundation

Critical realism provides the ontological foundation for this study by treating legal frameworks and dispute resolution mechanisms as structured institutional contexts that shape professional action. At the same time, it recognises that their operation depends on interpretation, judgement, and practice [7, 8, 9, 10].

Pragmatism provides the epistemological orientation by prioritising methods suited to the research problem, supporting reflexive analytic dialogue between quantitative pattern mapping and qualitative interpretation of practitioner experience [11, 12].

2.2.2 Justification for Rejecting Alternative Epistemological Positions

Neither positivism nor interpretivism alone provides sufficient explanatory scope for analysing mediation advocacy as both institutionally structured and professionally enacted. The combined adoption of critical realism and pragmatism therefore enables analysis of structural constraint and situated professional judgement within a single coherent framework.

2.2.3 Linking Epistemology to Methodology

The study's critical realist and pragmatic commitments shape the interpretive sequencing of methods within the mixed methods design. Thematic coherence testing across qualitative and quantitative phases enables the study to examine mediation advocacy as both structured and relationally enacted, consistent with its ontological and epistemological commitments [13].

[7] Andrew Sayer, *Realism and Social Science* (SAGE Publications 2000)
[8] Berth Danermark, Mats Ekström and Jan Ch. Karlsson, *Explaining Society: Critical Realism in the Social Sciences* (2nd edn, Routledge 2019)
[9] Reza Banakar and Max Travers, *Theory and Method in Socio-Legal Research* (Hart Publishing 2005)
[10] Marie Cornu and Marc-André Renold, 'New Developments in the Restitution of Cultural Property: Alternative Means of Dispute Resolution' (2010) 17(1) *International Journal of Cultural Property*
[11] Mohamed Elgeddawy and Mahmoud Abouraia, 'Pragmatism as a Research Paradigm' (2024) 23(1) *Proceedings of the European Conference on Research Methodology for Business and Management Studies*
[12] R Burke Johnson, Anthony J Onwuegbuzie and Lisa A Turner, 'Toward a Definition of Mixed Methods Research' (2007) 1(2) *Journal of Mixed Methods Research*
[13] Leonard B Bliss, 'Media Review: Jennifer C Greene, *Mixed Methods in Social Inquiry* (Jossey-Bass 2007)' (2008) 2(2) *Journal of Mixed Methods Research*

2.3 Methodological Approaches in Socio-Legal Research

The methodological choice of this study reflects the institutional characteristics of UK environmental and planning dispute resolution, where formal adjudication remains dominant yet mediation advocacy unfolds within relational and emotionally complex settings.

2.3.1 Justification for a Sequential Mixed-Methods Design

This study employs a four-phase mixed methods design. The phases progress iteratively from quantitative mapping of ADR engagement to qualitative exploration of professional practice and finally to survey-based triangulation of the study's interpretive findings. The detailed structure and rationale of the four-phase research design are presented in Section 2.4.

The original conception of this research adopted a broader focus on Alternative Dispute Resolution (ADR) within UK environmental and planning disputes, rather than mediation specifically. Phase 1 was therefore intentionally designed to examine legal professionals' engagement with ADR more generally, including institutional attitudes, patterns of adoption, and perceived barriers across different forms of dispute resolution. However, analysis of the Phase 1 survey findings indicated that mediation represented the form of ADR in which legal professionals perceived the greatest institutional, professional, and interpersonal challenges. Participants' responses consistently identified mediation advocacy, rather than ADR more broadly, as the context in which issues of professional judgement, emotional competence, and relational practice were most pronounced. On this basis, the subsequent phases of the research refined the empirical focus from ADR generally to mediation advocacy specifically, allowing the study to explore in greater depth mediation advocacy as the phenomenon that had emerged as most significant during the first phase of data collection. This refinement was an inductive development arising from the sequential mixed-methods design rather than a departure from the original research objectives, reflecting the study's pragmatic and iterative methodological orientation.

During the course of this doctoral research, selected aspects of the research were published in two co-authored publications (Bonomally and Agapiou, 2024; 2025). The 2024 publication reports findings from the Phase 1 questionnaire survey examining legal professionals' attitudes towards Alternative Dispute Resolution

(ADR), while the 2025 publication reports selected findings from the Phase 1 survey and Phase 2 interviews concerning legal professionals' engagement with ADR in planning and environmental disputes. The present thesis incorporates these published findings within the broader context of the complete doctoral research and substantially extends them through the full four-phase mixed-methods design, additional empirical phases, integrated cross-phase analysis, the development of the Relational Legal Judgement framework, and the overall theoretical and empirical contribution presented in this thesis.

2.4 Research Design: Two-Part, Four-Phase Empirical Study

Building on Sections 2.1 and 2.3, this section details the research design and data collection methods for each phase, outlining how the study progressed from survey data to qualitative analysis and final triangulated corroboration.

2.4.1 Phase 1: Understanding ADR Engagement among Environmental Lawyers

The rationale for Phase 1 was to quantify ADR adoption trends and assess institutional and professional barriers affecting mediation advocacy, addressing a gap in understanding ADR engagement within environmental and planning law.

The survey was designed to address the following research objectives:

1) Measure the prevalence of ADR adoption in environmental and planning law.
2) Identify the most significant challenges preventing broader ADR engagement.
3) Assess institutional attitudes toward ADR, mediation, and dispute resolution.
4) Examine the impact of legal training and education on ADR competency.
5) Investigate whether EI is recognised as a factor influencing mediation success.

The survey design consisted of a structured self-administered online questionnaire developed to collect survey data on ADR engagement and institutional barriers among environmental lawyers. The complete questionnaire used during Phase 1 is reproduced in Appendix A. The survey comprised three primary sections:

1) Demographic and Professional Background: Years of legal practice, specialisation, and ADR exposure.

2) ADR Knowledge and Engagement: Familiarity with ADR mechanisms, prior mediation experience, and perceived advantages and risks.
3) Institutional and Structural Barriers: The perceived enforceability of ADR outcomes, organisational ADR policies, and professional norms around litigation versus ADR, including how institutional context shapes decision-making.

Participant recruitment and sampling were undertaken using a purposive and stratified random sampling strategy. Due to the absence of a centralised registry for environmental lawyers in the UK, this approach was adopted to ensure diverse representation across:

- Professional specialisations (solicitors, barristers, lawyers).
- Institutional affiliations (private practice, regulatory agencies, academia).
- Experience levels (junior associates, mid-level practitioners, King's Counsel).

Recruitment sources included:

- UK Environmental Law Association (UKELA)
- Planning and Environmental Bar Association (PEBA)
- The Law Society and Bar Council
- Direct invitations to legal professionals specialising in environmental disputes

A total of 120 legal professionals participated, yielding a 44% response rate, exceeding standard response rates for legal professional surveys.

Data collection and analysis were undertaken over a six-week period. Survey responses were analysed using SPSS to conduct:

1) Descriptive statistics: Measuring ADR adoption and institutional barriers.

2) Cross-tabulation analysis: Identifying engagement trends across demographic groups.
3) Factor analysis: Clustering key challenges limiting ADR adoption.

Ethical considerations for Phase 1 included the following safeguards:

- Informed Consent: All participants were provided with an information sheet outlining the study's purpose and data protection measures.
- Confidentiality: Survey responses were fully anonymised.
- GDPR Compliance: All data was stored securely in encrypted university databases.
- Right to Withdraw: Participants could exit the survey at any time without consequence.

2.4.2 Transitioning from Phase 1 to Phase 2

Phase 1 identified patterned institutional resistance, judicial neutrality, and enforceability concerns; however, the survey design could not explain how these structural dynamics were interpreted, negotiated, or reproduced in everyday professional practice. These limitations created the need for a qualitative phase capable of examining how practitioners themselves interpret and navigate these institutional conditions. Phase 2 therefore follows directly from Phase 1 by shifting the research design from statistical pattern mapping to interpretive analysis of professional practice.

Phase 2 shifts the analytic lens from statistical mapping to interpretive explanation, enabling examination of how institutional barriers are enacted, resisted, or normalised within professional judgement. Interview sampling was drawn from the Phase 1 respondent pool to ensure analytical continuity, while also enabling variation across professional role, institutional affiliation, and ADR engagement level. In this way, the second phase did not operate as a separate exploratory inquiry but as a theoretically and empirically grounded extension of the survey findings.

2.4.3 Phase 2: Qualitative Exploration of ADR Adoption in UK Environmental Disputes

The rationale for Phase 2 was to explore why ADR adoption remains limited in environmental law despite its wider use in commercial and construction disputes, where courts increasingly encourage and may compel parties to engage in ADR, including through potential cost consequences for refusal [14].

The second phase sought to explore why ADR adoption remains limited in environmental law despite its widespread use in commercial and construction disputes [15]. The key objectives included:

1) Understanding how practitioners perceive ADR's role in environmental and planning disputes.
2) Assessing institutional attitudes toward ADR within UK legal practice.
3) Examining how judicial neutrality and lack of statutory ADR mandates impact ADR engagement.
4) Identifying key barriers preventing broader ADR adoption, including concerns about enforceability and professional resistance.

Participants were recruited from the Phase 1 survey pool to ensure continuity between phases. Twelve semi-structured interviews were conducted with legal professionals selected on the basis of the following criteria:

- ADR Engagement Level: To contrast perspectives between ADR users and non-users.
- Institutional Affiliation: Participants were drawn from private law firms, regulatory bodies, and academia to compare institutional attitudes.
- Experience with ADR Cases: Ensuring representation from professionals handling various dispute types (e.g., environmental

[14] Francesca Muscutt and Millie Bailey, 'Courts Can Compel Parties to Use Alternative Dispute Resolution' (DAC Beachcroft, 9 February 2024) https://www.dacbeachcroft.com/en/What-we-think/Courts-can-compel-parties-to-use-Alternative-Dispute-Resolution accessed 10 June 2025.
[15] Antara Dongre, 'Environmental Dispute Resolution and Arbitration: Legal Mechanism' (Jus Scriptum Law, 17 February 2024) https://www.jusscriptumlaw.com/post/environmental-dispute-resolution-and-arbitration-legal-mechanism accessed 13 June 2025.

impact assessments, planning appeals, and regulatory enforcement disputes).

Interviews followed a semi-structured format, balancing consistency across participants while allowing flexibility for emerging themes. The complete Phase 2 interview schedule is reproduced in Appendix B.

Key question areas included:

1) Institutional Barriers to ADR Adoption: What firm-level policies and professional norms discourage ADR use?
2) Judicial Influence on ADR Uptake: How does the absence of judicial penalties for refusing ADR shape legal professionals' attitudes?
3) Enforceability and ADR Effectiveness: Do legal professionals perceive ADR outcomes as binding and credible alternatives to litigation?

Interviews were conducted via Zoom or Microsoft Teams, transcribed verbatim, and analysed using reflexive thematic analysis as articulated by Braun and Clarke. Reflexive thematic analysis was selected because it aligns with the study's critical realist and pragmatic commitments: it treats themes as interpretive constructions developed through researcher reflexivity while still permitting systematic attention to patterned meaning across cases. Alternative approaches such as grounded theory or interpretative phenomenological analysis were not adopted, as the study did not seek to generate formal theory from first principles or prioritise idiographic depth over cross-case institutional patterning.

Ethical safeguards for Phase 2 included the following measures:

- Confidentiality and Anonymity: Participants were assigned pseudonyms to protect their identities.
- Informed Consent: Participants received detailed consent forms outlining the study's purpose, data usage, and withdrawal rights.
- Bias Mitigation: Researcher reflexivity was maintained to minimise interpretative bias and ensure that analysis remained grounded in participants' actual perspectives rather than researcher expectations.

This two-phase empirical design ensures that the findings are both:

- o Quantifiable (survey data from Phase 1): providing statistical insights into ADR attitudes, barriers, and institutional resistance.
- o Deeply contextualised (interviews from Phase 2): offering detailed qualitative explanations of how these factors operate in practice.

The Phase 2 sample size was determined by thematic saturation, assessed through analytic depth and pattern stability rather than numerical threshold. By the twelfth interview, no substantively new themes were emerging and subsequent accounts reinforced established analytic categories, indicating conceptual sufficiency for the study's explanatory aims.

2.4.4 Transitioning from Phase 2 to Phase 3

Phase 2 demonstrated that institutional and procedural barriers alone were insufficient to account for variation in mediation effectiveness and practitioner engagement. This interpretive insight indicated that factors beyond institutional structure were shaping mediation outcomes. The third research phase was therefore designed to examine EI as a relational dimension of professional legal judgement within mediation advocacy. Participants' accounts indicated that mediation effectiveness also depended upon the interpersonal judgement, emotional regulation, and advocacy styles of legal representatives. These findings suggested that professional practice dimensions warranted focused investigation.

Phase 3 was therefore designed to examine EI as an enacted dimension of professional judgement, shifting the analytic focus from structural constraint to the relational competencies through which mediation authority is exercised.

2.4.5 Phase 3: Exploring Emotional Intelligence in Mediation Advocacy

The rationale for Phase 3 was that EI has been identified in psychological literature as critical to conflict resolution but remains under-explored in legal mediation settings [16]. Phase 3 seeks to address this gap by examining the role of EI in mediation advocacy in environmental and planning law. This focus reflects the particular demands placed on legal advocates operating within UK environmental and planning

[16] Randall Kiser, 'The Emotionally Attentive Lawyer: Balancing the Rule of Law with the Realities of Human Behavior' (2009) 12 *Nevada Law Journal* 1

disputes, where lawyers must balance adversarial obligations with expectations of procedural fairness, public accountability, and de-escalation in multi-stakeholder contexts. The complete Phase 3 semi-structured interview schedule is reproduced in Appendix C.

Phase 3 sought to examine the role of EI in mediation advocacy and its impact on ADR adoption in environmental and planning law. While Phase 2 highlighted institutional and procedural barriers to ADR, qualitative findings suggested that mediation outcomes often depend on lawyers' interpersonal skills, communication styles, and ability to manage emotions during negotiations. However, EI remains an underexplored competency in legal training and practice.

"I often don't know what 'hat' I'm wearing, are we mediating or lawyering? It's blurry."
(Phase 3 interview participant, local government solicitor)

This gap has been recognised in legal education scholarship, where EI is identified as integral to effective advocacy and conflict resolution yet frequently marginalised within doctrinally focused training [17, 18, 19, 20, 21, 22].Integrating EI into legal curricula and ADR-focused modules has therefore been proposed as a means of strengthening practitioners' capacity to manage emotionally complex disputes and foster trust in mediation contexts.

The key objectives of Phase 3 included:

1) Understanding the Role of Mediation Advocates: Investigating how legal representatives influence mediation outcomes in environmental and planning disputes beyond their legal knowledge.

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[17] Emma Jones, 'An Emotionally Vulnerable Profession? Professional Values and Emotions within Legal Practice' (2023) 26(2) *Legal Ethics* 238
[18] Colin James, 'Seeing Things As We Are: Emotional Intelligence and Clinical Legal Education' (2005) *International Journal of Clinical Legal Education*
[19] Susan Douglas, 'Incorporating Emotional Intelligence in Legal Education: A Theoretical Perspective' (2015) 9(2) *e-Journal of Business Education and Scholarship Teaching*
[20] Terry A Maroney, 'Emotional Competence, "Rational Understanding," and the Criminal Defendant' (2006) 43 *American Criminal Law Review* 1375
[21] Rachael Field and James Duffy, 'Better to Light a Single Candle than to Curse the Darkness: Promoting Law Student Well-being through a First Year Law Subject' (2012) 12(1) Queensland University of Technology Law Review
[22] Roy Stuckey et al, *Best Practices for Legal Education: A Vision and a Road Map* (Clinical Legal Education Association 2007) https://encle.org/upload/files/teaching-materials/best_practices-full.pdf accessed 17 June 2025.

2) Assessing the Lack of EI Training: Examining whether the absence of formal EI education affects lawyers' ability to navigate mediation effectively.

3) Exploring EI’s Influence on ADR Engagement: Identifying whether lawyers with stronger EI competencies are more likely to recommend ADR and achieve positive mediation outcomes.

4) Identifying Barriers to EI Integration in Legal Practice: Investigating why EI remains undervalued in legal education and professional development, and how its integration could enhance ADR effectiveness.

To ensure both continuity and new perspectives, Phase 3 participants were recruited from the same professional recruitment pool established for the study. This included returning participants from Phase 2 together with additional mediation advocates recruited from the same professional pool. Accordingly, while participant overlap existed between the Phase 2 and Phase 3 interview cohorts, Phase 3 was not limited to the earlier interview participants. Phase 3 participants therefore included:

- Returning Participants from Phase 2: Legal professionals who had engaged with ADR and could reflect on EI’s implicit role in mediation.
- New Participants (Mediation Advocates): Mediation advocates specialising in environmental and planning disputes, chosen to provide direct insights into how advocacy styles and interpersonal skills shape mediation success.

Participants were selected based on:

- Professional Role: Mediation advocates with experience in environmental and planning law.
- Experience with Mediation: Legal professionals and advocates who had represented clients in ADR processes.
- Familiarity with EI competencies: Individuals with varying levels of awareness and training in EI to assess its impact on mediation advocacy.

This targeted sampling ensured that the study captured perspectives from both traditional legal professionals and specialised mediation advocates, allowing for a nuanced exploration of EI's role in mediation practice.

Phase 3 interviews followed a semi-structured format, balancing comparability across responses with flexibility for deeper exploration of emerging themes.

Prior to formal data collection, a pilot interview was conducted to test question clarity, sequencing, and sensitivity, resulting in minor refinements to wording and prompts before the full Phase 3 interviews commenced.

Key question areas included:

1) Mediation Advocacy Strategies: How do mediation advocates adapt their approaches in emotionally charged disputes?
2) Perceptions of EI in Mediation: Do mediation advocates recognise EI as a key competency in successful dispute resolution?
3) Training Gaps and EI Development: Have mediation advocates received any formal EI training, and do they see value in incorporating it into legal education?
4) Challenges in ADR Adoption: How do advocacy styles and EI competencies influence stakeholder trust and ADR engagement?

This structure ensured that the research did not assume EI was a dominant factor but rather investigated whether and how mediation advocates themselves perceive its influence.

As with previous phases, ethical safeguards were rigorously maintained:

- Confidentiality and Anonymity: Participants were assigned pseudonyms to ensure privacy.
- Informed Consent: Detailed consent forms outlined the study's purpose, data handling protocols, and withdrawal rights.
- Verbal Confirmation of Consent: In addition to written consent, participants were asked at the start of each interview to verbally

confirm their willingness to participate and to proceed with audio recording, ensuring informed and voluntary engagement.

- Bias Mitigation: The research design incorporated neutral phrasing of questions to prevent overemphasis on EI as a determinant of mediation success, ensuring a balanced and open-ended exploration.

To strengthen analytic coherence and interpretive credibility, the participant pool was expanded to include mediation advocates while maintaining continuity with Phase 2 participants. This design ensured a robust exploration of mediation advocacy and the role of EI in ADR success. To enhance credibility and accuracy, interview transcripts were returned to participants for individual review prior to final analysis, allowing them to clarify meaning, correct errors, and confirm that their views had been accurately represented.

This phase addressed a gap in ADR research, recognising that while legal training prioritises procedural knowledge and argumentation, mediation effectiveness often relies on interpersonal dynamics, emotional regulation, and adaptability. By integrating perspectives from both general legal professionals and specialised mediation advocates, Phase 3 provided a deeper understanding of the human factors that shape ADR engagement and success in environmental and planning law. The Phase 3 sample size was guided by thematic saturation, with participants selected to ensure variation across role, seniority and institutional context. By the twelfth interview, core themes relating to emotional regulation, empathy, role ambiguity and ethical boundary management had stabilised, with subsequent interviews refining rather than expanding analytic categories, indicating adequacy for interpretive and theory-building analysis.

2.4.6 Phase 4: Triangulated Corroboration of ADR & Emotional Intelligence Findings Through a Follow-Up Survey

The rationale for Phase 4 was that it represented the final stage of the sequential mixed methods design. While Phase 3 generated qualitative insights into the role of EI within mediation advocacy, the fourth phase was designed to examine whether these patterns were observable across a broader sample of legal professionals. This transition therefore moves the study from interpretive explanation to quantitative corroboration, enabling the assessment of patterned resonance between qualitative insights and survey-level data.

Phase 4 is designed as a follow-up quantitative survey to examine the patterned resonance, scale-level corroboration, and analytic refinement of the qualitative insights obtained in Phase 3. Phase 4 did not replicate the Phase 1 survey instrument in its original form. Instead, the follow-up survey adopted a triangulation-focused design that combined selective reuse of contextual items from Phase 1 with the introduction of newly developed constructs derived directly from the qualitative findings in Phases 2 and 3.

While Phase 1 focused on mapping ADR awareness, usage patterns, and institutional barriers, the Phase 4 instrument was explicitly designed to probe EI as it is enacted within mediation advocacy. Survey items were therefore developed through an inductive process of construct operationalisation, translating qualitative themes; such as relational professionalism, strategic and ethical empathy, emotional regulation, and affective legitimacy; into structured domains suitable for quantitative analysis. This phase tested whether the relational and institutional dynamics identified qualitatively could be observed at scale, thereby strengthening the thesis's meta-inference regarding EI as relational legal judgement. The survey assessed whether patterns observed in Phase 3 and analysed in Chapter 7 were consistent and provided further insight into institutional and professional dynamics affecting ADR engagement. The complete Phase 4 triangulation survey questionnaire is reproduced in Appendix D.

The Phase 4 questionnaire was distributed to the same professional recruitment pool used for Phase 1. Participation remained voluntary and anonymous; consequently, while respondent overlap between the two survey phases was possible, individual participants could not be identified or matched across surveys.

Building upon the qualitative insights obtained in Phase 3, the key objectives for Phase 4 are:

1. Quantify the Role of EI in ADR Engagement: Assess whether lawyers who demonstrate higher EI awareness are more likely to engage with ADR.

2. Measure Perceptions of EI Training: Determine whether legal professionals support formal EI training in mediation and ADR practice.

3. Investigate Institutional Barriers: Examine whether legal professionals believe law firms, regulatory bodies, and legal education programs adequately support EI integration.

4. Reassess ADR Adoption in Light of Phase 3 Findings: Compare findings with Phase 1 survey results to identify any shifts in perception regarding ADR in environmental and planning law.

2.4.7 Design Schematic for Four-Phase Research Study

The four-phase research design was structured sequentially to enable progressive development of the study's empirical and theoretical contributions. Each phase addressed a distinct aspect of the research problem while informing the design and interpretation of subsequent phases. Table 2.1 summarises the relationship between the four research phases, the methods employed, the principal outputs generated, and the chapters in which the findings are presented and analysed.

Table 2.1: Sequential Relationship Between Research Phases, Research Outputs and Thesis Chapters

Phase	Research Aim	Method	Expected Output	Principal Thesis Chapter(s)
Phase 1	Understand ADR engagement trends in environmental law	Survey (quantitative)	Quantitative data on ADR adoption rates and institutional barriers	Chapter 6
Phase 2	Explore institutional barriers to ADR adoption	Semi-structured Interviews (qualitative)	Qualitative insights into professional barriers and attitudes	Chapter 6
Phase 3	Explore the role of EI in mediation	Semi-structured Interviews (qualitative)	Insights into how EI competencies affect ADR success	Chapter 7

Phase 4	Examine pattern convergence and construct reinforcement of Phase 3 findings on EI's role in ADR engagement	Follow-up Survey (quantitative)	Data to examine pattern convergence and reinforce qualitative constructs from Phase 3	Chapter 8
Integration of Findings	Synthesis across all four phases	Meta-inferential integration	Development of relational legal judgement framework	Chapter 9

As shown in Table 2.1, the research design progresses from quantitative exploration of ADR adoption patterns (Phase 1) to qualitative examination of institutional barriers (Phase 2) and the role of EI in mediation advocacy (Phase 3), before returning to quantitative analysis through a follow-up survey designed to assess patterned resonance and construct reinforcement (Phase 4). The final stage of the study involves meta-inferential integration across all four phases, enabling the development of the relational legal judgement framework presented in Chapter 9. The table therefore demonstrates how each phase contributes to the overall research trajectory and how the empirical findings collectively support the thesis's theoretical and normative conclusions.

2.5 Data Analysis Approach

To enhance analytic transparency, reflexive coherence and methodological clarity, a triangulated analytical approach was employed, integrating both quantitative and qualitative data analysis techniques across all four research phases. This section details the statistical methods applied to survey data, the thematic analysis framework used for qualitative interviews, and the measures implemented to enhance interpretive consistency and thematic coherence in coding EI indicators in legal practice.

2.5.1 Overview of Data Analysis Methodology

This study adopted a mixed methods analytical strategy integrating quantitative survey data and qualitative interview analysis across the research phases outlined earlier in the chapter.

Quantitative Survey Data Analysis (Phase 1 & Phase 4)

The Phase 1 survey provided a baseline assessment of ADR adoption trends, institutional barriers, and legal professionals' engagement with mediation. The Phase 4 follow-up survey examined the patterned resonance and refinement of these findings by assessing whether perspectives on ADR and EI had shifted following the qualitative exploration in Phases 2 and 3.

The following statistical techniques were applied:

- Descriptive statistics to measure ADR adoption rates, familiarity with ADR mechanisms, and attitudes toward mediation advocacy.
- Correlation analysis to examine relationships between ADR engagement and institutional factors, such as law firm policies and training levels.
- Cross-tabulation to identify patterns in ADR engagement across demographic groups, such as professional role, years of practice, and institutional affiliation.
- Comparative analysis between Phase 1 and Phase 4 to assess whether attitudes toward ADR and EI changed following the in-depth qualitative exploration in Phases 2 and 3.

Survey data were analysed using statistical techniques designed to identify patterns in ADR engagement and institutional dynamics across the sample. Silverman (2017)[23] and Mason (2002)[24] emphasise systematic, reflexive, and iterative qualitative analysis, supporting the layered coding approach adopted in this study.

Qualitative Interview Data Analysis (Phase 2 & Phase 3)

Data from semi-structured interviews in Phases 2 and 3 were analysed using Reflexive Thematic Analysis (RTA)[25] to identify key patterns in how legal professionals engage with ADR and mediation advocacy.

The qualitative analysis involved:

[23] David Silverman, *Doing Qualitative Research* (5th edn, SAGE Publications 2017)
[24] Jennifer Mason, *Qualitative Researching* (3rd edn, SAGE Publications 2017)
[25] Virginia Braun and Victoria Clarke, 'Using Thematic Analysis in Psychology' (2006) 3 *Qualitative Research in Psychology* 77

- Inductive and deductive coding, where open coding allowed for emergent themes, while pre-defined categories guided by the research questions structured the analysis.
- Qualitative coding software was used to support systematic data organisation and theme development.
- An iterative coding process to ensure that emerging themes from Phase 2 (ADR barriers and mediation advocacy challenges) informed the deeper exploration of EI in Phase 3.
- Triangulation with survey findings to examine thematic resonance and strengthen analytic coherence across research phases.

By integrating statistical and thematic analysis techniques, this approach enabled a layered and context-sensitive interpretation of ADR adoption trends and practitioner experiences.

2.5.2 Thematic Analysis and Coding Framework

Thematic analysis was used to analyse interview transcripts, drawing on Braun & Clarke (2006)[26] framework to identify recurring patterns, emotional themes, and social meaning[27]. Coding was both deductive (guided by EI indicators) and inductive, allowing for emergent themes. This dual approach ensured that both theoretical and grounded insights were captured.

The qualitative component of the study followed Braun & Clarke (2006)[28] six-step thematic analysis framework to systematically identify and interpret patterns in interview data:

1. Familiarisation with data by reviewing interview transcripts multiple times to identify initial patterns.
2. Generating initial codes using qualitative coding software, applying a combination of inductive (data-driven) and deductive (theory-driven) coding techniques.

[26] Ibid
[27] Greg Guest, Kathleen M MacQueen and Emily E Namey, *Applied Thematic Analysis* (SAGE Publications 2012)
[28] Braun and Clarke (n 25)

3. Searching for themes by grouping coded data into broader thematic categories, aligning with the research questions.
4. Reviewing themes to examine their resonance with survey data to strengthen analytic coherence and reflexive transparency.
5. Defining and naming themes by refining them into clear conceptual categories, with sub-themes developed where necessary.
6. Producing the report by structuring final themes into narrative explanations, with supporting direct quotations from participants.

To enhance analytic transparency and coherence, this study also drew on broader guidance for ensuring trustworthiness in thematic analysis. Nowell et al (2017)[29] advocate for transparency, coherence, and reflexive journaling throughout the coding process, principles that guided the iterative review of emergent themes in this research. Similarly, Terry et al (2017)[30] emphasise that thematic analysis should be theoretically flexible yet methodologically rigorous, aligning with this study's pragmatic, mixed methods stance.

A coding framework was established to categorise key themes emerging from the interviews, ensuring conceptual clarity and analytic consistency. Below is an overview of the thematic structure:

Primary Theme	Sub-Themes	Example Extract from Interviews
Institutional Barriers to ADR	- Law firm reluctance to use ADR - Regulatory gaps in ADR promotion - Judicial neutrality towards ADR	*"ADR is still seen as secondary to litigation by many firms."* *"Our firm has no formal ADR policy, so it's left to individual lawyers to decide whether to suggest it."* *"Unlike commercial disputes, courts do not push ADR in environmental cases, so*

[29] Lorelli S Nowell, Jill M Norris, Deborah E White and Nancy J Moules, 'Thematic Analysis: Striving to Meet the Trustworthiness Criteria' (2017) 16 *Qualitative Research in Psychology* 1
[30] Gareth Terry, Nikki Hayfield, Victoria Clarke and Virginia Braun, 'Thematic Analysis' in Carla Willig and Wendy Stainton Rogers (eds), *The SAGE Handbook of Qualitative Research in Psychology* (2nd edn, SAGE Publications 2017) 17

		lawyers default to litigation."
Training Deficiencies in ADR	- Lack of formal ADR training in legal education - Limited professional development opportunities for EI - Unawareness of EI's relevance in mediation	*"There is no structured regulatory encouragement for ADR, so most firms do not prioritise it ."* *"Mediation was briefly mentioned in my law degree, but we never learned how to use it in practice."*
EI in Mediation	- Self-awareness and emotional regulation in negotiations - EI competencies in lawyer-client interactions - Impact of EI on mediation success and stakeholder trust	*"If you are tense, everyone is tense."* *"You have to read the room constantly; the client, the mediator, the other side-because how you respond emotionally shapes whether anything moves forward."* *"Managing your own reaction is part of the job; if you escalate emotionally, the mediation just collapses."*
ADR's Perceived Effectiveness	- ADR's enforceability concerns - Client preferences for litigation over mediation - Stakeholder trust in ADR confidentiality	*"Clients often prefer litigation because they perceive it as more binding."* *"Mediation allows for candid discussions, but some clients worry about confidentiality."* *"We've had cases where a mediated agreement fell apart because there was no strong enforcement mechanism."*
EI's Influence on ADR Engagement	- Lawyers with stronger EI competencies show higher ADR adoption - EI-aware lawyers more likely to recommend mediation - EI training as a potential	*"Lawyers who are comfortable managing emotion are much more willing to suggest mediation; if they're not, they avoid it."* *"If you don't feel equipped to deal with the*

	solution to ADR hesitancy	*emotional side of it, you're far less likely to recommend ADR to a client."* *"Where people have the confidence to handle difficult conversations, they're more open to mediation; without that, litigation feels safer."*

This framework supported systematic coding and categorisation of qualitative insights, strengthening analytic transparency and coherence.

2.5.3 Identifying Emotional Intelligence Indicators in Legal Practice

The use of EI as a coding framework is informed by the central role emotions play in conflict resolution, particularly within mediation contexts. Goleman (1995)[31] model of EI, expanded by Salovey & Mayer (1990)[32] offers a nuanced lens for understanding emotional regulation, empathy, and interpersonal communication[33, 34]. The selection of EI as an analytical framework is grounded in socio-legal and ADR scholarship linking emotional competencies with legal advocacy and mediation outcomes. At the same time, the study remains attentive to critiques of EI as an elastic and context-dependent construct, and does not treat EI as a fixed, universal, or psychologically measurable trait, but rather as a heuristic lens for analysing professional legal practice. This framework was selected in preference to alternative EI models because its domains of self-awareness, emotional regulation, empathy and relational interaction align closely with the forms of interpersonal judgement observed in mediation advocacy practice.

A key objective of Phase 3 was to assess the role of EI in mediation advocacy. EI-related themes were coded using Goleman's (1995) framework as a heuristic lens to sensitise analysis to patterns of emotional awareness, regulation, empathy, and

[31] Daniel Goleman, *Emotional Intelligence* (Bantam Books 1995).
[32] Peter Salovey and John D Mayer, 'Emotional Intelligence' (1990) 9(3) *Imagination, Cognition and Personality* 185
[33] Edward J Kelly and Natalija Kaminskienė, 'Importance of Emotional Intelligence in Negotiation and Mediation' (2016) 12 *International Journal of Conflict Management* 1
[34] Goleman (n 31)

relational practice already present within participants' narratives, rather than to impose predefined emotional categories onto the data. Coding therefore proceeded iteratively, allowing themes to emerge inductively from interview material before being analytically aligned with EI competencies where conceptually appropriate:

- Self-awareness, or the ability of lawyers to recognise and regulate their emotional states in mediation.
- Self-regulation, particularly in relation to emotional control during high-stakes dispute resolution.
- Empathy, demonstrated through understanding and responding to opposing parties' emotions.
- Social skills, including negotiation tactics and rapport-building strategies.

Illustrative Example of Coding an EI Theme:

- *Empathy Theme:* During interviews, some legal professionals discussed how they manage client emotions during mediation sessions. One participant, for instance, reflected on their approach to managing client hostility in a high-stress environmental case:

"I've had to stay calm and listen to the client's frustration. They were really upset, so I acknowledged their anger, but then helped them refocus on the bigger picture."
(Empathy: Understanding and responding to emotions)

This quote was then categorised under Empathy because it illustrates how the lawyer recognised and addressed the emotional state of the client to improve mediation outcomes.

- *Self-Awareness Theme:* Another participant described their approach to self-regulating emotions in the face of a challenging mediation:

"When things started to get tense, I reminded myself to keep a level head. It's easy to get defensive, but I've learned to keep my composure."
(Self-awareness: Recognising and regulating one's own emotional response)

This quote was categorised under Self-awareness because the practitioner described being aware of their emotional state and taking steps to regulate it during the mediation process.

"Understanding what people really want."
(Phase 3 interview participant, senior infrastructure lawyer)

These themes were coded and organised to ensure a consistent approach to EI-related data. The Phase 4 survey results demonstrated patterned resonance with these qualitative findings, indicating that legal professionals with higher EI awareness were more likely to actively engage in ADR practices.

2.5.4 Analytic Quality Measures: Triangulation, Reflexivity, and Inter-Coder Review

To enhance the credibility and trustworthiness of the analysis, two analytic quality measures were employed:

1. Triangulation
   - Survey and interview data were cross-referenced to confirm key themes.
   - Findings from different participant groups (barristers, solicitors, mediators) were compared to ensure consistency.
   - Literature was used to contextualise emerging themes within broader ADR research.
2. Researcher Reflexivity
   - Reflexive memos were maintained throughout data analysis to document the researcher's thought process and minimise bias.
   - Potential preconceptions (e.g., assumptions about ADR effectiveness) were critically examined to maintain objectivity.

Triangulation, reflexivity, and inter-coder dialogue enhanced methodological transparency and ensured themes remained grounded in both the data and the relevant literature. Inter-coder dialogue functioned as an interpretive calibration process rather than a reliability audit. Selected transcript segments and emergent thematic structures were discussed with a second qualitative researcher to interrogate analytic assumptions, test alternative readings and refine conceptual boundaries. The purpose of this dialogue was to strengthen coherence, transparency and theoretical clarity in line with reflexive thematic analysis, not to generate statistical agreement coefficients or claims of coder neutrality.

Supervisory interpretive dialogue was conducted on four interview transcripts selected to reflect variation across professional role (barrister, solicitor, mediation advocate) and ADR engagement level. The researcher had completed initial coding prior to discussion, and selected coded segments relating to institutional barriers, emotional regulation, role ambiguity, and ethical boundary management were then reviewed with the supervisory team. Discussions focused on interpretive framing rather than theme identification; areas of divergence concerned whether references to emotional restraint reflected strategic advocacy technique, professional detachment, or implicit ethical calibration. Differences were addressed through reflexive discussion, returning to the raw transcript data to examine contextual meaning and theoretical alignment. Where alternative interpretations remained plausible, analytic memos documented the rationale for coding decisions. This process functioned as interpretive refinement rather than independent reliability testing, strengthening conceptual clarity and transparency in the development of final thematic categories.

The interpretive calibration between quantitative pattern mapping and qualitative thematic coding enabled a layered and context-sensitive interpretation of ADR adoption and EI in mediation advocacy, enhancing analytical depth and empirical credibility.

2.5.5 Phase 4: Patterned Resonance and Meta-Inferential Integration

The Phase 4 survey extended the qualitative findings by examining whether patterns identified in Phase 3 were observable across a broader sample of legal professionals. It assessed whether the role attributed to EI in mediation advocacy was supported at scale and whether these patterns demonstrated consistency across professional contexts.

Phase 4 translated the qualitative findings into measurable constructs in order to examine their prevalence and institutional significance across the wider sample. Survey items were designed to test whether themes identified in Phases 2 and 3, particularly relational professionalism, emotional regulation, strategic empathy and institutional support for EI, were observable at scale and whether they aligned with reported patterns of ADR engagement within planning and environmental practice.

The Phase 4 survey enabled meta-inferential alignment between the qualitative themes presented in Chapters 6 and 7 and the quantitative pattern mapping reported in Chapter 8, ensuring that the qualitative insights on EI and its impact on ADR engagement were analytically coherent and aligned with broader ADR adoption trends. By cross-referencing Phase 4's quantitative results with earlier qualitative data, the study strengthened the overall findings, demonstrating the relevance and applicability of EI in mediation advocacy within UK environmental law.

2.5.6 Integration of Qualitative and Quantitative Data

Integration occurred primarily at the level of meta-inference, where qualitative themes shaped survey operationalisation and quantitative findings were subsequently used to confirm, refine, or complicate interpretive claims. This ensured analytical coherence across data strands. Meta-inferential integration therefore functioned not as simple confirmation between methods, but as a process of interpretive refinement in which areas of convergence, divergence, and constructive tension were analytically examined. The results of this integration are presented in Chapter 9.

2.6 Ethical Considerations, Methodological Constraints and Limits of Transferability

This study adhered to established ethical research principles, ensuring participant confidentiality, informed consent, and compliance with data protection regulations. Ethical approval was obtained from the University of Strathclyde's Ethics Review Board before data collection commenced. Additionally, this section acknowledges the study's methodological limitations, including potential sampling biases, researcher reflexivity, and constraints on generalisability.

2.6.1 Ethical Approval Process and Participant Safeguards

Before initiating data collection, a comprehensive ethical review was conducted to ensure the study adhered to institutional and legal ethical guidelines. The following measures were implemented to safeguard participant rights and research integrity:

1. *Informed Consent and Voluntary Participation*

- Participants received a detailed information sheet explaining the study's objectives, methods, potential risks, and data protection measures.
- Written informed consent was obtained before participation in surveys and interviews.
- Participants were explicitly informed that participation was voluntary and that they had the right to withdraw at any time, without providing justification or facing negative consequences.
- Emotional Content Awareness: As part of the informed consent process, participants were made aware of the potential emotional content involved in discussing ADR practices, particularly when addressing instances of conflict, frustration, or interpersonal difficulties in mediation. Although minimal, it was emphasised that participants might experience emotional discomfort, and post-interview support options were made available.

2. *Confidentiality, Anonymity, and GDPR Compliance*
   - Survey Data: No personally identifiable information was collected in surveys to maintain anonymity.
   - Interview Data: All interview participants were assigned pseudonyms to protect their identities, and any references to specific firms, clients, or cases were anonymised.
   - Data Security:
     - All digital data were stored on password-protected and encrypted university servers, accessible only to authorised research personnel.
     - Transcriptions and notes were securely stored and will be deleted after five years, following data retention policies in accordance with GDPR (General Data Protection Regulation) guidelines.

These measures ensured that the study met high ethical standards in protecting participant autonomy, privacy, and data security.

2.6.2 Managing Researcher Bias and Reflexivity

As with all qualitative socio-legal research, researcher bias poses a potential risk, particularly in thematic analysis where interpretation plays a central role. To enhance analytic transparency, reflexive accountability, and interpretive coherence, several reflexivity measures were adopted:

1. Reflexive Journaling and Researcher Self-Awareness
    - The researcher maintained a reflexive journal throughout data collection and analysis to critically assess their own assumptions, expectations, and potential biases.
    - Regular entries in this journal allowed the researcher to document evolving interpretations, methodological choices, and challenges, reducing the risk of confirmation bias.
    - Any preconceived notions about ADR adoption and EI were actively questioned to ensure findings were derived from participant narratives rather than researcher expectations.
2. Triangulation of Data Sources
    - To enhance data credibility and reduce subjectivity, multiple data sources were systematically cross-referenced:
    - Survey findings (Phases 1 & 4) were compared with interview data (Phases 2 & 3) to identify convergence or divergence in themes.
    - Legal literature on ADR and EI was used as a theoretical lens to contextualise emerging patterns and ensure alignment with broader research.
    - Independent review: A second qualitative researcher engaged in inter-coder dialogue to interrogate thematic interpretation on a subset of interview transcripts to refine thematic coding.

- Inter-coder review was conducted through structured consensus discussion, with descriptive agreement indicators used solely as a transparency tool to document areas of convergence and divergence. Discrepancies were resolved through reflexive dialogue, prioritising interpretive justification over statistical conformity. Agreement indicators were therefore used descriptively rather than as claims of positivist reliability.

By implementing these reflexivity measures, the study aimed to ensure rigorous and balanced data interpretation, minimising the influence of researcher bias on findings

2.6.3 Limitations of Study Design and Sample Representativeness

Notwithstanding its methodological coherence, the study is subject to constraints that shape the scope and transferability of its findings:

1. *Self-Selection Bias*

    - Since participation in both the survey and interviews was voluntary, there is a risk that individuals who already engage with or support ADR were more likely to respond.
    - This may have overrepresented ADR proponents and led to a more favourable portrayal of ADR adoption than exists in practice.

Mitigation Strategy:

- Targeted recruitment efforts ensured participation from a diverse sample, including legal professionals with varying levels of ADR engagement and some who were skeptical of ADR.
- Thematic coding specifically included critical perspectives on ADR to balance the analysis.

2. *Institutional Concentration of the Sample*

    Although efforts were made to secure diversity across professional roles and institutional settings, the sample remains concentrated within practitioners engaged in environmental and planning law in the United Kingdom, many of whom are connected through professional networks such as UKELA and PEBA. This concentration may reflect a shared professional culture or normative orientation toward dispute resolution that is not representative of the wider legal profession. The prominence of regulatory and public law contexts within the sample may also shape perceptions of mediation, emotional judgement, and professional responsibility in ways that differ from purely commercial or adversarial legal environments. While this concentration strengthens contextual depth, it limits claims to broader professional universality.

3. *Generalisability Constraints*

   - The study focused exclusively on UK environmental and planning lawyers, meaning findings may not be directly applicable to other legal sectors such as family, commercial, or construction law.
   - While this research provides valuable insights into ADR engagement, institutional barriers to ADR adoption vary across legal fields. The theoretical framework developed in this thesis is therefore contextually bounded. Its analysis of EI as relational legal judgement is grounded in the institutional features of UK environmental and planning disputes, including regulatory discretion, multi-stakeholder participation, and heightened public accountability. Although aspects of the framework may be analytically transferable, its explanatory power is shaped by the constitutional and procedural architecture of planning law. Accordingly, caution is required when extending these findings to legal domains characterised by materially different dispute structures, adversarial cultures, or statutory mandates. This focus was intentional, as environmental and planning law presents particularly complex, publicly scrutinised, and procedurally formal decision-making contexts in which ADR and mediation advocacy are especially contested.

Mitigation Strategy:

   - Findings were contextualised within broader ADR literature, highlighting where ADR engagement patterns are consistent or diverge from other sectors.

- The study suggests that future research should expand to other legal fields to determine whether similar institutional barriers exist

4. *Limitations of Survey-Based Research*

    - Self-reported data may be influenced by social desirability bias, where respondents present an idealised rather than actual view of ADR engagement. In relation to EI specifically, the study relies on practitioners' self-reported perceptions of emotional awareness, regulation, and relational competence rather than independently observed behavioural measures. Self-assessment may be subject to overestimation, professional impression management, or limited metacognitive insight into emotional practice. The survey instrument operationalised EI as a socio-legal construct rather than a psychometric score; however, it remains dependent on participants' reflective accounts of their own professional conduct. The findings should therefore be interpreted as indicative of perceived and enacted professional judgement rather than as objective measurement of emotional competence.
    - Quantitative survey methods alone do not capture the depth of practitioner experiences with ADR and EI.

Mitigation Strategy:

- The study adopted a mixed methods approach to triangulate findings, balancing quantitative trends (surveys) with qualitative depth (interviews).
- Reflexive thematic analysis of interview data enabled a richer exploration of institutional challenges and personal experiences with ADR.

5. *Practical Constraints and Time Limitations*

    - Due to the demanding schedules of legal professionals, securing participation for interviews was challenging.

- Some senior barristers and King’s Counsel (KC) declined participation due to time constraints, which may have limited insights from highly experienced practitioners.

Mitigation Strategy:

- The researcher offered flexible scheduling options, including shorter interview formats, to accommodate participants.
- Despite some senior barristers declining, the study ensured diverse representation, including solicitors, barristers, mediators, and regulatory professionals.

2.6.4 Ethical and Methodological Rigor in Addressing Limitations

This study was designed and conducted in accordance with established ethical standards, ensuring:

- Confidentiality, informed consent, and data security for all participants.
- Reflexivity measures to minimise researcher bias and enhance interpretative credibility.
- Methodological triangulation to strengthen thematic coherence and meta-inferential alignment.

The following mitigation strategies were applied:

- A balanced recruitment strategy to avoid overrepresentation of ADR proponents.
- Cross-referencing of qualitative themes with survey data and relevant literature.
- Use of interpretive calibration processes, including structured inter-coder dialogue in thematic analysis.

2.7 Chapter Summary

This chapter has set out the study’s epistemological and ontological foundations, justified the adoption of a sequential mixed methods design, and detailed the empirical implementation, analytical framework, and ethical safeguards underpinning the research. By integrating quantitative and qualitative methods across four interconnected phases, the study examines ADR adoption and EI as institutionally situated and relationally enacted dimensions of mediation advocacy within UK environmental and planning disputes.

Collectively, this methodology provides the empirical foundation for the thesis's subsequent theoretical and normative analysis. The relationship between the quantitative and qualitative components of the study operates through sequential integration and meta-inferential synthesis. The empirical strategy proceeded through a sequence of interconnected research phases combining survey analysis with qualitative interviews and subsequent survey-based corroboration. Through this sequential integration the study moves from institutional pattern mapping to interpretive explanation and finally to quantitative corroboration, enabling a coherent mixed methods account of mediation advocacy in environmentally related planning disputes.

Chapter 3: The Nature, Evolution, and Viability of Alternative Dispute Resolution in Environmentally Related Planning Disputes in the UK

3.1 Introduction

Environmentally related planning disputes in the UK involve complex regulatory frameworks, competing land-use interests, and multiple stakeholders. These conflicts often arise at the intersection of urban development, environmental conservation, and public interest concerns[35]. Traditional litigation, while authoritative, is frequently described in the literature as adversarial, costly, and time-consuming, prompting increased scholarly and policy attention toward Alternative Dispute Resolution (ADR), particularly mediation[36]. This chapter examines the role of ADR in resolving planning disputes with environmental dimensions. It assesses its proposed advantages relative to litigation and its integration within the UK's regulatory landscape. Additionally, Emotional Intelligence (EI) is examined as an emerging theme within dispute resolution scholarship, particularly in relation to mediation advocacy and stakeholder management. This chapter adopts a narrative literature review approach, drawing on doctrinal, policy-based, and empirical socio-legal scholarship relevant to ADR in environmentally related planning disputes. The literature was selected to reflect both the legal framework governing planning disputes and empirical research examining ADR uptake, practitioner behaviour, and stakeholder participation. Doctrinal sources were prioritised to establish the statutory and regulatory context of UK planning law, while empirical studies were used to assess practical barriers to ADR implementation, including enforceability concerns, power imbalances, and professional training gaps. Although international literature on ADR and environmental dispute resolution is referenced where conceptually informative, sources were filtered for relevance to the UK planning system and public law context, ensuring that comparative insights were applied cautiously and only where they aligned with the institutional and legal characteristics of UK planning disputes. The chapter concludes by identifying structural and professional barriers to ADR adoption and by demonstrating that debates about ADR viability

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[35] C Short and M Winter, 'The Problem of Common Land: Towards Stakeholder Governance' (1999) 42(5) *Journal of Environmental Planning and Management* 613.
[36] J M P Howell and J Pugh-Smith, 'Mediation and Planning Disputes' *Local Government Lawyer* (2020)

cannot be separated from questions of institutional design, lawyer role conception, and relational advocacy practice.

This chapter contributes directly to the achievement of the research aim outlined in Section 1.4 by examining the institutional, legal, and procedural context within which mediation advocacy operates in environmentally related planning disputes. In particular, it addresses Objective 1 by analysing how legal professionals perceive and engage with ADR and by exploring the institutional, cultural, and procedural factors that influence its legitimacy and use. The chapter also contributes to Objective 3 by identifying the structural and regulatory conditions that enable or constrain ADR engagement within planning and environmental dispute resolution. These foundations provide the contextual framework necessary for the subsequent empirical analysis presented in Chapters 6, 7 and 8.

3.2 The Nature and Scope of Environmentally Related Planning Disputes

Environmentally related planning disputes in the UK arise from conflicts between development objectives, environmental regulations, and stakeholder interests, including local planning authorities, government agencies, developers, renewable energy companies, infrastructure firms, environmental groups, local communities, legal professionals, and trade bodies[37, 38, 39]. These disputes involve complex legal, economic, and policy considerations. They require effective resolution mechanisms to balance the interests of government regulators, businesses, conservation groups, and affected communities[40, 41]. With increasing pressures on land use and sustainability, such conflicts have become more frequent, particularly in relation to housing developments, infrastructure projects, and renewable energy initiatives, which frequently involve disputes between developers, regulatory authorities, and

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[37] Baker M, 'Planning and Environmental Issues' (Baker McKenzie Global Corporate Real Estate Guide, 2024). accessed 4 March 2025.

[38] House of Lords Built Environment Committee, *The Impact of Environmental Regulations on Development* (2nd Report of Session 2022–23, 2023).

[39] E R Lawlor, K Ellis, J Adams, R Jago, L Foley, S Morris, T Pollard, C Summerbell, S Cummins, H Forde, C Foubister, C Xiao and J Panter, 'Stakeholders' Experiences of What Works in Planning and Implementing Environmental Interventions to Promote Active Travel: A Systematic Review and Qualitative Synthesis' (2023) 43(3) *Transport Reviews* 478

[40] Travers Smith LLP, *Balancing Economic Growth and Environmental Protection: The Government's New Energy Dilemma* (Travers Smith, 2025) https://www.traverssmith.com/knowledge/knowledge-container/balancing-economic-growth-and-environmental-protection-the-governments-new-energy-dilemma/ accessed 5 March 2025.

[41] E Scotford, 'Legislation and the Stress of Environmental Problems' (2021) 74(1) *Current Legal Problems* 299.

local opposition groups[42, 43]. Understanding the structure of planning systems across the UK is essential to contextualising these disputes and assessing the role of ADR in their resolution.

3.2.1 Planning Systems Across the UK

The planning systems of the United Kingdom operate within a devolved governance structure, with England, Scotland, Wales, and Northern Ireland each maintaining distinct legislative and regulatory frameworks tailored to their socio-political contexts[44]. While the literature generally treats this devolved structure as a neutral background condition, from an ADR perspective it also operates as a variable that can shape forum choice, negotiation leverage, and perceptions of procedural fairness across jurisdictions. While these frameworks reflect the unique needs and priorities of each jurisdiction, they collectively aim to balance sustainable development with environmental protection[45].

In England, the National Planning Policy Framework (NPPF) establishes the overarching guidelines for land use, seeking to harmonise economic growth with environmental sustainability[46]. However, its implementation has faced criticism, particularly concerning its flexibility towards developers and the adequacy of environmental safeguards[47]. Wales has adopted a more community-driven and climate-conscious planning approach, enshrined in the Planning (Wales) Act 2015 and Future Wales 2040, which prioritises long-term environmental conservation and public engagement[48]. Scotland's planning framework, articulated through the Planning (Scotland) Act 2019, similarly emphasises local participation, sustainability,

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[42] UK Government, *Government launches national conversation on land use* (GOV.UK, 20 June 2025) https://www.gov.uk/government/news/government-launches-national-conversation-on-land-use accessed 6 March 2025.
[43] New Civil Engineer, *Land use consultation launched as part of government's development plans* (31 January 2025) https://www.newcivilengineer.com/latest/land-use-consultation-launched-as-part-of-governments-development-plans-31-01-2025/ accessed 7 March 2025.
[44] House of Commons Library, *Comparison of the planning systems in the four UK countries: 2016 update* (Research Briefing, CBP-7459, 20 January 2016)
[45] UK Government, *National Planning Policy Framework: 2. Achieving sustainable development* (GOV.UK, 27 March 2012, updated 12 December 2024) https://www.gov.uk/guidance/national-planning-policy-framework/2-achieving-sustainable-development accessed 10 March 2025.
[46] UK Government, *National Planning Policy Framework:Achieving Sustainable Development* (Stationery Office, 2024)
[47] E Shepherd, 'Ideology and Institutional Change: The Case of the English National Planning Policy Framework' (2021) 22(4) *Planning Theory & Practice* 519
[48] Welsh Government, *Environmental impact assessment: guidance* (GOV.WALES, 14 May 2019) https://www.gov.wales/environmental-impact-assessment-guidance accessed 11 March 2025.

and climate resilience, positioning itself as a leader in environmentally conscious planning[49]. Northern Ireland operates under the Planning Act (Northern Ireland) 2011, which delegates planning responsibilities to local councils while maintaining regional oversight through the Department for Infrastructure[50, 51].

Despite these jurisdictional variations, the divergence in planning policies across the UK presents challenges in achieving a consistent approach to resolving environmentally related planning disputes[52]. Cross-border projects, such as national infrastructure developments with environmental implications, frequently encounter regulatory fragmentation that complicates dispute resolution[53]. This complexity highlights the necessity of robust ADR mechanisms that can accommodate the nuanced governance structures and diverse stakeholder interests inherent in planning disputes.

The literature provides a strong doctrinal and policy mapping of these devolved planning frameworks and highlights how regulatory fragmentation can shape the terrain of dispute. However, it is less effective at explaining how this complexity is experienced and navigated in practice by legal and institutional actors, particularly in disputes where participation, legitimacy, and public accountability are contested. As a result, there remains a gap between structural accounts of planning governance and empirical understanding of how disputes are strategically framed, escalated, or diverted into ADR by legal and institutional actors operating within these systems. These institutional characteristics also shape how lawyers approach mediation advocacy within planning disputes. Decisions about whether mediation is proposed, resisted, or strategically pursued are often influenced by statutory constraints, professional role expectations, and perceptions of institutional legitimacy within the planning system.

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[49] Scottish Government, *Scotland 2045: Fourth National Planning Framework — Draft* (Scottish Government, 22 October 2025) https://www.gov.scot/publications/scotland-2045-fourth-national-planning-framework-draft/ accessed 12 March 2025.
[50] Department for Infrastructure (Northern Ireland), *Strategic Planning Policy Statement, Edition 2* (11 December 2025)
[51] Department for Infrastructure (Northern Ireland), *Northern Ireland Planning Statistics: July – September 2023* (12 December 2023)
[52] House of Commons Library (n 44)
[53] Ashurst LLP, *Managing and Resolving Cross-Border Disputes in the Energy Sector* (Ashurst, 14 September 2023) https://www.ashurst.com/en/insights/managing-and-resolving-cross-border-disputes-in-the-energy-sector/ accessed 13 March 2025.

3.2.2 Environmentally Related Planning Disputes

Environmentally related planning disputes arise in contexts where land use, economic development, and environmental preservation intersect, often resulting in protracted legal challenges and stakeholder conflicts[54]. These disputes typically manifest in several key areas, each highlighting the inherent tensions between development imperatives and ecological considerations[55].

Urban expansion and greenbelt conflicts frequently emerge as local authorities and developers seek to address housing shortages by encroaching on designated green spaces[56]. These disputes emphasise the challenges of balancing urban growth with the preservation of ecologically significant areas and community interests[57]. Infrastructure projects represent another contentious area, particularly when large-scale developments such as HS2 pose significant environmental risks, including deforestation, biodiversity loss, and disruptions to local ecosystems[58]. Renewable energy developments, including onshore wind farms and solar power installations, often attract local opposition due to concerns over landscape aesthetics, noise pollution, and ecological impacts, despite their broader environmental benefits[59].

Additionally, industrial land-use conflicts arise when manufacturing facilities, waste disposal sites, or energy production plants generate air and water pollution, adversely affecting local communities and environmental quality[60, 61]. Disputes over the siting of such developments highlight the inadequacies of conventional planning frameworks in reconciling industrial expansion with environmental sustainability[62].

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54 Laws.com, *Land-Use Disputes: Uncovering the Hidden Battles Over Our Future* (Laws.com, 2025) https://real-estate.laws.com/real-estate/land-use-disputes-uncovering-the-hidden-battles-over-our-future accessed 14 March 2025.
55 U Rehman, M M Islam and Q Miao, 'Environmental Sustainability via Green Transportation: A Case of the Top 10 Energy Transition Nations' (2023) *Transport Policy* 137 32
56 The Guardian, 'Building on the green belt is no solution to the housing crisis' (24 November 2023) https://www.theguardian.com/society/2023/nov/24/building-on-the-green-belt-is-no-solution-to-the-housing-crisis accessed 17 March 2025.
57 J Bennett and A Crudgington, 'Sustainable Development: Recent Thinking and Practice in the UK' (2003) *Proceedings of the Institution of Civil Engineers – Municipal Engineer* 156 27.
58 M Tewdwr-Jones, N Gallent and J Morphet, 'An Anatomy of Spatial Planning: Coming to Terms with the Spatial Element in UK Planning' (2010) 13 *Town Planning Review* 239
59 M C Karydis, 'Public Attitudes and Environmental Impacts of Wind Farms: A Review' (2013) 15(4) *Global Nest Journal* 585
60 J Johnston and L Cushing, 'Chemical Exposures, Health and Environmental Justice in Communities Living on the Fenceline of Industry' (2020) 7(1) *Current Environmental Health Reports* 48
61 Craig Anthony Arnold, *Fair and Healthy Land Use: Environmental Justice and Planning* (Planning Advisory Service Report Nos 549–550, American Planning Association 2007).
62 House of Lords Built Environment Committee (n 39)

In each of these cases, the competing interests of developers, regulatory bodies, environmental groups, and local communities complicate dispute resolution, often necessitating legal intervention when consensus cannot be reached through the planning consultation process [63]. This body of work usefully explains dispute drivers, stakeholder configurations, and the recurring policy tensions between development and environmental protection. Yet it often treats dispute resolution as a secondary or procedural consequence of these conflicts, offering limited analysis of the relational and professional dynamics through which disputes are actually negotiated, resisted, or resolved in practice; particularly the role of lawyers and advocates operating within institutional constraints.

The prevalence of environmentally related planning disputes underscores the limitations of traditional litigation in addressing their complexity. The adversarial nature of court proceedings often heightens tensions between stakeholders and prolongs decision-making, leading to higher costs and delays in project delivery [64, 65]. In contrast, ADR, and mediation in particular, is frequently presented within the literature as offering more dialogic and consensus-oriented pathways to dispute resolution. Later research further emphasises ADR's potential to address structural barriers such as stakeholder asymmetries and resource imbalances, highlighting the importance of mediation and negotiation in levelling participation in planning disputes [66].

As a whole, this literature is strongest when it clarifies the doctrinal and policy "architecture" of environmentally related planning disputes: it identifies the main dispute triggers, maps stakeholder categories, and explains the statutory pathways through which conflict escalates. What remains under-analysed is how these formal structures translate into professional decision-making, particularly in the moments

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[63] G Ellis and G Ferraro, *The Social Acceptance of Wind Energy: Where We Stand and the Path Ahead* (Publications Office of the European Union 2017)
[64] R Thomas, 'From "Adversarial v Inquisitorial" to "Active, Enabling, and Investigative": Developments in UK Tribunals' in L Jacobs and S Baglay (eds), *The Nature of Inquisitorial Processes in Administrative Regimes: Global Perspectives* (Ashgate 2013) 51.
[65] D F Engstrom (ed), *Legal Tech and the Future of Civil Justice* (Cambridge University Press 2023).
[66] S S Bonomally and A Agapiou, 'Navigating Environmental Disputes in the UK: Lawyers' Insights into ADR Attitudes and Experiences' (conference contribution, Leeds Beckett University Figshare 2025) https://figshare.leedsbeckett.ac.uk/articles/conference_contribution/Navigating_Environmental_Disputes_in_the_UK_Lawyers_insights_into_ADR_attitudes_and_experiences/29184218 accessed 18 March 2025.

where disputes are steered toward or away from mediation before litigation is initiated. In particular, the literature tends to treat dispute resolution as an institutional "endpoint" rather than as an ongoing set of professional choices and interactions, leaving under-analysed the role of lawyers, planning officers, and advisers in framing issues, signalling risk, and steering parties towards or away from mediation. This gap matters because it affects how ADR viability is assessed: not only as a theoretical alternative to litigation, but as a practice-dependent process shaped by professional incentives and institutional constraints.

3.3 Traditional and Alternative Dispute Resolution Methods in Environmentally Related Planning Disputes

The resolution of environmentally related planning disputes in the United Kingdom has historically relied on formal legal mechanisms, particularly litigation and judicial review[67, 68]. The literature provides a well-developed account of the procedural architecture and constitutional significance of these mechanisms, but it is less consistent in examining how they shape practitioner behaviour, stakeholder experience, and the practical conditions under which ADR becomes viable or resisted in planning contexts. The analytical question is therefore not whether ADR formally exists within planning systems, but under what professional, institutional, and relational conditions it becomes strategically credible to those who shape dispute trajectories in practice. Courts ensure regulatory compliance and uphold planning laws; however, litigation is increasingly criticised for its adversarial nature, high costs, and inefficiencies[69]. As planning disputes grow more complex, encompassing legal, economic, and environmental dimensions, the limitations of litigation have led to the exploration of ADR mechanisms[70, 71] . These include arbitration, mediation, negotiation, expert determination, and facilitation, all of which provide more

[67] L Vanhala, *Mobilising the Law: Environmental NGOs in Court* (British Academy Policy Centre, British Academy Research Paper No 22/11, 2012).
[68] P Kenny, 'Environmental Challenges to UK Public Authorities: The Impact of the Judicial Review and Courts Act 2022' (2024) 36(1) *Journal of Environmental Law* 107
[69] A Guerra, M Maraki, B Massenot and C Thöni, 'Deterrence, Settlement, and Litigation Under Adversarial Versus Inquisitorial Systems' (SSRN working paper, 2021) https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3900581 accessed 19 March 2025.
[70] Cornerstone Barristers, *Mediation and planning: Here to stay?* (26 July 2021) https://cornerstonebarristers.com/mediation-planning-here-stay/ accessed 20 March 2025.
[71] K Lawrence, *Mediation – A Powerful Tool in Litigation* (Hamlins, 27 November 2024) https://hamlins.com/insight/mediation-a-powerful-tool-in-litigation/ accessed 21 March 2025.

collaborative and flexible pathways to conflict resolution[72]. This section reviews how the literature evaluates litigation and ADR in addressing environmentally related planning disputes, assessing their perceived strengths and limitations.

3.3.1 Litigation and Its Limitations

Litigation remains a primary tool for resolving planning disputes, particularly when conflicts escalate to judicial review[73]. However, it has several limitations, namely:

1. *Adversarial nature:* This approach often deepens conflict rather than fostering consensus[74, 75, 76] .
2. *Prolonged timelines and high costs:* Legal proceedings frequently delay development and increase financial burdens[77, 78].
3. *Limited stakeholder engagement*: Formal litigation restricts opportunities for collaborative problem solving and meaningful participation[79, 80].

Litigation remains the dominant method for resolving planning disputes in the UK primarily in the form of a judicial review[81, 82, 83]. Judicial review allows individuals, environmental organisations, and other stakeholders to challenge planning decisions made by public authorities, ensuring compliance with statutory and procedural requirements[84, 85]. Courts serve as an enforcement mechanism, compelling adherence

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[72] Royal Institution of Chartered Surveyors (RICS), *Alternative Dispute Resolution (ADR) Mechanisms – UK and Ireland* (Version 10, RICS, in force from 2 February 2022).
[73] Ashtons Legal, *A Quick Guide to Judicial Review Planning Claims* (19 April 2021) https://www.ashtonslegal.co.uk/insights/business-news/a-quick-guide-to-judicial-review-planning-claims/ accessed 24 March 2025.
[74] E M Runesson and M-L Guy, *Mediating Corporate Governance Conflicts and Disputes* (Global Corporate Governance Forum, International Finance Corporation, Focus 4, 2007).
[75] Guerra and others (n 69)
[76] L Susskind and J Cruikshank, *Breaking the Impasse: Consensual Approaches to Resolving Public Disputes* (Basic Books 1987).
[77] R Bleemer (ed), *Alternatives to the High Costs of Litigation* (Center for Public Resources 1983).
[78] Ibid
[79] J Hu and Y Zheng, 'Breaking the Dilemma Between Litigation and Non-litigation: "Diversified Mechanisms of Dispute Resolution" in Contemporary China' (2024) *China Perspectives* 47
[80] J S Picou, B K Marshall and D A Gill, 'Disaster, Litigation, and the Corrosive Community' (2004) 82(4) *Social Forces* 1493
[81] A Akintoye, S Renukappa and H Lal, 'Developments in the United Kingdom Dispute Resolution Process' (2015) *Journal of Legal Affairs and Dispute Resolution in Engineering and Construction* 7
[82] Monarch Solicitors, *Planning Disputes* (n d) https://www.monarchsolicitors.com/business/property/commercial-property-litigation/planning-disputes/ accessed 25 March 2025.
[83] Buckles Solicitors, *Legal Challenges to Planning Decisions* (25 April 2022) https://www.buckles-law.co.uk/blog/legal-challenges-to-planning-decisions/ accessed 26 March 2025.
[84] Public Law Project, *An Introduction to Judicial Review* (Guide Series, Public Law Project 2018).
[85] M S Miah, 'The Limitations of Judicial Review on UK Perspectives' (SSRN working paper, 2013) https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2321931 accessed 27 March 2025.

to environmental regulations and land-use policies. A notable example is the recent High Court ruling that overturned the approval of two significant oil and gas fields in the North Sea. The court determined that the original approvals were unlawful due to inadequate consideration of the environmental impacts, particularly the emissions resulting from the and use of the fossil fuels. This decision underscores the judiciary's function in upholding environmental laws and ensuring that development projects comply with statutory environmental obligations[86].

While litigation provides authoritative and legally binding decisions, its structural features often intensify conflict, restrict participatory engagement, and narrow the range of solutions available in environmentally complex disputes. The adversarial nature of litigation fosters confrontation rather than consensus, often exacerbating tensions among developers, public authorities, and community groups[87, 88, 89, 90].

Additionally, litigation is costly and time-consuming[91, 92]. Judicial reviews and appeals can extend over several years, delaying essential infrastructure and housing projects while imposing substantial financial burdens on all parties[93, 94]. The high costs of legal representation also create inequalities in access to justice, disproportionately disadvantaging community groups and environmental advocates compared to well-resourced developers and governmental bodies[95, 96].

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[86] S Tobin and S Twidale, 'UK Must Reconsider Shell and Equinor's North Sea Gas, Oil Projects, Court Rules' *Reuters* (30 January 2025) https://www.reuters.com/business/energy/uk-must-reconsider-shell-equinors-north-sea-gas-oil-projects-court-rules-2025-01-30/ accessed 28 March 2025.
[87] C-A Gavrila and T N Mohamed, 'Mediation vs Litigation: The Advantages of Settling Out of Court' (Wolters Kluwer Mediation Blog, 14 June 2023) https://legalblogs.wolterskluwer.com/mediation-blog/mediation-vs-litigation-the-advantages-of-settling-out-of-court/ accessed 31 March 2025.
[88] Bennett and Crudgington (n 57)
[89] A Agapiou, 'Mediating Planning Disputes: Opportunities, Experiences, and Challenges' (2018) 10(3) *Journal of Legal Affairs and Dispute Resolution in Engineering and Construction*
[90] H Brooke, *The Role of Mediation in Planning and Environmental Disputes* (16 December 2015) https://sirhenrybrooke.me/2015/12/16/the-role-of-mediation-in-planning-and-environmental-disputes/ accessed 1 April 2025.
[91] S E Sterk, 'Structural Obstacles to Settlement of Land Use Disputes' (1999) 91 *Boston University Law Review* 227.
[92] Agapiou (n 89)
[93] Lord Ponsonby of Shulbrede, *Infrastructure Planning and Judicial Review Reform* (Written Statement, HLWS382, 23 January 2025)
[94] Planning Inspectorate, *Planning Inspectorate Statistical Release: 24 October 2024* (GOV.UK, 24 October 2024) https://www.gov.uk/government/statistics/planning-inspectorate-statistical-release-24-october-2024/planning-inspectorate-statistical-release-24-october-2024 accessed 2 April 2025.
[95]A Stabb, *Lessons from the Aarhus Compliance Committee on Legal Costs and Access to En* Stabb *ironmental Justice* (Global Network for Human Rights and the Environment, n d) https://gnhre.org/?p=18127 accessed 3 April 2025.
[96] H Siddique, 'High costs deterring legal challenges in England and Wales to protect environment, NGOs say' The Guardian (28 June 2023)

The literature identifies another shortcoming of litigation as its limited capacity to address the broader societal and environmental dimensions of planning disputes [97, 98]. Court rulings tend to focus narrowly on statutory compliance rather than fostering innovative, mutually beneficial solutions that balance economic development with environmental sustainability [99]. This has led to increasing recognition of the need for alternative dispute resolution mechanisms that prioritise dialogue and consensus-building over legal confrontation [100, 101].

3.3.2 Mediation and Constitutional Accountability in Public Law

The integration of mediation into environmentally related planning disputes cannot be assessed solely in terms of efficiency, participation, or settlement rates. Planning disputes arise within a public law framework structured by statutory duties, democratic accountability, and judicial supervision. Any assessment of ADR viability must therefore engage with constitutional principles governing the exercise of public power.

First, judicial review operates as a supervisory mechanism designed to ensure that public authorities act within the scope of their statutory powers, comply with procedural requirements, and exercise discretion lawfully [102]. Judicial review does not substitute the court's view for that of the decision-maker; rather, it ensures legality, rationality, and procedural propriety [103]. Mediation, by contrast, is not a supervisory forum. It cannot displace the court's constitutional role in reviewing ultra vires action, nor can it immunise unlawful decisions from scrutiny [104]. The

https://www.theguardian.com/environment/2023/jun/28/high-costs-deterring-uk-legal-challenges-to-protect-environment-ngos-say accessed 4 April 2025.

97 P H Kahn Jr, 'Resolving Environmental Disputes: Litigation, Mediation, and the Courting of Ethical Community' (1994) 3(3) *Environmental Values* 211.

98 M Averill, 'Climate Litigation: Ethical Implications and Societal Impacts' (2008) 85 *Denver University Law Review* 899.

99 J R May and K Hite, 'Not at All: Environmental Sustainability in the Supreme Court' (2009) 10(1) *Sustainable Development Law & Policy* 20.

100 F P Grad, 'Alternative Dispute Resolution in Environmental Law' (1989) 14(1) *Columbia Journal of Environmental Law* 157.

101 L Susskind, *15 Things You Need to Know About Environmental Dispute Resolution* (Program on Negotiation, Harvard Law School, 29 September 2020) https://www.pon.harvard.edu/daily/dispute-resolution/environmental-negotiations-and-15-things-about-environmental-dispute-resolution/ accessed 7 April 2025.

102 Council of Civil Service Unions v Minister for the Civil Service [1985] AC 374 (HL).

103 Ibid

104 R (Miller) v Prime Minister [2019] UKSC 41.

availability of mediation must therefore be understood as operating alongside, rather than replacing, judicial review.

Second, statutory planning duties are non-delegable. Local planning authorities remain legally responsible for decisions taken under the Town and Country Planning framework and related environmental legislation [105]. While parties may negotiate aspects of a dispute through mediation, the ultimate decision must remain within the lawful authority of the public body. A mediated understanding cannot authorise an outcome that exceeds statutory competence, circumvents mandatory procedures, or compromises duties imposed in the public interest [106]. In this respect, mediation in public law planning contexts is structurally bounded by the legal limits of public power.

Third, public law decision-making remains constrained by principles of reasonableness and proportionality. Even where mediation facilitates compromise, any resulting decision must satisfy rationality standards [107] and, where applicable, proportionality analysis [108]. Agreements reached through negotiation cannot legitimise outcomes that are irrational, procedurally improper, or disproportionate in their impact on affected stakeholders. The constitutional legitimacy of mediation therefore depends on its compatibility with these normative constraints.

Finally, the possibility that mediated outcomes may be ultra vires requires careful consideration. Where mediation results in informal commitments, policy shifts, or negotiated conditions that fall outside statutory authority, such outcomes remain vulnerable to legal challenge. [109] Mediation must function within the architecture of public law accountability rather than as a private substitute for it.

Accordingly, mediation in environmentally related planning disputes should be conceptualised not as a displacement of constitutional safeguards, but as a procedurally complementary mechanism operating within legally bounded discretion. Its legitimacy depends on maintaining the supervisory role of the courts,

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[105] Tesco Stores Ltd v Secretary of State for the Environment [1995] 1 WLR 759 (HL).
[106] Anisminic Ltd v Foreign Compensation Commission [1969] 2 AC 147 (HL).
[107] Associated Provincial Picture Houses Ltd v Wednesbury Corporation [1948] 1 KB 223 (CA).
[108] Bank Mellat v HM Treasury (No 2) [2013] UKSC 39.
[109] Anisminic (n 106).

preserving the non-delegable character of statutory duties, and ensuring that negotiated outcomes remain subject to public law principles.

3.3.3 The Rise of ADR in Environmentally related Planning Disputes

ADR methods offer alternatives that mitigate litigation's shortcomings by facilitating direct negotiations between disputing parties [110]. The Planning Inspectorate and local authorities increasingly recognise ADR's value in resolving contentious planning issues without resorting to lengthy court battles. A notable initiative is the "Pathfinder" project launched by the Planning Inspectorate, which aims to review its current enforcement workload to identify appeals suitable for mediation. This approach seeks to make the appeals system more responsive and efficient [111]. Furthermore in 2020, the All Party Parliamentary Group on Alternative Dispute Resolution (APPG ADR) has emphasised the importance of integrating ADR techniques into the planning system. In their submission to the Housing, Communities and Local Government Committee, they advocate for changing the culture of dispute resolution by promoting mediation and facilitation as effective tools for building consensus and resolving planning disputes. ADR has gained increased policy and institutional attention as a potential means of managing environmentally related planning disputes, particularly in response to concerns about the cost, delay and adversarial character of litigation.

Table 3.1:Key ADR Mechanisms in Environmentally Related Planning Disputes:

ADR Mechanism	**Description**	**Benefits**	**Challenges**	**References**
Arbitration	A structured, legally binding process where an independent arbitrator assesses evidence and issues a final decision.	Provides procedural finality and technical expertise.	Can be costly and adversarial, limiting collaboration.	[112, 113]

[110] U.S. General Services Administration (GSA), *Using Alternative Dispute Resolution Techniques* (GSA directives library) https://www.gsa.gov/directives-library/using-alternative-dispute-resolution-techniques accessed 8 April 2025.
[111] Cornerstone Barristers (n 70)
[112] S Furst and V Ramsey, *Keating on Construction Contracts* (10th edn, Sweet & Maxwell 2016).
[113] B Balzer and J Schneider, 'Managing a Conflict: Optimal Alternative Dispute Resolution' (2021) *Journal of Institutional and Theoretical Economics*

Expert Determination	Involves an independent expert assessing technical aspects of a dispute and providing a binding or advisory decision.	Resolves scientific and technical issues efficiently.	Effectiveness depends on the credibility and neutrality of the expert.	[114, 115]
Mediation	A facilitated negotiation process where a neutral mediator assists parties in reaching a voluntary agreement.	Encourages stakeholder dialogue, consensus-building, and creative problem-solving.	Relies on voluntary compliance; enforceability challenges are discussed further in section 3.3.3.1.	[116, 117, 118, 119, 120, 121]
Negotiation	Direct discussions between parties to resolve disputes without third-party intervention.	Flexible, cost-effective, and preserves relationships.	Relies on willingness to compromise; agreements lack formal enforcement mechanisms.	[122, 123, 124, 125]

[114] G Chambers, S Townend, R Gaitskell, R Evans, J Lee, K Lee, P Buckingham and R Coplin, *Keating Construction Dispute Resolution Handbook* (Sweet & Maxwell 2016).
[115] Norton Rose Fulbright, *Use of Expert Determination Mechanisms* (July 2023) https://www.nortonrosefulbright.com/en/knowledge/publications/470a3448/use-of-expert-determination-mechanisms accessed 10 April 2025.
[116] T Sourdin, 'Alternative Dispute Resolution (ADR) Principles: From Negotiation to Mediation' (SSRN working paper, 2014) https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2723652 accessed 11 April 2025.
[117] E A L Teo and A A Aibinu, 'Legal Framework for Alternative Dispute Resolution: Examination of the Singapore National Legal System for Arbitration' (2007) 133(2) *Journal of Professional Issues in Engineering Education and Practice* 148
[118] Balzer and Schneider (n 113)
[119] R Lock, 'Alternative Dispute Resolution in Energy Disputes: A New Formula for a New Era?' (2007) 20(9) *The Electricity Journal* 58
[120] D Masucci, 'The Keys to Effective Mediation Advocacy' (2003) 3(4) *Journal of Investment Compliance* 36
[121] Bleemer (n 77)
[122] R Fisher, W Ury and B Patton, *Getting to Yes: Negotiating Agreement Without Giving In* (2nd edn, Penguin 1991).
[123] Ibid
[124] J S Andrew, 'Examining the Claims of Environmental ADR: Evidence from Waste Management Conflicts in Ontario and Massachusetts' (2001) 21(2) *Journal of Planning Education and Research* 186
[125] S J Szmania, A M Johnson and M Mulligan, 'Alternative Dispute Resolution in Medical Malpractice: A Survey of Emerging Trends and Practices' (2008) 26(1) *Conflict Resolution Quarterly* 71

Facilitation	A structured process to manage discussions between multiple stakeholders and improve communication.	Enhances inclusivity and ensures broad stakeholder participation.	Does not always result in formal resolutions and may require additional legal processes.	[126, 127]

Collectively, these mechanisms illustrate that while ADR offers a diverse toolkit for managing environmentally related planning disputes, their practical viability varies significantly depending on enforceability, resource distribution, and institutional context. The literature therefore suggests that the question is not whether ADR is available within planning systems, but under what conditions particular forms of ADR are regarded by practitioners and institutions as credible, legitimate, and worth pursuing. These practical limitations raise questions about the conditions under which ADR mechanisms are considered viable in public law planning disputes, issues examined in greater detail in the following section.

3.3.4 Barriers to ADR Uptake in Environmentally Related Planning Disputes

Despite the advantages of ADR in environmentally related planning disputes, several barriers continue to hinder its widespread adoption. These challenges are structural, institutional, and cultural, limiting ADR's effectiveness in delivering fair, sustainable, and timely outcomes.

Empirical research has highlighted enforceability concerns, limited practitioner training, and stakeholder preparedness as recurring obstacles [128], while further work points to institutional disincentives and professional role perceptions that discourage lawyers from recommending ADR [129].

3.3.4.1 Enforceability and Legal Structure

A persistent limitation of ADR in environmentally related planning disputes concerns the enforceability of outcomes and their relationship to formal legal and regulatory

[126] L Susskind, S McKearnan and J Thomas-Larmer (eds), *The Consensus Building Handbook: A Comprehensive Guide to Reaching Agreement* (SAGE Publications 1999).
[127] M L Poirier Elliott, 'The Role of Facilitators, Mediators, and Other Consensus Building Practitioners' in L Susskind, S McKearnan and J Thomas-Larmer (eds), *The Consensus Building Handbook: A Comprehensive Guide to Reaching Agreement* (SAGE Publications 1999) 77.
[128] Bonomally and Agapiou (n 66)
[129] Ibid

structures. While arbitration produces binding decisions, mediation and facilitation rely largely on voluntary compliance. In public law planning disputes, where regulatory compliance, environmental protection and public participation are central, this voluntary character can undermine confidence in ADR processes.

Research consistently identifies enforceability as a central reason for practitioner and institutional reluctance to engage in ADR. While comparative models demonstrate that hybrid approaches can enhance legal authority, ADR within the UK planning system remains largely voluntary, reinforcing professional and institutional scepticism.

3.3.4.2 Power, Participation and Representation

Power imbalance is a defining feature of many environmentally related planning disputes and poses a significant challenge to the legitimacy of ADR processes. Developers and public authorities often possess greater financial, legal and technical resources than local communities or environmental organisations, creating asymmetries that shape negotiation dynamics and outcomes.

Although ADR is frequently promoted as participatory and inclusive, these structural inequalities can be reproduced within mediation and negotiation settings. Weaker parties may lack access to legal representation, expert evidence or sustained participation, limiting their capacity to negotiate on equal terms. Confidentiality within ADR processes may further undermine transparency in disputes that engage significant public interest considerations.

Socio-legal scholarship cautions that without safeguards, ADR risks privileging efficiency and settlement over procedural fairness and meaningful representation. These dynamics underscore the importance of legally informed advocacy and neutral facilitation in ensuring that less-resourced stakeholders are not marginalised within planning-related ADR.

3.3.4.3 Education, Training and Institutional Support

A further barrier to the effective use of ADR in planning disputes lies in limited education, training and institutional support. Many legal professionals report minimal formal exposure to mediation or negotiation within environmental and planning law contexts, with ADR training often confined to informal or in-house experience rather than structured education or accreditation.

Institutional support is similarly uneven. Local authorities, community organisations and NGOs may lack the time, funding or technical capacity to engage meaningfully in ADR processes, reinforcing existing participation inequalities. Without clearer institutional pathways, professional incentives and accessible training frameworks, ADR risks remaining peripheral to mainstream planning practice despite increasing policy endorsement. These institutional, professional, and structural constraints shape the conditions under which lawyers engage in mediation advocacy within planning disputes. Understanding how lawyers navigate these constraints is therefore central to evaluating ADR viability in environmentally related planning conflicts, a role examined in the following section.

3.4 Lawyers and Mediation Advocacy in Planning Disputes

In the context of environmentally related planning disputes, lawyers are not just legal representatives but key facilitators in ensuring that mediation processes are effective, fair, and reflective of the varied interests at play [130]. Their involvement is critical in balancing legal requirements with the social, environmental, and economic factors that are central to planning disputes [131]. This section explores the specific contributions of lawyers to mediation processes in such disputes, along with the challenges they face in advocating for stakeholders effectively.

3.4.1 Lawyers as Key Stakeholders in ADR

Lawyers are pivotal players in planning mediations, where the resolution of environmental conflicts requires careful navigation of complex issues [132]. Their contributions extend beyond simply representing their clients' legal interests; they must also foster productive dialogue, maintain balance between competing interests, and promote solutions that address both the immediate dispute and the long-term sustainability of the area in question. The specific roles and responsibilities of lawyers in mediation include:

[130] G Bingham, *Resolving Environmental Disputes: A Decade of Experience* (The Conservation Foundation 1986).
[131] S Jones, 'Current Issues in the Changing Roles and Practices of Community Economic Development Lawyers' in A Sarat and S Scheingold (eds), *Cause Lawyers and Social Movements* (Harvard University Press 2006) 308.
[132] Jennifer Harder, 'Environmental Mediation: The Promise and the Challenge' (1995) 19(1) *Environs: Environmental Law and Policy Journal*

Representing stakeholders' interests:

Lawyers ensure that their clients' legal and economic interests are not sidelined in the mediation process[133]. This is particularly important in planning disputes where large-scale developments may conflict with environmental protections, community interests, or local authority policies[134]. Lawyers must ensure that all relevant stakeholders, including developers, local authorities, and community groups, are adequately represented, enabling them to advocate for sustainable solutions that align with their clients' goals without undermining broader environmental and societal objectives[135, 136].

Advising clients on ADR mechanisms:

Lawyers are responsible for providing clients with expert guidance on the suitability of ADR mechanisms, particularly mediation, in resolving planning disputes[137]. Their role includes explaining the advantages of mediation, such as the potential for quicker resolution, reduced costs, and more creative, flexible solutions than those available in court[138]. In environmentally related planning disputes, lawyers must also ensure that clients understand how mediation can address complex environmental concerns alongside legal and economic issues[139]. This requires a deep understanding of both the planning process and the broader environmental implications of decisions.

Mitigating power imbalances:

As discussed in section 3.3.3.2, structural resource asymmetries are common in planning disputes, and lawyers play a critical role in ensuring that less-resourced stakeholders are not marginalised within mediation processes.

Despite the potential advantages, lawyers frequently face significant challenges in embracing ADR, particularly in the context of environmentally related planning

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[133] J R Sternlight, 'Lawyers' Representation of Clients in Mediation: Using Economics and Psychology to Structure Advocacy in a Non-Adversarial Setting' (1999) 14 *Ohio State Journal on Dispute Resolution* 269.
[134] B Flyvbjerg, N Bruzelius and W Rothengatter, *Megaprojects and Risk: An Anatomy of Ambition* (Cambridge University Press 2014).
[135] Sternlight (n 133)
[136] Bonomally and Agapiou (n 66)
[137] T Sourdin, *Alternative Dispute Resolution* (6th edn, Thomson Reuters Australia 2020).
[138] Miah (n 85)
[139] R O'Leary and L Bingham (eds), *Promise and Performance of Environmental Conflict Resolution* (RFF Press 2003).

disputes. These challenges can hinder their ability to act as effective mediators and advocates for their clients [140].

3.4.2 Barriers to Lawyer Participation in Mediation

While lawyers are critical to the success of ADR in planning disputes, several factors prevent their active and effective participation in the mediation process [141]. These barriers often stem from professional, institutional, and client-driven challenges, particularly when dealing with disputes that have significant environmental dimensions [142]. Some of the key challenges lawyers face in advocating for stakeholders during planning mediations include:

Limited ADR training:

Although many lawyers are well-versed in litigation techniques, the skills necessary for successful mediation are often underdeveloped in traditional legal training [143]. Mediation requires a distinct set of skills, including the ability to facilitate discussions, manage emotions, and help parties reach consensus [144]. The lack of formal training in these areas can leave lawyers feeling ill-prepared to guide their clients through the mediation process, particularly in cases involving complex environmental and planning issues [145]. Furthermore, in environmentally related disputes, lawyers must also be able to navigate technical environmental matters, which adds another layer of complexity to the mediation process [146].

Institutional resistance:

The legal profession is historically rooted in adversarial practices, and many lawyers continue to see litigation as the most effective method for resolving disputes [147]. This institutional preference for litigation can hinder the adoption of ADR, especially in

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[140] N Alexander, 'Mediation and the Art of Regulation' (2008) 8(1) *Queensland University of Technology Law and Justice Journal* 1
[141] G Smith, 'Unwilling Actors: Why Voluntary Mediation Works, Why Mandatory Mediation Might Not' (1998) 36(4) *Osgoode Hall Law Journal* 733.
[142] R L Wissler, 'Barriers to Attorneys' Discussion and Use of ADR' (2004) 19 *Ohio State Journal on Dispute Resolution* 459.
[143] Bonomally and Agapiou (n 66)
[144] Christopher W Moore, *The Mediation Process: Practical Strategies for Resolving Conflict* (4th edn, Jossey-Bass 2014).
[145] Alexander (n 140)
[146] L Susskind and C Ozawa, 'Mediated Negotiation in the Public Sector: The Planner as Mediator' (1984) 4(1) *Journal of the American Planning Association* 5.
[147] J Nolan-Haley, 'Lawyers, Non-Lawyers and Mediation: Rethinking the Professional Monopoly from a Problem-Solving Perspective' (2002) 7 *Harvard Negotiation Law Review* 235.

high-profile planning disputes where the stakes are perceived to be high[148]. Lawyers may resist mediation because it is seen as less authoritative than a court judgment or because they are more comfortable with the procedural rigor of litigation[149]. Furthermore, there is sometimes a perception within the legal profession that mediation is only suitable for simpler, lower-value disputes, which can prevent lawyers from considering it for complex planning and environmental cases[150].

Client expectations:

Client expectations also operate as a barrier to ADR adoption in planning disputes, particularly where economic interests or political accountability are prominent. Clients may prioritise formal, enforceable outcomes, which can discourage lawyers from recommending mediation despite its potential procedural benefits. These barriers illustrate how professional identity and institutional incentives shape lawyers' engagement with mediation within planning disputes[151].

The emotional complexities inherent in planning disputes also play a significant role in the mediation process[152]. Understanding and managing these emotional dynamics is where EI becomes a vital skill for lawyers involved in mediation[153]. This provides the context for examining EI as a dimension of lawyer mediation advocacy in environmentally related planning disputes.

Although the literature on ADR in planning and environmental disputes has expanded substantially, it remains under-theorised in several respects that are central to this thesis. First, lawyers are often discussed as procedural intermediaries or litigation specialists, rather than as mediation advocates whose professional judgement, negotiation practice, and role perceptions actively shape mediation uptake and legitimacy within public law planning contexts. Second, while institutional and structural barriers to ADR are well documented, comparatively little attention is paid to how these constraints interact with the relational and emotional

[148] M A Schuler, 'ADR's Biggest Compromise' (2006) 54(3) *Drake Law Review* 751.
[149] Bonomally and Agapiou (n 66)
[150] Ibid
[151] Ibid
[152] D L Shapiro, 'Colloquy: Appreciating Emotion in Conflict Processes – Negotiating Emotions' (2002) 20(2) *Conflict Resolution Quarterly* 199.
[153] C Irvine and L R Farrington, 'Mediation and Emotions: Perception and Regulation' in J Stannard and H Conway (eds), *The Emotional Dynamics of Law and Legal Discourse* (Hart Publishing 2016) 211.

dimensions of advocacy in practice. Third, although EI is increasingly referenced in dispute resolution and legal practice scholarship, it is rarely examined in connection with institutional context and the uneven adoption of mediation within UK planning law. This gap provides the basis for the thesis's focus on EI as a situated, trainable competency that may influence mediation advocacy and ADR viability in environmentally related planning disputes.

3.5 Emotional Intelligence and Legal Practice in Planning Disputes

In the context of planning disputes, especially those involving environmental considerations, mediation has become an increasingly valuable tool for resolving conflicts [154]. However, these disputes are often fraught with emotional complexity. Whether it concerns large-scale development projects that threaten local communities or environmental conservation efforts at odds with economic interests, stakeholders frequently bring deeply held beliefs, concerns, and emotions into the mediation process [155]. This makes EI particularly relevant as a component of mediation advocacy within legal practice, rather than as a general psychological attribute. In this chapter, EI is examined primarily as a professional skill set for lawyers engaged in planning dispute mediation, with a focus on how it can be developed through legal education, professional training, and continuing professional development frameworks. EI, understood here as the professional capacity to recognise, interpret, and regulate emotional dynamics within legally bounded dispute processes [156], can provide lawyers with the tools necessary to navigate these emotionally charged conflicts, foster productive dialogue, and reach equitable, sustainable solutions [157].

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[154] L Susskind and A Weinstein, 'Towards a Theory of Environmental Dispute Resolution' (1980) 9(2) *Boston College Environmental Affairs Law Review* 311.
[155] T Rumore and M Straube, 'Environmental Dispute Resolution: Past, Present, and Future' *Dispute Resolution Magazine* (American Bar Association, 14 April 2023) https://www.americanbar.org/groups/dispute_resolution/resources/magazine/archive/environmental-dispute-resolution-past-present-future/ accessed 24 April 2025.
[156] D Goleman, *Emotional Intelligence: Why It Can Matter More Than IQ* (Bloomsbury Publishing 1996).
[157] Christine C Kelton, 'Clients Want Results, Lawyers Need Emotional Intelligence' (2015) 63 *Cleveland State Law Review* 459

3.5.1 The Relevance of EI in Planning Disputes

Planning disputes in the UK often present a delicate balance of economic, social, and environmental considerations [158]. Lawyers involved in these disputes must manage not only legal arguments but also emotional dynamics among stakeholders [159]. Environmental disputes, in particular, can be highly emotional, with significant implications for local communities, environmental groups, developers, and government bodies [160]. EI is critical in these settings as it enables lawyers to manage these emotional complexities, which may otherwise lead to heightened tensions and failure to reach a consensus [161]. Power asymmetries in planning disputes are discussed earlier in section 3.3.4.2; here, EI is examined as a complementary advocacy skill rather than a substitute for structural safeguards. Accordingly, this chapter does not advance EI as a standalone solution to structural inequalities in planning disputes, nor as a form of informal counselling or applied psychology. Instead, EI is positioned as a mediation advocacy strategy, operating alongside legal knowledge and procedural safeguards, and as a trainable professional competency that can enhance lawyers' capacity to manage stakeholder conflict, client expectations, and emotionally charged public interest disputes within the planning system.

1. The Role of Empathy in Managing Community Concerns

Empathy constitutes a core component of EI in mediation advocacy, particularly in planning disputes involving community opposition or environmental concern. By recognising and acknowledging stakeholder emotions, lawyers can reduce defensiveness, facilitate dialogue, and support more constructive engagement without displacing legal safeguards or decision-making authority.

2. The Importance of Emotional Regulation when Mediating Between Developers and Environmental Advocates

Emotional regulation is equally central to mediation advocacy in planning disputes

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[158] Department for Communities and Local Government, *Planning for a Sustainable Future* (White Paper, Cm 7120, 2007).

[159] M T Colatrella Jr, 'A "Lawyer for All Seasons": The Lawyer as Conflict Manager' (2004) 41(1) *San Diego Law Review* 91.

[160] Food and Agriculture Organization of the United Nations (FAO), *An Introduction to Natural Resource Conflicts, Collaborative Management and Sustainable Livelihoods* (FAO) https://www.fao.org/4/a0032e/a0032e04.htm accessed 25 April 2025.

[161] Irvine and Farrington (n 153)

characterised by polarised interests. Lawyers must manage both their own emotional responses and those of their clients to prevent escalation, maintain procedural focus, and preserve professional credibility within high-stakes public law negotiations.

3. Facilitating Constructive Dialogue Between Conflicting Parties

Facilitating constructive dialogue requires lawyers to interpret emotional cues, reframe contested narratives, and manage communicative dynamics within mediation. EI supports this process by enabling lawyers to balance advocacy with responsiveness, particularly where disputes engage public interest and long-term environmental considerations.

3.5.2 Integrating EI into Lawyer Training

Claims about the relevance of EI to mediation advocacy do not, by themselves, justify curricular inclusion. They must instead be situated within ongoing debates in legal education about what counts as legal competence, how practice-readiness is cultivated, and how relational skills can be developed without diluting doctrinal rigour or professional ethics. Within the literature on legal education and professional formation, these calls can be read as part of a broader shift from purely doctrinal competence towards 'practice-ready' professional capability, including negotiation, client communication, and ethically bounded relational work. In this context, proposals to incorporate EI into training do not function as standalone skills interventions, but as contested responses to longstanding critiques that traditional legal education under-prepares lawyers for the interpersonal and institutional realities of dispute resolution. Framing EI in this way situates it within debates about legal competence, professional identity formation, and the advocacy norms that shape mediation's legitimacy in public law planning disputes.

The legal education literature suggests that, within the UK professional training framework, advocacy skills are formally emphasised, yet the structured development of relational and emotional competencies remains comparatively limited. However, traditional legal education has long focused on the technical and doctrinal aspects of the law, often neglecting the development of emotional and interpersonal skills[162]. This gap in training leaves lawyers ill-prepared to manage the emotional dynamics of

[162] J E Montgomery, 'Incorporating Emotional Intelligence Concepts into Legal Education: Strengthening the Professionalism of Law Students' (2008) 39 *University of Toledo Law Review* 323.

mediation, potentially hindering the resolution of complex planning disputes[163, 164]. From the perspective of legal education and professional formation scholarship, this training gap raises questions about whether existing pathways adequately cultivate the relational competencies that are increasingly relevant to mediation and negotiated decision-making in planning disputes[165, 166].

1. EI Skill Assessments to Identify Areas for Development

Within debates about professional formation, EI-oriented assessment tools are best understood as reflective pedagogic devices rather than objective measures of suitability for legal practice, and their use raises familiar concerns about validity, professional gatekeeping, and the risk of psychologising what are partly institutional challenges. Tools such as the ‘Emotional Competence Inventory’ developed by Daniel Goleman and Richard Boyatzis, can help identify areas where future lawyers need improvement, such as in emotional regulation, empathy, or social awareness[167]. In legal contexts, such instruments should be used as reflective development tools rather than as determinative measures of competence, and they must be interpreted alongside professional ethics and performance-based advocacy standards.

Structured reflective and skills-based assessment tools can support the development of emotional awareness and regulation within legal training, provided they are adapted to professional and ethical legal contexts. These assessments can serve as a baseline for further development, ensuring that lawyers can identify their emotional strengths and weaknesses early in their careers[168]. Incorporating such assessments into law school curricula would encourage future lawyers to not only focus on legal

163 Lori S Schreier, ‘Emotional Intelligence and Mediation Training’ (2002) 20(1) *Conflict Resolution Quarterly* 99.
164 E Barker, ‘Emotional Literacy for Mediators’ (*Marin County Bar Association*, 2 September 2018) https://marinbar.org/news/article/?id=365&type=news accessed 28 April 2025.
165 Silver MA, ‘Emotional Intelligence and Legal Education’ (1999) 5(4) *Psychology, Public Policy, and Law* 1173
166 Douglas (n 19)
167 Hay Group and McClelland Center for Research and Innovation, *Emotional Competence Inventory (ECI) Technical Manual* (updated edn, November 2005)
168 R E Boyatzis and F Sala, ‘The Emotional Competence Inventory (ECI)’ in G Geher (ed), *Measuring Emotional Intelligence: Common Ground and Controversy* (Nova Science Publishers 2004) 147.

doctrines but also on their own emotional competencies, thereby equipping them with the tools to succeed in mediation environments[169, 170].

2. Role-playing Simulations of Mediation Scenarios

Experiential learning methods such as simulation are widely discussed within clinical legal education, but their pedagogic value depends on whether they are analytically structured, ethically framed, and explicitly linked to professional responsibility rather than treated as generic skills rehearsal. These simulations could involve a variety of stakeholders, such as developers, environmental groups, and local communities, enabling students to engage with the emotional and legal complexities of planning disputes[171]. In such scenarios, students can practice empathy, active listening, and emotional regulation, all while learning how to navigate the complex interpersonal dynamics of mediation[172]. These role-playing exercises also provide an opportunity for students to receive feedback on their EI performance, helping them identify areas for improvement before they face high-stakes mediation situations in practice[173].

3. Techniques for De-escalating Tensions in Planning Disputes

De-escalation techniques are often presented in practitioner-facing guidance as universally beneficial, yet socio-legal scholarship cautions that emotion management can either support participation or function as a subtle form of control, particularly in disputes marked by power asymmetry[174]. Training-oriented accounts typically emphasise techniques such as neutral language, reframing, and acknowledgement as mechanisms for managing emotion within mediation; however, socio-legal critique cautions that such techniques must be analysed in context, as they can either support participation or subtly reinforce existing power asymmetries[175]. Related scholarship also highlights the value of equipping lawyers with strategies for managing

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[169] C L James, 'Exploring Changes in the Emotional Intelligence of Law Students' (2018) 28(1) *Legal Education Review* 33.
[170] P J Cain, 'A First Step Toward Introducing Emotional Intelligence into the Law School Curriculum: The "Emotional Intelligence and the Clinic Student" Class' (2003) 14(1) *Legal Education Review* 1.
[171] J Andrew and J Meligrana, 'Evaluating the Use of Role-Playing Simulations in Teaching Negotiation Skills to University Students' (2012) 3(6) *Creative Education* 1026
[172] Schreier (n 163)
[173] P Reilly, 'Teaching Law Students How to Feel: Using Negotiations Training to Increase Emotional Intelligence' (2005) 3(2) *Journal of Legal Education* 295
[174] Michael J Boland and William H Ross, 'Emotional Intelligence and Dispute Mediation in Escalating and De-Escalating Situations' (2011) *Journal of Applied Social Psychology*.
[175] Robert A Baruch Bush, 'Mediation Skills and Client-Centered Lawyering: A New View of the Partnership' (2013) Clinical Law Review

stakeholder frustrations and anxieties, which are common in planning disputes, especially when there are concerns about environmental damage or community displacement [176, 177]. The literature therefore frames emotional competence not as a guarantee of successful mediation, but as a contingent professional resource whose effects depend on institutional design, representation, and procedural safeguards.

On this account, EI is best understood as a potentially valuable dimension of mediation advocacy that operates alongside doctrinal competence and procedural safeguards rather than replacing them, a position reflected in negotiation and mediation scholarship that treats EI as contributory rather than determinative of dispute resolution outcomes [178]. Whether EI should be incorporated into legal education is therefore an institutional and pedagogic question shaped by curriculum design, assessment legitimacy, professional ethics, and the risk that individualised training narratives obscure structural barriers. Policy-oriented work on collaborative dispute resolution similarly emphasises that relational competence derives its practical significance from institutional design and procedural context rather than from personal aptitude alone [179].

3.6 Illustrative Examples in Environmentally Related Planning Disputes

The illustrative examples below are each organised around one analytical issue that is central to this chapter, namely legitimacy, power, or enforceability. They are intentionally selective and focus only on the features of each dispute that illuminate that single issue for mediation in environmentally related planning conflicts.

Case Study	Heathrow Airport Expansion (Analytical focus: legitimacy)
Issue	The proposed third runway at Heathrow Airport is used here to illustrate how environmentally related planning disputes can become conflicts about the legitimacy of decision making, particularly where stakeholders contest the adequacy of public participation, transparency, and accountability within the planning process [180].

176 Bureau of Land Management, *Collaborative Stakeholder Engagement and Appropriate Dispute Resolution: What BLM, Communities, and the Public Need to Know for Preventing Conflict and Resolving Disputes Involving Public Lands and Resources* (US Department of the Interior 2010).
177 Irvine and Farrington (n 153)
178 Kelly and Kaminskienė (n 33)
179 Bureau of Land Management (n 168)
180 May T, 'Heathrow's Third Runway: Economic Lifeline or Environmental Catastrophe?' *Airport Industry News* (29 January 2025) https://airportindustry-news.com/heathrows-third-runway-economic-lifeline-or-environmental-catastrophe/ accessed 29 April 2025.

Stakeholders Involved	Local communities, environmental groups, airport authorities, and government bodies .
Analytical Issue	Legitimacy: This dispute is illustrative of how environmentally related planning conflicts often turn on perceptions of procedural fairness, transparency, and accountability in public law decision-making. In such contexts, mediation may be viewed sceptically if it is perceived to dilute public scrutiny or to relocate public-interest questions into a private settlement space, even where it offers practical efficiencies.
EI Application (linked to legitimacy)	EI is relevant here as a mediation advocacy competency insofar as it supports legitimacy-enhancing practice: listening that communicates recognition of stakeholder concerns, careful reframing that reduces polarisation, and emotional regulation that enables sustained engagement without escalating conflict. Used in this limited way, EI can help lawyers and mediators maintain constructive participation and procedural confidence, without implying that emotional skill substitutes for legal standards or democratic accountability.

Case Study	Greenbelt Development in London (Analytical focus: power)
Issue	The proposal to release Green Belt land for housing is used here to illustrate how power and resource asymmetries shape planning disputes, particularly where developers and public authorities possess greater legal, technical, and financial capacity than community and civil society participants [181].
Stakeholders Involved	Local residents, developers, local authorities, environmental organisations, and planning regulators [182].
Analytical Issue	Power: This case is illustrative of the power and resource asymmetries that shape many planning disputes, where developers and authorities typically have greater access to legal, technical, and financial resources than community groups. In mediation, these asymmetries may affect agenda-setting, evidential capacity, and bargaining leverage, raising concerns that settlement can reproduce inequality rather than correct it.
EI Application	EI is relevant here insofar as it supports advocacy strategies that help mitigate marginalisation within the process: recognising when fear, anger,

[181] Michael Hutchinson, 'Developing in the Green Belt – An Update' (Mayer Brown, 12 March 2025) https://www.mayerbrown.com/en/insights/publications/2025/03/developing-in-the-green-belt-an-update accessed 26 March 2025.
[182] Felicia Rankl and Cassie Barton, *Green Belt* (House of Commons Library Research Briefing No 00934, 7 February 2023)

(linked to power)	or frustration are expressions of exclusion; using empathy and active listening to maintain participation; and regulating tone to prevent escalatory dynamics that can silence weaker parties. This does not resolve structural inequality, but it can strengthen the quality of engagement where representation and voice are at risk.

Case Study	Housing Development in a National Park (Analytical focus: enforceability and regulatory constraint)
Issue	The proposed housing development in a national park is used here to illustrate enforceability and regulatory constraint, because any mediated outcome remains bounded by statutory planning duties and environmental protections and must translate into a legally compliant and implementable decision[183].
Stakeholders Involved	Local residents, environmental NGOs, developers, and government regulators[184].
Analytical Issue	Enforceability/Constraint: This case is illustrative of the limits of mediated settlement in highly regulated planning contexts. Even if parties reach agreement, outcomes must remain compatible with planning law duties and environmental protections, and therefore cannot simply reflect negotiated preference. This raises practical questions about what, in such disputes, is genuinely “settleable” through mediation and how any agreement interacts with formal decision-making and legal enforceability.
EI Application (linked to enforceability/constraint)	EI is relevant here insofar as it supports realistic negotiation under constraint: managing disappointment when desired outcomes are not legally available, maintaining constructive dialogue when mediation cannot deliver definitive regulatory change, and helping parties reframe goals towards implementable, legally compliant options.

These case studies are not presented as evidence of mediation success, but as analytically bounded illustrations of the structural constraints shaping ADR viability

[183] East Hampshire District Council, ‘South Downs National Park Housing Plans Would “Leave Us High and Dry”’ (2024) https://www.easthants.gov.uk/news/2024/south-downs-national-park-housing-plans-would-leave-us-high-and-dry accessed 27 March 2025.
[184] Yorkshire Dales National Park Authority, ‘Fresh Consultation on Proposed Housing Sites’ (News Release, 16 September 2024) https://www.yorkshiredales.org.uk/fresh-consultation-on-proposed-housing-sites/ accessed 28 March 2025.

in environmentally related planning disputes. They are included as focused illustrations of three distinct constraints on mediation in environmentally related planning disputes: legitimacy concerns in public law decision making, power asymmetries in participation and representation, and enforceability limits created by regulatory duties. They provide a structured bridge between this chapter's discussion of ADR viability and the later empirical analysis of lawyers' mediation advocacy and EI.

3.7 Legal Reforms and Future Directions for ADR in Planning Disputes

The reform proposals discussed below reveal an unresolved tension within the literature between voluntary flexibility and institutionalisation of ADR in public law planning contexts. The integration of ADR into planning disputes has been described within policy and academic literature as a significant shift away from traditional adversarial processes[185]. Scholarship identifies potential benefits, including time and cost considerations and relational advantages; however, debates persist regarding legislative support, institutional uptake, and long-term viability within public law planning contexts.

Any reform proposals must remain compatible with the constitutional constraints outlined in section 3.3.2.

3.7.1 Strengthening Legislative Support for ADR

The integration of ADR into planning disputes requires more than optional guidance; it necessitates legislative and institutional reform. Research has shown that key barriers include the absence of statutory mandates, enforceability concerns, and a lack of judicial encouragement[186]. Building on these findings, more recent work emphasises the need for systemic reform to normalise ADR in planning and environmental law[187].

Policy proposals for mandatory ADR consideration before litigation

A frequently proposed reform is the introduction of a requirement for parties to consider ADR prior to litigation, particularly in environmentally related planning disputes.

[185] Andrew (n 125)
[186] Bonomally and Agapiou (n 66)
[187] Ibid

Training-oriented proposals for integrating mediation into legal education

Empirical findings reveal that many legal professionals lack confidence in ADR due to insufficient training. Embedding mediation, negotiation, and EI training within legal education and CPD would better prepare practitioners for the complexities of environmental disputes[188].

Policy proposals addressing resource barriers to ADR participation

Finally, government-backed incentives could help address resource disparities, particularly among local authorities and NGOs, by funding mediation sessions or recognising collaborative approaches within regulatory processes[189]. Such measures would align planning and environmental law with established ADR practices in commercial and construction sectors[190, 191].

3.7.2 Future Research on EI in Mediation

While ADR in planning disputes holds significant promise, particularly with the integration of EI into the process, further research is essential to explore the ways in which EI can improve the success rates of ADR and shape the future of mediation in planning law.

How EI Influences Mediation Success Rates in Planning Disputes

Parts of the literature suggest that EI may influence mediation effectiveness, particularly in disputes characterised by high emotional intensity[192]. Research into how EI influences the success rates of mediation in planning disputes could provide valuable insights into how emotional awareness, empathy, and emotional regulation impact the outcome of these cases[193].

Understanding the relationship between EI and mediation success could help legal professionals and mediators better prepare for emotionally complex planning disputes, ultimately leading to more satisfactory and sustainable resolutions[194]. Future studies should explore whether higher levels of EI in mediators and

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188 Ibid
189 Ibid
190 A Agapiou and B Clark, 'Scottish Construction Lawyers and Mediation: An Investigation into Attitudes and Experiences' (2011) 3(2) *International Journal of Law in the Built Environment* 159 https://doi.org/10.1108/17561451111148266 accessed 8 April 2025.
191 H Genn, *Judging Civil Justice* (Cambridge University Press 2010).
192 Kelly and Kaminskienė (n 33)
193 Jagtiani (n 4)
194 Kelly and Kaminskienė (n 33)

participants correlate with better outcomes in terms of relationship-building, long-term solutions, and stakeholder satisfaction[195].

The Development of EI-Based Mediation Frameworks for Lawyers

The integration of EI into mediation training for lawyers could significantly enhance their ability to manage the interpersonal dynamics of environmentally related planning disputes[196]. Developing EI-based mediation frameworks specifically tailored for lawyers in planning and environmental disputes would provide them with the tools necessary to manage the emotional complexities of these cases.

Research could focus on creating comprehensive EI frameworks that include techniques for active listening, empathy, emotion regulation, and social awareness, all of which are crucial for successful mediation[197]. These frameworks could be used by law schools, legal training programmes, and professional development courses, ensuring that lawyers are better equipped to handle not just the legal aspects of a case[198], but also the emotional and interpersonal dynamics involved in resolving complex planning disputes.

3.7.3 Broader Implications for ADR in Planning Disputes

The future of ADR in planning disputes, particularly those involving significant environmental concerns, holds the potential to contribute to shifts in environmental governance and sustainable development[199]. Traditional litigation often focuses on rigid legal arguments, leaving little room for the nuanced balance required in environmentally-sensitive planning decisions[200]. Some commentators suggest that

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[195] I Coronado-Maldonado and M-D Benítez-Márquez, 'Emotional Intelligence, Leadership, and Work Teams: A Hybrid Literature Review' (2023) 9(10) *Heliyon* e20356
[196] Schreier (n 163)
[197] Leslie Riopel, 'Emotional Intelligence Frameworks, Charts, Diagrams & Graphs' (*PositivePsychology.com*, 12 March 2019) https://positivepsychology.com/emotional-intelligence-frameworks/ accessed 10 April 2025.
[198] Silver (n 165)
[199] Murithi Antony and James Njuguna, 'Harnessing Appropriate Dispute Resolution (ADR) for Achieving Environmental Justice: A Path to Sustainable Development' (2024) https://www.researchgate.net/publication/381956630_Harnessing_Appropriate_Dispute_Resolution_ADR_for_Achieving_Environmental_Justice_A_Path_to_Sustainable_Development accessed 6 June 2025.
[200] Kahn (n 97)

prioritising ADR, particularly where relational competencies are emphasised, may contribute to more inclusive and collaborative approaches to conflict management[201].

ADR processes are described within the literature as offering flexibility to address the wide range of interests at stake in planning disputes, from environmental preservation to economic development[202]. Integrating EI into these processes is described within parts of the literature as potentially assisting participants in navigating emotional tensions, power imbalances, and competing priorities[203]. This holistic framing is presented by some commentators as expanding the evaluative criteria applied to planning dispute outcomes beyond narrow legality[204]. By fostering structured dialogue, ADR may widen the range of interests formally considered in planning dispute resolution[205].

3.7.4 Linking ADR's Role to EI in Mediation Advocacy Training

Within the literature, some scholars argue that integrating EI into mediation advocacy training may strengthen relational competence in planning disputes, although the institutional implications of such proposals remain contested. The emotional dynamics that shape planning disputes, whether in high-profile cases like Heathrow Airport Expansion or local conflicts over greenbelt development, require lawyers to go beyond technical legal expertise[206]. It is argued within sections of the literature that embedding EI-related competencies such as empathy, emotional regulation, and active listening into mediation training may better equip lawyers to manage the complex interpersonal dynamics that often underlie planning disputes[207].

Proposals to incorporate EI into ADR training are framed by some commentators as contributing to shifts in dispute resolution culture, though questions remain regarding implementation and professional legitimacy[208]. Proponents argue that such training

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[201] Z L Williams and K R Wilson, 'Mindful Dispute Resolution: Enhancing Alternative Dispute Resolution Through Mindfulness and Restorative Justice Techniques' (*Oklahoma Bar Journal*, March 2025) https://www.okbar.org/barjournal/march-2025/mindful-dispute-resolution/ accessed 15 April 2025.
[202] D Lockhart and C Santos, 'Alternative Dispute Resolution in Environmental Disputes' (*Australian Disputes Centre*) https://disputescentre.com.au/alternative-dispute-resolution-in-environmental-disputes/ accessed 16 April 2025.
[203] A K Qtaishat, 'Power Imbalances in Mediation' (2018) 14(2) *Asian Social Science* 75
[204] Environmental Law Institute, *A Community Guide to Using Alternative Dispute Resolution to Secure Environmental Justice* (Environmental Law Institute May 2011)
[205] L S Bacow and M Wheeler, *Environmental Dispute Resolution* (1st edn, Springer 1984).
[206] Williams and Wilson (n 201)
[207] Kelly and Kaminskienė (n 33)
[208] Schreier (n 163)

may support environments in which parties feel heard, understood, and respected, which is crucial for fostering lasting, sustainable agreements[209]. This emphasis on emotional competencies will encourage a shift away from adversarial approaches, making ADR a more viable and desirable option for resolving disputes in the context of planning and environmental law[210].

Moreover, EI-based frameworks could be incorporated into ADR accreditation standards[211]. This would ensure that legal professionals are not only trained in ADR processes but are also prepared to handle the emotional complexities inherent in these disputes. By ensuring that mediators and legal practitioners are proficient in both legal and EI, ADR processes can become more effective in achieving outcomes that meet both the legal and emotional needs of stakeholders[212]. These reforms would elevate the standard of mediation practice, ensuring that ADR is approached with a greater focus on collaboration, empathy, and long-term sustainability.

Integrating EI into mediation advocacy training is presented within parts of the literature as a means of strengthening relational competence; however, its practical effect remains contingent on institutional design, professional legitimacy, and the structural conditions governing planning disputes[213].

3.8 Chapter Summary

This chapter has critically examined the literature on ADR in environmentally related planning disputes, situating mediation within debates on institutional legitimacy, participation, enforceability, and regulatory design. The scholarship identifies both the normative appeal of ADR and the structural constraints that shape its uneven uptake, including judicial neutrality, resource asymmetries, institutional resistance, and limited professional training in relational dispute management.

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209 Ronda Muir, *Beyond Smart: Lawyering with Emotional Intelligence* (2nd edn, American Bar Association 2022)
210 O A Oladejo, 'Emotional Intelligence in Alternative Dispute Resolution Mechanism: Beyond the Cacophony of Legal-Mindedness' (2020) https://www.researchgate.net/publication/338540124_EMOTIONAL_INTELLIGENCE_IN_ALTERNATIVE_DISPUTE_RESOLUTION_MECHANISM_BEYOND_THE_CACOPHONY_OF_LEGAL-MINDEDNESS accessed 24 April 2025.
211 James Duffy, 'Empathy, Neutrality and Emotional Intelligence: A Balancing Act for the Emotional Einstein' (2010) 10(1) *QUT Law Review*.
212 Schreier (n 163)
213 Mnotho Thamsanqa Ngcobo, 'Navigating the Emotional Landscape of Mediation: An Exploration of the Role of Emotions in Conflict Resolution and the Strategies for Effective Management' (2023) *Conflict Resolution Quarterly* 41(3) 327

Across these strands, a central insight emerges: while ADR is increasingly promoted as a flexible and participatory alternative to litigation, its viability within UK planning law remains institutionally contingent. Questions of enforceability, public accountability, and power asymmetry complicate its application in public law contexts, where mediated outcomes must remain compatible with statutory duties and democratic oversight. These institutional constraints also shape how lawyers approach mediation advocacy within planning disputes, influencing whether mediation is proposed, resisted, or strategically deployed in practice.

Within this landscape, EI is increasingly referenced as relevant to mediation advocacy, yet its role remains under-theorised in relation to institutional design and legally accountable professional judgement. Although emotional competencies such as empathy, active listening, and emotional regulation are recognised as influential within negotiation settings, the literature rarely integrates these relational dimensions with the structural conditions that shape ADR credibility and legitimacy in planning disputes.

The result is an unresolved tension between structural reform proposals and relational accounts of mediation competence. Existing scholarship acknowledges both institutional fragility and interpersonal skill, but does not fully articulate how these dimensions interact within the architecture of UK environmental and planning law. This gap establishes the need for a more integrated analysis of ADR viability and EI as a situated, professionally accountable dimension of mediation advocacy.

The next chapter therefore turns to the conceptual foundations of EI, examining competing theoretical models in order to assess whether and how EI can be reconceptualised as an institutionally embedded component of legally bounded professional judgement within environmentally related planning disputes.

Chapter 4: Emotional Intelligence in the Legal Profession: Conceptual Foundations and Relevance to Mediation Advocacy

4.1 Introduction to Chapter 4

Chapter 3 established the institutional and structural conditions of Alternative Dispute Resolution (ADR) in planning disputes. This chapter does not revisit those contextual dynamics. Instead, it focuses on the conceptual development of Emotional Intelligence (EI). This chapter develops the conceptual foundations necessary for analysing emotional judgement within legally accountable mediation advocacy. It evaluates dominant EI models and explains why generic formulations are insufficient for analysing public law mediation contexts.

4.2 Emotional Intelligence in the Legal Profession: Conceptual Foundations and Relevance to Mediation

This section examines dominant EI models in order to assess their analytical adequacy for legally accountable mediation advocacy.

4.2.1 Introduction to Emotional Intelligence

EI is commonly defined as the capacity to perceive, interpret, and regulate emotions in oneself and others in ways that influence judgement and interpersonal interaction.

4.2.2 Theoretical Models of Emotional Intelligence

The analytical appeal of the Mayer–Salovey framework [214] lies in its articulation of emotional capacities as cognitively structured and assessable. However, its abstraction from role-specific context limits its direct transferability to legally regulated mediation advocacy.

Table 1: Mayer-Salovey vs Goleman Theoretical Models

Model	Key Features	Pros in Legal Context	Limitations
Mayer-Salovey (1997)	Four-branch ability model	Objective, skill-based, MSCEIT-linked	May miss contextual nuance
Goleman (1995/2020)	Mixed-trait model with leadership emphasis	Empathy & leadership-rich	Less rigorous; relies on self-report

[214] John D Mayer, Peter Salovey and David Caruso, 'Models of Emotional Intelligence' in Robert J Sternberg (ed), Handbook of Intelligence (Cambridge University Press 2012) 396.

While both models contribute to the broader literature on EI, the present thesis focuses primarily on elements of the Mayer–Salovey ability framework that relate directly to mediation advocacy: emotional perception, emotional understanding, and emotional regulation within interpersonal conflict. These capacities correspond closely with the communicative, interpretive, and relational demands placed on lawyers acting as mediation advocates. Accordingly, the analysis that follows concentrates on those aspects of EI theory that illuminate how lawyers interpret emotional dynamics, manage stakeholder interactions, and exercise relational judgement within legally accountable dispute resolution settings.

For the purposes of this thesis, the Mayer–Salovey ability model provides a more analytically precise foundation, as it conceptualises EI as assessable capacities rather than personality traits. However, even this model requires adaptation when transposed into legally structured mediation advocacy, where emotional judgement must remain accountable to procedural and public law constraints[215].

4.2.3 Implications of Emotional Intelligence in the Legal Profession

The professional implications of EI are particularly evident in the lawyer–client relationship, where emotional awareness, regulation, and empathy shape communication, trust, and decision-making. These dynamics are examined in detail in section 4.5, with specific attention to environmentally related planning disputes.

The Role of EI in Legal Education and Training

The incorporation of EI into curricula often lacks clear articulation of how such capacities operate within adversarial and institutionally constrained legal roles [216,217,218].

[215] Jeffrey M Conte, 'A Review and Critique of Emotional Intelligence Measures' (2005) 26(4) *Journal of Organizational Behavior* 433.
[216] I A Martynenko and N N Karandasheva, 'Emotional Intelligence in Law Students: Relevance of Development' (2021) 4 *Kutafin Law Review* 626.
[217] Silver (n 165)
[218] Cain (n 170)

Emotional Intelligence in Negotiation and Mediation

One of the most significant applications of EI in the legal profession lies in negotiation and mediation[219, 220]. Both processes require practitioners to navigate complex emotional dynamics and facilitate effective communication between parties[221]. High levels of EI enable lawyers and mediators to identify underlying emotional issues that frequently contribute to the persistence of conflict. Recognition of these emotional factors supports the development of more constructive conditions for dialogue and resolution[222, 223].

Negotiation and mediation scholarship consistently recognises the constitutive role of emotion in shaping bargaining dynamics and relational outcomes. Empirical studies link emotional awareness and regulation with improved trust formation and de-escalation. However, this literature predominantly examines neutral facilitators or general negotiators, offering limited analysis of how EI operates within structured advocacy roles.

What this body of work does not explain, however, is how EI is exercised, constrained, or ethically justified when negotiation and mediation are conducted within legally accountable advocacy roles, rather than by neutral facilitators operating outside formal professional responsibility structures. This unresolved tension between emotional effectiveness and professional accountability is central to the analysis developed in this chapter.

4.2.4 The Growing Importance of Emotional Intelligence in the Legal Profession

Although EI is increasingly discussed within professional discourse, existing scholarship provides limited analysis of how emotional judgement operates within

[219] Emma Jones, 'The Role and Impact of Emotions within Everyday Legal Practice' (2020) 18 *No Foundations: An Interdisciplinary Journal of Law and Justice*.
[220] Kelly and Kaminskienė (n 33)
[221] Francis Mulu and Dominic Chungo, 'Emotions in Negotiation and Mediation: Strategies for Managing Emotional Dynamics' (2023) *International Journal of Research and Innovation in Social Science* 1732.
[222] Neil H Katz and Adriana Sosa, 'The Emotional Advantage: The Added Value of the Emotionally Intelligent Negotiator' (2015) 33(2) *Conflict Resolution Quarterly* 189.
[223] Cary Cherniss, Melissa Extein, Daniel Goleman and Roger P Weissberg, 'Emotional Intelligence: What Does the Research Really Indicate?' (2006) 41(4) *Educational Psychologist* 239.

legally accountable mediation advocacy roles. The concept therefore requires specification for legally structured mediation advocacy[224, 225].

4.2.5 Conceptual Clarification: Emotional Intelligence as Professional Judgement

Any legal-specific conceptualisation of EI must also confront the critical literature that questions its normative and governance implications. While contemporary professional discourse frequently celebrates EI as a marker of leadership and resilience, critical scholarship has raised concerns about its alignment with managerial and neoliberal governance logics. Within strands of the critical literature, Emotional Intelligence (EI) has been characterised not as a form of emancipatory relational competence but as a "technology of self-discipline": a means through which professionals are encouraged to internalise responsibility for organisational strain, institutional fragility, and structural inequality. This characterisation reflects a critical perspective rather than the conceptual position adopted in this thesis.

From this perspective, emotionally intelligent lawyers may be expected to absorb conflict, regulate frustration, and maintain institutional legitimacy without corresponding structural reform. Emotional regulation risks becoming a mechanism through which systemic problems are reconstituted as matters of individual resilience and interpersonal skill.

The analysis advanced in this thesis does not treat EI as a solution to institutional deficit. Rather, it conceptualises EI as a form of relational legal judgement exercised within, and constrained by, structural conditions. Emotional competence cannot substitute for procedural reform, distributive fairness, or regulatory clarity. Any account of EI that abstracts it from institutional context risks reproducing the very managerial logics it seeks to transcend. Accordingly, throughout this thesis, EI is consistently understood as context-bound relational legal judgement rather than as a technology of self-discipline.

This critique is particularly salient in public law mediation contexts, where institutional fragility and resource asymmetry are already pronounced. If EI is

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[224] Cary Cherniss, 'Emotional Intelligence: Toward Clarification of a Concept' (2010) 3(2) *Industrial and Organizational Psychology: Perspectives on Science and Practice* 110.
[225] Mark Slaski and Susan Cartwright, 'Emotional Intelligence Training and Its Implications for Stress, Health and Performance' (2003) 12(2) *Stress and Health* 107.

framed as a compensatory professional virtue, lawyers may become responsible for stabilising structurally unstable processes without corresponding institutional reform. From the perspective of this critical literature, EI can operate as a governance technology by encouraging self-regulation and relational smoothing in lieu of addressing deeper distributive or procedural imbalances. The present thesis therefore does not conceptualise EI as a governance technology. Instead, it conceptualises emotionally intelligent advocacy as a form of context-bound relational legal judgement exercised within existing institutional, ethical, and procedural constraints.

At this stage, it is important to clarify analytically how EI differs from adjacent constructs frequently invoked in legal scholarship. Emotional labour refers to the effort required to regulate affect in accordance with professional expectations, often involving the suppression or performance of emotion under institutional constraint. Professional judgement, by contrast, concerns the application of legal reasoning, ethical norms and role-based discretion within structured doctrinal frameworks. EI, as conceptualised in this thesis, performs distinct explanatory work. It is not synonymous with emotional labour, professional discretion, negotiation strategy, or care ethics, although it intersects with each of these domains. Nor is it reducible to expressive empathy or interpersonal sensitivity. Rather, it refers to a calibrated interpretive and regulatory capacity. Through this, practitioners translate affective cues into legally accountable and ethically bounded forms of action. It explains how emotional awareness becomes operational within legally accountable advocacy practice. Without this distinction, emotional labour appears as burden alone and professional judgement as cognition alone. EI explains how these domains become structurally interlinked in mediation advocacy.

4.2.6 Analytical Boundaries of Emotional Intelligence

Before advancing a legal-specific reconceptualisation of EI, it is necessary to clarify its analytical boundaries. Absent analytical boundary-setting, EI risks conceptual inflation, absorbing adjacent constructs and losing explanatory precision[226].

First, EI is not synonymous with emotional agreeableness. The capacity to recognise and interpret affect does not entail compliance, appeasement, or the avoidance of

[226] Cherniss (n 224)

conflict[227]. In legally accountable mediation advocacy, emotionally intelligent judgement may require firm boundary-setting, strategic resistance, or the disciplined refusal of emotionally persuasive but legally untenable claims.

Second, EI is not reducible to personality. While trait-based models often conflate EI with dispositional empathy or sociability,[228] this thesis treats EI as a structured professional capacity rather than an inherent personal characteristic. It concerns how affective information is interpreted and translated into legally accountable action under institutional constraint.

Third, EI is not therapeutic intervention. Lawyers engaged in mediation advocacy do not function as counsellors or psychological support providers. Emotional awareness in this context is directed toward procedural calibration, strategic communication, and ethical boundary management rather than emotional healing or personal transformation[229].

Fourth, EI is not a substitute for legal reasoning. Emotional judgement does not displace doctrinal analysis, statutory interpretation, or evidentiary assessment. Rather, it operates alongside and within these processes, informing how legal reasoning is communicated, framed, and ethically exercised in relationally complex settings[230].

Fifth, EI is not managerial compliance rhetoric. While contemporary professional discourse sometimes aligns EI with resilience, adaptability, or institutional loyalty, the present analysis does not treat emotionally intelligent advocacy as a mechanism for absorbing systemic strain or legitimising structural fragility[231]. Emotional competence cannot compensate for procedural injustice, distributive inequity, or

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[227] Susan A Bandes, 'Feeling and Thinking Like a Lawyer: Cognition, Emotion, and the Practice and Progress of Law' (2021) 89 Fordham Law Review 2427; Terry A Maroney, 'Law and Emotion: A Proposed Taxonomy of an Emerging Field' (2006) 30 Law and Human Behavior 119.
[228] Peter Salovey and John D Mayer, 'Emotional Intelligence' (1990) 9(3) Imagination, Cognition and Personality 185; John D Mayer, Peter Salovey and David R Caruso, 'Models of Emotional Intelligence' in Robert J Sternberg (ed), Handbook of Intelligence (Cambridge University Press 2012).
[229] Arlie Russell Hochschild, The Managed Heart: Commercialization of Human Feeling (University of California Press 2012); Catrina Westaby and others, 'Emotional Labour in the Legal Profession' in Jennifer Phillips and others (eds), Emotional Labour in Criminal Justice and Criminology (Routledge 2020).
[230] Susan A Bandes (n 2); Kathryn K Tiscione, 'Feelthinking Like a Lawyer: The Role of Emotion in Legal Reasoning and Decision-Making' (SSRN Working Paper, 2019).
[231] Martha Albertson Fineman, 'The Vulnerable Subject: Anchoring Equality in the Human Condition' (2008) 20 Yale Journal of Law and Feminism 1; Margaret Thornton, Dissonance and Distrust: Women in the Legal Profession (Oxford University Press 1996).

institutional design deficits. Within this thesis, EI is conceptualised as structured, context-sensitive relational judgement enacted under professional constraint. It refers to the disciplined capacity to interpret affective dynamics, calibrate strategic responses, and integrate emotional awareness into legally accountable advocacy within public law mediation settings.

Clarifying these analytical boundaries protects the concept from over-extension and situates it firmly within the architecture of professional judgement rather than personality psychology or managerial discourse. For the avoidance of conceptual inflation, this thesis therefore treats EI neither as a personality trait nor as a therapeutic disposition, neither as generic "soft skills" nor as free-floating strategic persuasion. It is not emotional warmth, not emotional agreeableness, and not emotional labour alone. It is a context-bound, institutionally mediated form of relational legal judgement exercised within the ethical and procedural limits of public law mediation advocacy. By specifying these exclusions, the concept is stabilised analytically and prevented from absorbing adjacent constructs that, while related, perform distinct theoretical functions.

The analytical purpose of this clarification is to stabilise EI as a concept capable of explaining relational judgement within mediation advocacy rather than as a general account of emotional competence. The subsequent sections therefore examine how these emotionally informed judgements operate within lawyer–client interaction, advocacy conduct, and mediation practice.

4.3 EI in Legal Practice: A Historical Perspective

Legal professionalism became structurally aligned with emotional restraint, embedding detachment as a marker of legitimacy. However, in recent decades, these traditional views have been challenged [232, 233, 234].

[232] Cary Cherniss and Daniel Goleman, *The Emotionally Intelligent Workplace: How to Select for, Measure, and Improve Emotional Intelligence in Individuals, Groups, and Organizations* (Jossey-Bass 2001).

[233] Susan A Bandes, 'Feeling and Thinking Like a Lawyer: Cognition, Emotion, and the Practice and Progress of Law' (2021) 89 *Fordham Law Review* 2427.

[234] Sharyn Roach Anleu, Kathy Mack, Jennifer Elek and David Rottman, 'Judicial Ethics, Everyday Work, and Emotion Management' (2016) 4(1) *Journal of Law and Courts* 127.

4.3.1 Traditional Views on Emotions in Law and Professional Detachment

Historically, emotions in legal practice were seen as a hindrance to rational decision-making and objective judgment[235]. This cultural expectation extended to the relationship between lawyers and their clients. Lawyers were encouraged to maintain a level of emotional distance from the cases they handled, particularly in areas of law where emotions ran high, such as criminal defence or family law.

The professional detachment ingrained in legal training has increasingly come under scrutiny, particularly through the lens of "emotional labour," a concept first introduced by Arlie Hochschild in *The Managed Heart* (1983)[236]. Emotional labour is the effort involved in managing emotions as part of professional work, especially in roles involving interaction with others[237]. In the legal profession, this often translates to lawyers prioritising rationality and objectivity at the expense of emotional expression to appear unbiased and professional[238]. Recent studies, however, have highlighted the adverse consequences of such suppression. Research by Jones (2018)[239] indicates that prolonged emotional suppression contributes to burnout, stress, and declining mental health among lawyers. The constant tension between presenting a composed professional image and internal emotional realities has been linked to elevated rates of anxiety and depression within the legal field[240].

Critics argue that the traditional emphasis on emotional detachment overlooks the constructive role emotions can play in legal practice and disregards the emotional needs of both clients and lawyers. For instance, Kiser (2014) note that empathy and EI are essential tools for managing sensitive legal matters, such as family disputes or criminal defence, where emotional dynamics can heavily influence outcomes[241]. Moreover, recent work by Melita (2023) highlights how EI can enhance client-

[235] Kristen Konrad Tiscione, 'Feelthinking Like a Lawyer: The Role of Emotion in Legal Reasoning and Decision-Making' (SSRN working paper, 16 December 2019) https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3508004 accessed 24 March 2025.
[236] Jill Switzer, 'On the Emotional Labor of Being a Lawyer' *Above the Law* (27 June 2018) https://abovethelaw.com/2018/06/on-the-emotional-labor-of-being-a-lawyer/ accessed 25 March 2025.
[237] Arlie Russell Hochschild, *The Managed Heart: Commercialization of Human Feeling* (University of California Press 2012).
[238] James J Gross, 'Emotion Regulation: Affective, Cognitive, and Social Consequences' (2003) *Behavioural and Brain Sciences*.
[239] Jones (n 17)
[240] Lawrence S Krieger and Kennon M Sheldon, 'What Makes Lawyers Happy?: A Data-Driven Prescription to Redefine Professional Success' (2015) 83 *George Washington Law Review* 554.
[241] Kiser (n 16)

lawyer relationships by fostering trust, improving communication, and leading to more client-centred advocacy[242]. These insights suggest that a balanced approach, in which lawyers integrate emotional awareness while maintaining professional objectivity, can enhance both practitioner well-being and the quality of legal outcomes.

4.3.2 Shifts in Perceptions: From Rationality to Emotional Competence in Legal Practice

In recent decades, the long-standing assumption that emotional detachment is synonymous with professionalism has been increasingly challenged[243, 244, 245, 246]. Traditional legal culture privileged rational analysis and technical expertise, positioning emotional restraint as a safeguard of objectivity. However, socio-legal scholarship has questioned whether this model adequately reflects the realities of contemporary practice, particularly in client-facing and dispute-resolution contexts[247, 248, 249].

The shift has been driven in part by growing recognition that emotions are not antithetical to rationality but are integral to decision-making and interpersonal judgment[250, 251]. Research in negotiation and behavioural studies further

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[242] Norina Melita, 'Emotional Intelligence, Distancing, and Learning a New Skill as Strategies to Combat the Deleterious Effects of Emotional Labor on Attorney Wellbeing' (2023) *Frontiers in Behavioral Neuroscience*.
[243] Tiscione (n 235)
[244] Ronda Muir, *Emotional Intelligence for Lawyers* (Law People Management 2016).
[245] John Barwell, 'The Role of Emotional Intelligence in Legal Practice: Enhancing Client Relations and Professional Success' *Legal Lens* (15 July 2024) https://legallens.org.uk/the-role-of-emotional-intelligence-in-legal-practice-enhancing-client-relations-and-professional-success/ accessed 26 March 2025.
[246] Chelsy Castro, 'Emotional Intelligence: The Most Important Skill Lawyers Need but Don't Know About' (US Legal Support Blog, 7 December 2021) https://www.uslegalsupport.com/blog/emotional-intelligence-the-most-important-skill-lawyers-need-but-dont-know-about/ accessed 27 March 2025.
[247] Jones (n 17)
[248] Peter-Hagene LC, Bean S and Salerno JM, 'Emotion and Legal Judgment' in *Oxford Handbook of Law and Psychology* (Oxford University Press 2023) 726–741
[249] Kelly and Kaminskienė (n 33)
[250] Salovey and Mayer (n 32)
[251] Goleman (n 31)

demonstrates that emotional dynamics shape perception, risk assessment, and relational trust[252, 253, 254].

This reconceptualisation has also extended to legal education and professional development, where EI is framed as contributing to client management, ethical judgment, and practitioner well-being[255, 256, 257]. Yet much of this literature positions EI as a professional enhancement rather than interrogating how emotionally competent practice operates within adversarial and institutionally constrained legal roles.

4.3.3 EI in Negotiation and Mediation: Early Application in Law

The practical significance of emotional competence became particularly visible in the evolution of negotiation and mediation practice. Early adversarial models conceptualised negotiation as a competitive, zero-sum process grounded primarily in factual and legal argument[258, 259]. Within this framework, emotions were often treated as disruptive variables requiring containment.

However, the development of alternative dispute resolution in the late twentieth century marked a significant reorientation[260]. Mediation scholarship increasingly emphasised communication, reframing, and relational engagement as central to

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[252] Matt Gavin, 'The Impact of Emotions in Negotiation' *Harvard Business School Online* (18 May 2023) https://online.hbs.edu/blog/post/emotion-in-business-negotiation accessed 28 March 2025.
[253] Program on Negotiation (PON) Staff, 'Emotional Triggers: How Emotions Affect Your Negotiating Ability' *Program on Negotiation at Harvard Law School* (18 December 2025) https://www.pon.harvard.edu/daily/dispute-resolution/how-emotions-affect-your-talks/ accessed 8 April 2025.
[254] Reilly (n 173)
[255] Minute7, 'The Importance of Emotional Intelligence in Legal Practice' (Minute7 Blog, 12 September 2024) https://minute7.com/blog/the-importance-of-emotional-intelligence-in-legal-practice/ accessed 17 April 2025.
[256] LawCrossing, 'The Role of Emotional Intelligence in Legal Practice' (LawCrossing, 12 June 2023) https://www.lawcrossing.com/article/900054491/The-Role-of-Emotional-Intelligence-in-Legal-Practice/ accessed 15 April 2025.
[257] CMS, 'Emotional Intelligence: A Secret Weapon for Elevating Legal Professionals' https://cms.law/en/gbr/publication/emotional-intelligence-a-secret-weapon-for-elevating-legal-professionals accessed 23 April 2025.

[258] Lalit Singh, 'Why Negotiation Shouldn't Be a Zero-Sum Game: Understanding the Benefits' *Vareto Blog* (10 August 2023) https://www.vareto.com/blog/negotiation-shouldnt-be-a-zero-sum-game-heres-why accessed 3 April 2025.
[259] Rellie Derfler-Rozin, 'How a Zero-Sum Mind-Set Can Undermine Workplace Negotiations' *Quirk's* (18 May 2021) https://www.quirks.com/articles/how-a-zero-sum-mind-set-can-undermine-workplace-negotiations accessed 4 April 2025.
[260] Jerome T Barrett and Joseph P Barrett, *A History of Alternative Dispute Resolution: The Story of a Political, Cultural, and Social Movement* (Jossey-Bass 2004).

constructive dispute resolution[261, 262, 263]. Emotional awareness and empathy were repositioned not as weaknesses but as strategic and ethical competencies relevant to de-escalation and trust-building[264, 265, 266].

Negotiation theory likewise evolved to recognise that emotional triggers, cognitive framing, and relational dynamics influence bargaining outcomes[267, 268, 269].

Nevertheless, much of this early application literature centres on mediators or negotiators in general terms. It provides limited analysis of how emotional competence is exercised by lawyers acting as partisan representatives within legally accountable and public law contexts. The historical embrace of relational competence therefore exposes a persistent tension: how can emotional engagement be reconciled with advocacy duties, procedural fairness, and institutional accountability?

4.4 Emotional Intelligence and the Lawyer-Client Relationship

Building on the professional implications of EI outlined previously, this section examines how emotional awareness operates specifically within the lawyer–client relationship in environmentally related planning disputes.

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261 Tricia S Jones and Annette Bodtker, 'Mediating with Heart in Mind: Addressing Emotion in Mediation Practice' (2001) 17(3) *Negotiation Journal* 217–244.
262 Fisher, Ury and Patton (n 122)
263 Ehsan Zaffar, 'Context Is King: A Practical Guide to Reframing in Mediation' (Mediate.com, 23 June 2008) https://mediate.com/context-is-king-a-practical-guide-to-reframing-in-mediation/ accessed 9 April 2025.
264 Peter Sear, 'Empathy for Legal Professionals' (*Psychology Today*, 1 December 2023) https://www.psychologytoday.com/us/blog/empathic-minds/202312/empathy-for-legal-professionals accessed 10 April 2025.
265 Sarathi Susheela, 'Empathy in Mediation' (*Mediate.com*, 17 May 2020) https://mediate.com/empathy-in-mediation/ accessed 11 April 2025.
266 Phillip McCallum, 'The Role of Emotional Intelligence in Effective Mediation' *Phillip McCallum Blog* (21 August 2024) https://www.phillip-mccallum.com/post/the-role-of-emotional-intelligence-in-effective-mediation accessed 7 April 2025.
267 Gavin (n 252)
268 Program on Negotiation (n 253)
269 Kelly and Kaminskienė (n 33)

4.4.1 The Role of Emotional Awareness in Understanding Client Needs

Emotional awareness, a core component of EI, enables lawyers to recognise and interpret their clients' emotions, which can reveal underlying concerns, priorities, and motivations [270, 271].

In environmentally related planning disputes, clients' stated legal positions frequently coexist with affective commitments to land, community identity, economic viability, or environmental protection. Emotional awareness enables lawyers to identify these underlying motivations and integrate them into strategic advice without displacing legal analysis [272]. This interpretive function of EI has been recognised within mediation literature as central to constructive conflict engagement and relational problem-solving [273] and within professional guidance as relevant to contemporary legal competence and practitioner development [274, 275].

Emotional awareness structures how advice is framed, how risks are communicated, and how client autonomy is respected [276, 277, 278]. The lawyer's interpretive sensitivity to emotional cues informs not only tone but also strategic calibration of expectations and disclosure [279, 280].

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[270] Gerdy KB, 'The Heart of Lawyering: Clients, Empathy, and Compassion' (unpublished paper, 2006) https://web.law.duke.edu/sites/default/files/clinics/healthjustice/gerdy_-_the_heart_of_lawyering_clients_empathy_and_compassion.pdf accessed 16 April 2025.
[271] Sear (n 264)
[272] EI4Change, 'Emotional Intelligence in Mediation: Facilitating Resolution and Finding Common Ground' https://ei4change.com/emotional-intelligence-in-mediation-facilitating-resolution-and-finding-common-ground/ accessed 11 March 2025.
[273] L O O D E May, 'How Emotional Intelligence Impacts Conflict Resolution' (*Law Offices of Denise Eaton* Blog, 27 May 2024) https://demlegaleagle.com/blog/2024/05/how-emotional-intelligence-impacts-conflict-resolution/ accessed 12 March 2025.
[274] ADR Mediation, 'The Importance of Emotional Intelligence in Mediation' (ADR Mediation, n.d.) https://www.adrmediation.org.uk/the-importance-of-emotional-intelligence-in-mediation/ accessed 13 March 2025.
[275] American Bar Association Standing Committee on Professionalism, The Path to Lawyer Well-Being: Practical Recommendations for Positive Change (American Bar Association 2017) https://www.americanbar.org/groups/professional_responsibility/committees_commissions/standing-committee-on-professionalism/the-path-to-lawyer-well-being-practical-recommendations-for-pos/ accessed 18 March 2025.

[276] Zara Arif, 'Do Lawyers Need Emotional Intelligence?' (AllAboutLaw, 22 April 2024) https://www.allaboutlaw.co.uk/school-leaver-law-careers/becoming-a-lawyer/do-lawyers-need-emotional-intelligence accessed 17 March 2025.
[277] American Bar Association Standing Committee on Professionalism (n 275)
[278] Gerdy (n 270)
[279] LawCrossing (n 256)
[280] Arif (n 276)

4.4.2 EI in Managing Client Expectations and Stress

A key element of EI in this context is emotional regulation[281]. Lawyers must be able to manage their own emotions to avoid projecting anxiety or frustration onto their clients[282]. This emotional regulation is crucial for fostering a sense of control and stability for clients, particularly when they are facing difficult or high-pressure situations[283].

Moreover, Emotional awareness shapes how legal risk, uncertainty, and strategic compromise are framed, thereby influencing client expectations and decision trajectories[284]. Clients often have unrealistic expectations about the legal process, believing that a quick resolution is possible or that they will inevitably win their case[285].

Emotional regulation within the lawyer–client relationship therefore operates not merely as interpersonal sensitivity, but as a structuring mechanism for advice, expectation management, and strategic calibration within emotionally charged disputes[286].

4.4.3 Trust-Building and Rapport in the Lawyer-Client Dynamic

Cultural sensitivity, within legally accountable mediation advocacy, is not merely an interpersonal virtue but a condition of procedural legitimacy. Trust formation within the lawyer–client relationship functions not merely as interpersonal goodwill but as a structuring mechanism through which strategic alignment and authority are negotiated[287]. EI, which enables lawyers to navigate emotional and psychological

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[281] Debra Austin and Rob Durr, 'Emotion Regulation for Lawyers: A Mind Is a Challenging Thing to Tame' (2016) 16 *Wyoming Law Review* 387

[282] Rewire Trauma Therapy, 'A Guide for Lawyers Dealing With Stressed and Traumatized Clients' https://www.rewiretraumatherapy.com/blog/a-guide-for-lawyers-dealing-with-stressed-and-traumatized-clients accessed 27 March 2025.

[283] Muir (n 244)

[284] LawCrossing (n 256)

[285] Jennifer Anderson, 'Understanding Emotional Intelligence and Its Role in Litigation' (InfoTrack Blog, 17 January 2024) https://www.infotrack.com/blog/emotional-intelligence-for-litigators/ accessed 31 March 2025.

[286] Momentum Legal, 'Managing Stress in the Legal Profession: Strategies for Lawyers' (26 June 2023) https://www.momentumlegal.com/news/stress-management-for-lawyers/ accessed 28 March 2025.

[287] LawCrossing (n 256)

nuances, plays a critical role in fostering trust and maintaining positive relationships[288].

Cultural Sensitivity in Trust-Building

Cultural sensitivity is also essential in fostering trust, particularly in environmentally related planning disputes that involve diverse communities[289]. In many cases, such disputes affect marginalised groups with distinct cultural perspectives, such as indigenous populations or local communities with unique values tied to the land[290, 291]. Lawyers who are attuned to these cultural dynamics are better equipped to build rapport and establish trust with clients, especially when dealing with issues of environmental justice[292].

In the context of planning decisions that disproportionately impact vulnerable communities, demonstrating cultural awareness can significantly strengthen the lawyer-client relationship and improve the prospects for a successful resolution[293]. Lawyers who acknowledge diverse communication styles and respect alternative knowledge systems, such as indigenous land management practices, can foster better communication, making clients feel more comfortable in sharing their concerns[294]. This, in turn, leads to a more collaborative and effective dispute resolution process[295, 296].

Emotional awareness, regulation, and empathy therefore structure how trust, legitimacy, and strategic alignment are negotiated within the lawyer–client

[288] American Bar Association Standing Committee on Professionalism (n 275)

[289] Kerri Anne Crowne, 'Cultural Exposure, Emotional Intelligence, and Cultural Intelligence: An Exploratory Study' (2013) 13(1) *International Journal of Cross Cultural Management*

[290] Tao He, Lulu Liu and Manyi Gu, 'The Role and Development Trend of Third-Party Mediation in Environmental Disputes' (2023) 15(13) *Sustainability* 10197

[291] Robert D Bullard, 'Environmental Justice in the 21st Century: Race Still Matters' (2001) 49(3–4) *Phylon* 151–171

[292] Harder (n 132)

[293] John D Nakagawa, *Environmental Mediation: A New Strategy for Environmental Conflict Resolution* (MCP thesis, University of Rhode Island 1980) https://digitalcommons.uri.edu/theses/611/ accessed 25 April 2025.

[294] Ainize Peña-Sarrionandia, Moïra Mikolajczak and James J Gross, 'Integrating Emotion Regulation and Emotional Intelligence Traditions: A Meta-Analysis' (2015) 6 *Frontiers in Psychology*

[295] Robert A Mines, Rachel A Meyer and Michael R Mines, 'Emotional Intelligence and Emotional Toxicity: Implications for Attorneys and Law Firms' (2004)

[296] Jerry Firestone, Jonathan Lily and Isable Torres de Noronha, 'Cultural Diversity, Human Rights, and the Emergence of Indigenous Peoples in International and Comparative Environmental Law' (2005) 20(2) *American University International Law Review* 219

dyad[297, 298]. While EI has broad professional significance across legal practice, its operation within the lawyer–client relationship is analytically distinct from the emotional demands of advocacy and mediation conduct, which require lawyers to manage emotions in public, multi-party, and procedurally constrained settings.

However, while the lawyer–client dyad illustrates the interpersonal dimension of EI, mediation advocacy introduces additional layers of institutional accountability and multi-party complexity that exceed the relational boundaries of private representation.

4.5 Emotional Regulation in Legal Advocacy

This section maps key strands of the literature on emotional regulation relevant to mediation advocacy, not to rehearse established claims about its effectiveness, but to examine the limits of existing accounts when applied to legally accountable advocacy roles. In particular, it considers what prevailing emotional regulation frameworks fail to explain about how lawyers balance emotional engagement, ethical restraint, and professional responsibility within adversarial and public law mediation contexts. Unlike the lawyer–client relationship examined in Section 4.4, the focus here is on emotional regulation as a form of professional conduct exercised by lawyers in advocacy and mediation settings, where emotional engagement must be managed in relation to adversarial roles and institutional norms.

4.5.1 Managing Emotions During High-Conflict Mediation Sessions

Environmentally related planning disputes in the UK, often involve entrenched emotional grievances, deeply held values, and high stakes, making the effective management of emotions a cornerstone of productive engagement[299, 300].

Emotional Regulation as a Professional Advocacy Competency

Negative emotions like anger, frustration, or defensiveness can overshadow rational discourse, while unacknowledged feelings may perpetuate mistrust and resistance. Emotional regulation, which involves identifying, understanding, and influencing

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297 Polly Botsford, 'Why lawyers need to be taught more about emotional intelligence' (International Bar Association, 2019) https://www.ibanet.org/article/bc769d24-a76e-447a-aff1-fd92903bbd60 accessed 29 April 2025.
298 Kiser (n 16)
299 ADR Mediation (n 274)
300 Irvine and Farrington (n 153)

emotional states, is integral to achieving a balanced and collaborative mediation environment[301].

For the purposes of this thesis, emotional regulation techniques refer to the practical strategies through which legal professionals and mediators seek to recognise, manage, and respond to emotional dynamics during mediation. These techniques include practices such as reframing, emotion-labelling, de-escalation, and structured perspective-taking. They are discussed in this chapter as concepts identified within the mediation literature rather than as discrete variables measured during the empirical phases of the research. The interviews and surveys explored participants' broader perceptions and experiences of Emotional Intelligence and mediation advocacy, rather than systematically collecting data on the use or effectiveness of individual emotional regulation techniques.

Mediation scholarship identifies a range of emotional regulation techniques, including reframing[302, 303], emotion-labelling[304], de-escalation strategies[305], and structured perspective-taking[306]. While these techniques are well established within facilitative mediation literature, their normative orientation presupposes neutrality rather than partisan advocacy. When deployed by lawyers acting as client representatives, such practices raise unresolved questions concerning strategic influence, role fidelity, and professional accountability.

Self-Regulation in Mediation Advocacy: Professional and Ethical Demands

In high-conflict mediations, the ability of lawyers and mediators acting within advocacy contexts to manage their own emotions is just as crucial as managing the parties' emotions. Emotional self-regulation helps lawyers and mediators remain neutral and focused when acting within mediation advocacy contexts, modelling emotional stability while remaining accountable to professional and ethical

[301] Kelly and Kaminskienė (n 33)
[302] Jessica Katz Jameson, Andrea M Bodtker and Tim Linker, 'Facilitating Conflict Transformation: Mediator Strategies for Eliciting Emotional Communication in a Workplace Conflict' (2010) 26(1) *Negotiation Journal* 25
[303] Jessica Katz Jameson, Andrea M Bodtker, Dennis M Porch and William J Jordan, 'Exploring the Role of Emotion in Conflict Transformation' (2010) 27(2) *Conflict Resolution Quarterly* 167
[304] Kalter M, Bollen K, Euwema M and Verbeke A-L, 'Matter of Feelings: Mediators' Perceptions of Emotion in Hierarchical Workplace Conflicts' (2021) 12 *Frontiers in Psychology* 629768
[305] Richard J Davidson and Bruce S McEwen, 'Social Influences on Neuroplasticity: Stress and Interventions to Promote Well-Being' (2012) 15 *Nature Neuroscience* 689
[306] Eran Halperin, 'Emotion, Emotion Regulation, and Conflict Resolution' (2014) 6(1) *Emotion Review* 68

standards. This is especially important in mediation advocacy, where maintaining composure and EI can guide the mediation towards a fair resolution.

Application to Environmentally Related Planning Disputes

In the specific context of environmentally related planning disputes, emotional stakes are often heightened by long-term impacts, deeply personal investments, and conflicts over values like property rights versus environmental conservation. Mediators must adopt tailored strategies to address these unique dynamics.

In environmentally related planning disputes, scholarship highlights the importance of value articulation, anticipatory management of emotional flashpoints, transparency mechanisms, and structured pre-mediation preparation as techniques for stabilising emotionally charged processes[307, 308, 309]. The literature emphasises that surfacing shared or competing values can reduce polarisation, while anticipatory identification of emotional triggers may mitigate escalation before formal sessions commence. Pre-mediation coaching and structured preparation are likewise presented as mechanisms for strengthening emotional regulation and communication capacity among participants[310, 311]. However, these discussions are predominantly framed from the perspective of neutral facilitation and mediator skill-development, offering limited examination of how such practices operate when deployed by lawyers acting as partisan representatives within legally accountable advocacy roles.

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[307] Kalter and others (n 304)
[308] Cherniss (n 224)
[309] K A Rahman, 'Mediation and Mediator Skills: A Critical Appraisal' *(working paper, SSRN 2018)* https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3231684 accessed 6 March 2025.
[309] Cherniss (n 224)
[310] Bill Eddy, 'Pre-Mediation Coaching: 4 Skills for Your Mediation Clients' (High Conflict Institute, 11 October 2012) https://www.highconflictinstitute.com/pre-mediation-coaching-4-skills-for-your-mediation-clients/ accessed 7 March 2025.
[311] Kalter and others (n 304)

4.5.2 The Impact of Emotional Control on Professional Conduct and Decision-Making

In legal advocacy, especially within the context of high-conflict situations like environmentally related planning disputes, emotional control is a fundamental aspect of maintaining professional conduct and ensuring sound decision-making[312, 313, 314].

Enhancing Professional Conduct Through Emotional Regulation

Legal professionals frequently encounter situations where strong emotions, whether from clients, opposing parties, or personal biases, could impair their judgment and behaviour[315]. The literature consistently links emotional regulation with improved stress management among legal professionals, yet offers limited analysis of how such regulation interacts with advocacy ethics, role fidelity, and institutional accountability in public law mediation contexts.

Ethical Decision-Making and Emotional Control

The ability to regulate emotions is also crucial for ethical decision-making in legal practice[316]. In high-stakes environmental disputes, legal professionals are required to make decisions based on legal principles and ethical standards rather than emotional biases[317].

Moreover, emotional regulation helps mitigate cognitive biases, such as the confirmation bias, where individuals favour information that supports their pre-existing beliefs[318]. Legal professionals who can regulate their emotions are less likely to be influenced by these biases, resulting in more balanced and evidence-

312 John C Shepherd and Jordan B Cherrick, 'Advocacy and Emotion' (1991) https://www.alwd.org/index.php?option=com_attachments&task=download&id=161 accessed 10 March 2025.
313 Lateral Link, 'The Importance of Emotional Intelligence in Legal Practice' https://laterallink.com/the-importance-of-emotional-intelligence-in-legal-practice/ accessed 11 March 2025.
314 Kelton CC, 'Clients Want Results, Lawyers Need Emotional Intelligence' (2015) 63(2) *Cleveland State Law Review* 459–494
315 Lateral Link (n 313)
316 American Bar Association Standing Committee on Professionalism (n 275)
317 Netta Weinstein, Guy Itzchakov and Nicole Legate, 'The Motivational Value of Listening During Intimate and Difficult Conversations' (2022) *Social and Personality Psychology Compass*
318 Shari E Belitz, 'The Cognitive Biases That Impact Your Cases' (Litify Blog, August 2019) https://www.litify.com/blog/cognitive-bias-improve-litigation-results accessed 20 March 2025.

based decision-making[319, 320]. For example, in an environmentally related planning disputes, emotional regulation helps ensure that a mediator or lawyer's personal sympathies do not cloud their professional judgment, allowing them to make decisions that are impartial and grounded in the law[321].

Impartiality in Mediation

Emotional control is particularly critical in maintaining impartiality during mediation[322]. Mediation in environmental disputes often involves parties with deeply opposing views, and the ability of mediators and legal professionals to regulate their emotions ensures that they can remain neutral and focused on facilitating constructive dialogue[323]. If a mediator allows personal biases or emotions to influence their conduct, it can undermine their neutrality and hinder the resolution process[324, 325].

Emotional regulation allows legal professionals to empathise with all parties while maintaining a professional distance, fostering a sense of fairness and trust[326]. For instance, a mediator working on a contentious environmental case can use emotional regulation techniques to avoid siding with one party, even if they personally sympathise with that side's perspective. This neutrality is essential for maintaining the integrity of the mediation process and guiding the parties toward mutually acceptable solutions[327].

Mitigating Cognitive Biases

Legal professionals are often subject to cognitive biases that can distort their judgment. "Affective reasoning" occurs when decisions are influenced more by emotions than by objective analysis, such as when a lawyer's emotional reactions to a case lead them to overestimate the strength of their arguments[328]. Emotional

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[319] Vincent Berthet, 'The Impact of Cognitive Biases on Professionals' Decision-Making: A Review of Four Occupational Areas' (2022) 12 *Frontiers in Psychology*
[320] Walter S Hersing, 'Managing Cognitive Bias in Safety Decision Making: Application of Emotional Intelligence Competencies' (2018) *Journal of Safety Science and Engineering*
[321] Austin and Durr (n 281)
[322] Ngcobo (n 213)
[323] ADR Mediation (n 274)
[324] Ngcobo (n 213)
[325] Brian L Heisterkamp, 'Taking the Footing of a Neutral Mediator' (2006) *Conflict Resolution Quarterly* 23(3) 301
[326] ADR Mediation (n 274)
[327] Claudia L Hale and Chris Nix, 'Achieving Neutrality and Impartiality: The Ultimate Communication Challenge for Peer Mediators' (2007) *Mediation Quarterly* 14(4) 337
[328] Weinstein, Itzchakov and Legate (n 331)

regulation helps counteract these biases by encouraging a more objective approach to decision-making, promoting rational problem-solving even in high-pressure situations[329].

Stress Management and Long-Term Well-Being

Emotional regulation operates as a mechanism of professional self-management within adversarial environments, shaping how professional judgement is exercised under institutional pressure[330]. Legal professionals, especially those dealing with complex environmental disputes, face high levels of stress, which can negatively affect their decision-making capacity and long-term job satisfaction[331].

Stress management techniques, such as mindfulness and cognitive-behavioural strategies, have been shown to improve emotional regulation and reduce the negative impacts of stress on decision-making[332, 333]. While emotional regulation is consistently presented as beneficial within mediation scholarship, existing frameworks offer limited analysis of how such practices intersect with advocacy ethics, role fidelity, and public accountability; gaps that necessitate closer empirical examination of EI in legal mediation advocacy. Emotional regulation therefore operates as legally constrained professional judgement rather than mere interpersonal skill.

4.6 Critical Review of EI Theories in Legal Mediation Advocacy

This section synthesises the preceding analysis and evaluates the adequacy of existing EI frameworks for legally regulated mediation advocacy.

4.6.1 Strengths of Emotional Intelligence Models in Legal Mediation Advocacy

Existing EI frameworks illuminate important dimensions of mediation practice, particularly in relation to empathy, emotional awareness, stress regulation and

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329 Jeremy A Blumenthal, 'Law and the Emotions: The Problems of Affective Forecasting' (2005) 80 *Indiana Law Journal* 155
330 Momentum Legal (n 286)
331 Kadović M, Mikšić Š and Lovrić R, 'Ability of Emotional Regulation and Control as a Stress Predictor in Healthcare Professionals' (2023) 20(1) *International Journal of Environmental Research and Public Health* 541
332 Austin and Durr (n 281)
333 Vella E and McIver S, 'Reducing Stress and Burnout in the Public-Sector Work Environment: A Mindfulness Meditation Pilot Study' (2018) 30(2) *Health Promotion Journal of Australia* 219

relational communication [334, 335, 336, 337, 338]. These strengths are frequently invoked in professional and facilitative mediation literature as enhancing leadership effectiveness, adaptability and collaborative problem-solving[339, 340]. However, their normative orientation presupposes neutrality and interpersonal enhancement rather than legally accountable advocacy. While EI models may support relational stability and ethical sensitivity, they do not specify how emotional discernment operates under adversarial duties, procedural fairness requirements and institutional accountability structures. Their contributions are therefore conditional: without conceptual adaptation, they remain insufficient for analysing mediation advocacy within public law contexts.

4.6.2 Limitations of EI Models in Legal Mediation Advocacy

1. *Generalisation Across Contexts*
   Existing EI models are structurally under-specified when transposed into legally regulated mediation advocacy[341]. Their primary limitation is institutional abstraction: they conceptualise emotional competence at the level of individual capacity while leaving largely unexamined the procedural, adversarial and public law constraints that govern how such competence may legitimately be exercised. While frameworks such as Goleman's[342] illuminate interpersonal dynamics and leadership-oriented emotional capacities, they do not theorise how emotional judgement operates within role fidelity, evidentiary accountability and institutional scrutiny in adversarial public law contexts. Adapting EI to legal mediation contexts, therefore, requires integrating EI with specific legal competencies, such as understanding regulatory frameworks and managing legal hierarchies. Notably, 71.4% of legal respondents in the Bonomally & Agapiou (2024)'s study expressed a preference for litigation over ADR, reflecting a deep-rooted cultural

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[334] Goleman (n 156)
[335] McCallum (n 266)
[336] Goleman (n 156)
[337] M Channell, 'Daniel Goleman's Emotional Intelligence' (TSW Blog, 6 October 2025) https://www.tsw.co.uk/blog/leadership-and-management/daniel-goleman-emotional-intelligence/ accessed 2 April 2025.
[338] Botsford (n 297)
[339] Goleman (n 156)
[340] Williams and Wilson (n 201)
[341] Kelly and Kaminskienė (n 33)
[342] Goleman (n 156)

alignment with formal adjudication and a scepticism toward alternative forums[343].

2. *Insufficient Focus on Legal-Specific Competencies*
   Existing EI frameworks tend to focus on individual emotional capabilities but often overlook the specific competencies required in legal mediation. These competencies include understanding power dynamics, navigating regulatory frameworks, and maintaining procedural integrity[344]. For example, Mayer and Salovey's model does not explicitly account for institutional power structures, which are often critical in environmental disputes involving government agencies or large corporations. As such, while EI frameworks can help mediators manage emotions, they may fail to address the complexities of legal mediation, where power imbalances and formal legal processes significantly influence the negotiation dynamics[345].

3. *Challenges in Measurement and Training*
   A significant limitation of EI models is the challenge of accurately measuring and training for EI in legal professionals. For instance, while ADR is widely accepted as a flexible resolution strategy, Bonomally & Agapiou (2024) found that many legal practitioners still lack confidence and training in its use; highlighting the need for frameworks that blend EI training with practical legal education[346]. Tools like the Emotional Competence Inventory (ECI) and the Mayer-Salovey-Caruso Emotional Intelligence Test (MSCEIT) rely on self-reported data, which may not fully capture the practical application of EI in high-stakes legal settings.
   Critics argue that these tools fail to assess the real-world emotional competencies required in legal mediation advocacy. Furthermore, the lack of standardised training programs for EI in legal contexts makes it difficult for professionals to develop and apply EI skills effectively[347]. In legal mediation, where mediators need to demonstrate neutrality, ethical reasoning, and

[343] Bonomally and Agapiou (n 66)
[344] Schreier (n 163)
[345] Botsford (n 297)
[346] Bonomally and Agapiou (n 66)
[347] McCallum (n 266)

emotional regulation, developing reliable and validated training programs that align with legal-specific competencies is essential.

4. *Risk of Emotional Manipulation*
   A central normative risk in deploying EI within mediation advocacy lies in its capacity to amplify persuasive asymmetries through subtle emotional calibration that may evade formal procedural scrutiny. Skilled mediators who are highly attuned to the emotional states of parties may use this awareness to influence the direction of negotiations subtly. This can lead to ethical concerns, particularly in disputes involving marginalised or vulnerable communities. When power imbalances already exist in the mediation process, there is a risk that highly skilled mediators could exploit their EI to advance particular interests rather than facilitating a resolution[348]. Legal mediation should, therefore, include safeguards to prevent the misuse of EI and ensure that the mediation process remains ethical and unbiased.

5. *Cultural and Demographic Insensitivity*
   Another limitation of many EI models is their lack of cultural sensitivity. Most EI models were developed in Western contexts, which may not fully account for cultural variations in emotional expression and regulation. In environmentally related planning disputes in multicultural regions like the UK, where diverse community interests often intersect, EI models may fail to address cultural differences in emotional communication. For example, norms surrounding emotional expression in Asian or African communities may differ significantly from those in Western contexts[349]. Therefore, mediators must be mindful of these differences and adapt their use of EI to accommodate diverse cultural norms[350, 351].

[348] Jim Coben and Lela P Love, 'Trick or Treat? The Ethics of Mediator Manipulation' (2003) 17 *Dispute Resolution Magazine* 19
[349] Proloyendu Bhoumick, 'It's Really Matter: Review of the Book *Emotional Intelligence: Why It Can Matter More Than IQ* by Daniel Goleman' (2018) 9(3) *Research Journal of Humanities and Social Sciences* 639–644
[350] Maria Akbar Saberi, *The Role of Emotional Intelligence in Enhancing Intercultural Sensitivity* (PhD thesis, Brunel University 2012) http://bura.brunel.ac.uk/handle/2438/7383 accessed 11 April 2025.
[351] McCallum (n 266)

6. *Underestimation of Structural Constraints*
   Finally, EI models often focus on individual emotional competencies without considering the broader structural and systemic barriers that may inhibit their application in legal mediation[352]. In environmentally related planning disputes, mediators operate within rigid legal frameworks that prioritise procedural compliance over emotional engagement. These structural constraints limit the extent to which EI can influence the mediation process. Mediators may find themselves navigating a complex web of legal regulations, political pressures, and institutional hierarchies that demand compliance with external frameworks rather than emotional sensitivity[353, 354].

Together, these limitations demonstrate that prevailing EI frameworks remain analytically insufficient for explaining how emotional judgement operates within legally accountable mediation advocacy. Their focus on individual emotional capacity, largely detached from institutional constraint and professional role obligations, leaves unresolved how emotional reasoning can legitimately function within adversarial and public law mediation settings. This limitation therefore establishes the need for a reconceptualisation of EI that integrates affective interpretation with institutional accountability, advocacy ethics, and procedural constraint. The following section develops this reconceptualisation by outlining a legal-specific framework through which EI can be understood as a form of relational legal judgement operating within institutionally constrained mediation advocacy.

4.6.3 Advancing a Legal-Specific EI Framework: Integrating Mediation Advocacy and Ethical Safeguards

The preceding analysis demonstrates both the conceptual promise and structural constraints of existing EI frameworks in legally regulated mediation contexts. Advancing the analysis requires a legal-specific framework that integrates mediation

[352] Salovey and Mayer (n 32)
[353] Botsford (n 297)
[354] Oliver J Sheldon, David Dunning and Daniel R Ames, ‘Emotionally Unskilled, Unaware, and Uninterested in Learning More: Reactions to Feedback about Deficits in Emotional Intelligence’ (2014) 99(1) *Journal of Applied Psychology* 125–137

advocacy with institutional accountability safeguards[355]. The purpose is to specify how emotional judgement operates within legally regulated mediation.

Bridging Gaps in EI for Legal Mediation

Existing EI models remain institutionally under-specified when transposed into legally regulated mediation advocacy[356]. A legal-specific EI framework must integrate core emotional competencies with institutional accountability, procedural fairness, and advocacy ethics if it is to operate legitimately within public law mediation contexts. Such a framework clarifies how emotional discernment can operate without compromising legal standards or ethical obligations.

Incorporating Mediation Advocacy into EI Training

Mediation advocacy entails strategic representation within procedurally bounded dispute resolution settings[357]. Analytically integrating mediation advocacy principles clarifies the institutional conditions under which emotionally informed judgement can operate legitimately[358].

Ethical and Context-Sensitive Implementation

The ethical application of EI in legal mediation requires the integration of safeguards to prevent misuse and manipulation. High EI skills, while valuable, pose risks of emotional manipulation or bias, particularly in disputes involving vulnerable communities[359]. These risks necessitate explicit ethical constraints within any legal-specific EI framework[360].

Furthermore, addressing cultural and contextual nuances is paramount. EI models often rely on Western-centric assumptions about emotional expression, which may not align with diverse cultural norms. Tailoring EI frameworks to account for these

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355 Maw Der Foo, Hillary Anger Elfenbein, Hwee Hoon Tan and Voon Chuan Aik, 'Emotional Intelligence and Negotiation: The Tension between Creating and Claiming Value' (2004) 15(4) *International Journal of Conflict Management* 411–429

356 M E Kann, 'Review of *Breaking the Impasse: Consensual Approaches to Resolving Public Disputes* by Lawrence Susskind and Jeffrey Cruikshank, and *The Politics of Environmental Mediation* by Douglas J Amy' (2013) *American Political Science Review*

357 Boulle L, *Mediation: Principles, Process, Practice* (LexisNexis Butterworths 2005)

358 B C Glavovic, E F Dukes and J M Lynott, 'Training and Educating Environmental Mediators: Lessons from Experience in the United States' (2007) 14(4) *Mediation Quarterly* 269

359 Duffy (n 211)

360 Botsford (n 297)

differences can enhance their applicability and effectiveness in multicultural mediation settings[361].

Toward Systemic Integration

Individual emotional capacity remains mediated by systemic and structural conditions. Institutional pressures, such as lobbying or regulatory constraints, can influence decision-making and ethical behaviour[362]. To address these challenges, EI frameworks should emphasise systemic factors, encouraging mediators to consider broader institutional dynamics alongside individual emotional skills[363]. By adopting a holistic approach, mediators can better navigate the complexities of environmentally related disputes, balancing stakeholder interests with regulatory and ethical considerations.

Developing Reliable Assessment Tools

Existing tools, such as the Mayer-Salovey-Caruso Emotional Intelligence Test (MSCEIT), have faced criticism for their inability to capture the complexities of legal mediation, including power dynamics and the need for impartiality[364]. Context-sensitive assessment remains necessary if EI is to be evaluated within legally accountable mediation practice[365].

Advancing a legal-specific EI framework therefore requires reconceptualising EI as a form of relational legal judgement exercised within the institutional, ethical, and procedural constraints of mediation advocacy. Such specification clarifies how emotional discernment may operate without compromising legal standards or institutional constraint[366]. At this stage, it is necessary to clarify why EI, rather than

361 McCallum (n 266)
362 Jacob Bercovitch and Richard Jackson, *Conflict Resolution in the Twenty-first Century: Principles, Methods, and Approaches* (University of Michigan Press 2009)
363 Magali A Delmas and Michael W Toffel, 'Institutional Pressures and Environmental Strategies' (Working Paper, University of California, December 2005) https://escholarship.org/uc/item/1bw326ts accessed 21 April 2025.
364 Colton Shannon, Burnout in Novice Counselors: Occupational Support and Social Connectedness as Moderators of the Relationship Between Occupational Stress and Burnout (PhD thesis, Trevecca Nazarene University 2022) https://www.proquest.com/openview/16c87c36a2b47ab22c9d367947e83f2f/1?cbl=18750&diss=y&pq-origsite=gscholar accessed 22 April 2025.
365 Richard E Boyatzis and Fabio Sala, 'Assessing Emotional Intelligence Competencies' (2004) in Glenn Geher (ed), *The Measurement of Emotional Intelligence* (Nova Science Publishers, forthcoming)
366 Marjaana Gunkel, Christopher Schlaegel and Vas Taras, 'Cultural Values, Emotional Intelligence, and Conflict Handling Styles: A Global Study' (2016) *Journal of World Business*

adjacent theoretical frameworks, provides the most analytically coherent lens for this thesis. Alternative approaches such as care ethics, procedural justice theory, emotional labour scholarship, or general theories of professional discretion illuminate important aspects of legal practice. However, each tends to operate at a single analytical register: care ethics foregrounds moral orientation; procedural justice theory emphasises fairness perception; emotional labour scholarship examines affective regulation under institutional demand; and discretion theory centres role-based authority. None, in isolation, integrates affective interpretation, cognitive calibration, professional role constraint, and institutional legitimacy within a single explanatory framework.

EI, as reconceptualised in this thesis, therefore operates as a form of relational legal judgement linking micro-level professional judgement (how lawyers interpret and regulate affect in real time), meso-level mediation advocacy practice (how emotional reasoning operates within partisan representation under ethical constraint), and macro-level institutional legitimacy (how authority is stabilised within public law dispute resolution systems). By integrating cognition and affect within structured professional roles, EI explains how emotional awareness becomes legally accountable judgement rather than interpersonal sensitivity alone. The next chapter moves from this conceptual analysis to the applied context of mediation advocacy in environmentally related planning disputes. It examines how emotional awareness, empathy, and emotional regulation operate within negotiation dynamics, lawyer–client relationships, and mediation practice, and how these competencies interact with the institutional tensions and ethical risks that shape emotionally intelligent advocacy in public law dispute resolution.

4.6.4 Gaps in Existing Literature: EI and Its Empirical Impact on Legal Outcomes

EI has been identified as relevant to legal professionals, particularly in mediation, where managing emotions may support more constructive outcomes. However, while the theoretical and anecdotal benefits of EI in legal practice have been widely discussed, there are substantial gaps in the empirical literature regarding its direct impact on legal outcomes, particularly in environmentally related planning disputes. This subsection critically explores the existing gaps in the literature, focusing on the limited empirical studies, measurement issues, and the challenges of assessing the true influence of EI on legal outcomes in mediation. The gap between measured EI improvement and demonstrable legal outcomes points to a need for mixed-method studies that link training metrics to tangible mediation success indicators.

1. Limited Empirical Evidence Linking EI to Legal Outcomes

Although EI is widely theorised as professionally advantageous, empirical verification of its impact on mediation outcomes remains underdeveloped. Most of the existing research focuses on the benefits of EI for individual legal professionals, such as improved stress management and communication skills, rather than its effects on systemic or legal outcomes[367]. Few studies investigate how EI directly influences the resolution of legal disputes, particularly in the context of environmentally related planning disputes, which often involve multiple stakeholders with competing interests and significant emotional stakes.

Moreover, most studies that explore the relationship between EI and legal outcomes tend to focus on relatively narrow variables, such as client satisfaction or lawyer well-being, rather than broader, systemic measures of success, such as the sustainability of mediation agreements or the fairness of the outcomes. For example, while studies have shown that emotionally intelligent mediators may create a more harmonious negotiation environment[368] there is little empirical evidence on whether this translates into more successful or fair long-term outcomes for all parties involved.

2. Inconsistency in Measuring EI in Legal Settings

A critical gap in the literature lies in the inconsistency of how EI is conceptualised and measured in legal settings. While EI is widely regarded as a multi-dimensional construct, with models such as Goleman's (1995) mixed model and Mayer and Salovey's (1997) ability model dominating the discourse, these frameworks have not been systematically adapted or tested in the context of legal mediation. Many studies still rely on generic EI measurement tools, such as the MSCEIT (Mayer-Salovey-Caruso Emotional Intelligence Test) or the EQ-i (Emotional Quotient Inventory), which may not capture the nuances of how EI functions within the legal

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[367] Kim K, Cundiff NLA and Choi SB, 'The Influence of Emotional Intelligence on Negotiation Outcomes and the Mediating Effect of Rapport: A Structural Equation Modeling Approach' (2014) 30(1) *Negotiation Journal* 49

[368] Shannon (n 364)

environment, especially when mediation requires balancing multiple, often conflicting emotional dynamics.

In addition, critics argue that existing EI assessments may fail to adequately measure the practical application of EI in real-world legal settings, particularly in high-conflict situations[369]. Standardised tests of EI often fail to account for context-specific factors, such as the power dynamics between parties in environmentally related planning disputes or the emotional pressures faced by legal professionals when navigating complex regulatory landscapes. This discrepancy highlights the need for EI measurement tools tailored to the specific challenges of legal mediation, taking into account the contextual variability of different legal environments.

3. Methodological Limitations in Existing Research

Another significant gap in the literature is the methodological limitations of existing research on EI in legal mediation. Most studies exploring the role of EI in legal outcomes rely on cross-sectional or self-reported data, which can lead to biases such as social desirability or retrospective recall issues[370, 371]. Self-reported measures of EI often fail to capture the dynamic, real-time applications of EI in mediation sessions, where decisions are influenced by rapidly changing emotional cues from multiple stakeholders.

Furthermore, there is a lack of longitudinal studies that track the long-term effects of EI on legal outcomes, particularly in complex environmentally related planning disputes[372]. While short-term outcomes, such as mediator satisfaction or immediate post-mediation resolutions, are often measured, there is little research on how EI contributes to the sustainability of agreements or the broader impact on stakeholder relationships[373]. Longitudinal studies would provide more robust insights into the effectiveness of EI in fostering lasting, positive legal outcomes, such as compliance

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[369] Creed Branson, 'Why Is Emotional Intelligence Criticized?' (9 June 2023) *Creed Branson* https://creedbranson.com/why-is-emotional-intelligence-criticized/ accessed 24 April 2025.
[370] Goleman (n 156)
[371] Gijs A Holleman, Ignace TC Hooge, Chantal Kemner and Roy S Hessels, 'The "Real-World Approach" and Its Problems: A Critique of the Term Ecological Validity' (2020) 11 *Frontiers in Psychology* art 721
[372] Valentina Marchetti, Alessio Panno, Massimiliano Scopelliti, Laura Romano, Giulia Angelini, Elena Rinallo, Daniela Barni and Cristina Fiorilli, 'Trait Emotional Intelligence and Ecological Outcomes: The Role of Connectedness to Nature' (2024) 12(1) *BMC Psychology* art 201
[373] Alessandra Montenegro, Marina Dobrota, Marija Todorović, Teodora Slavinski and Vladimir Obradović, 'Impact of Construction Project Managers' Emotional Intelligence on Project Success' (2021) 13(19) *Sustainability* 10804

with mediation agreements or the maintenance of positive relationships among disputing parties.

Additionally, much of the research on EI in legal practice focuses on a narrow set of variables, often neglecting other critical factors that might interact with EI to shape legal outcomes, such as institutional pressures, professional norms, or the influence of external regulatory bodies[374]. A more holistic approach is needed to understand how EI works in concert with these external factors to influence legal mediation outcomes.

4. Lack of Focus on Ethical and Systemic Impacts of EI

While many studies discuss the role of EI in promoting ethical decision-making in legal practice, there is little research on how EI influences ethical outcomes in the context of legal mediation, particularly with respect to systemic issues such as institutional pressures and power dynamics[375]. Given the ethical challenges faced by legal professionals in high-stakes mediation, where emotional biases may influence objectivity, EI could play a significant role in maintaining ethical standards and ensuring impartiality[376]. However, the empirical evidence linking EI to ethical decision-making in mediation remains scarce.

For instance, while Goleman (2020)[377] and other scholars argue that EI can enhance ethical sensitivity by enabling professionals to better understand the emotions of others, studies investigating how EI impacts ethical decision-making in legal mediation are minimal. Further research is needed to examine whether EI can help mediators navigate the ethical dilemmas inherent in high-conflict disputes, such as balancing empathy with impartiality or managing emotional entanglements with clients[378]. In particular, there is a need for research that investigates the role of EI in addressing systemic inequities, such as biases against marginalised groups in

[374] Colin James, 'Lawyer Dissatisfaction, Emotional Intelligence and Clinical Legal Education' (2008)
[375] Rahul Chatterjee, 'The Power Duo: Emotional Intelligence and Ethical Decision Making' (LinkedIn, 13 April 2024) https://www.linkedin.com/pulse/power-duo-emotional-intelligence-ethical-decision-rahul-chatterjee-vkwrc/ accessed 28 April 2025.
[376] American Bar Association, 'How Emotional Intelligence Helps You Avoid Ethical Traps' (ABA News, April 2018) https://www.americanbar.org/news/abanews/publications/youraba/2018/april-2018/avoid-ethical-traps-with-emotional-intelligence-skills--experts-/ accessed 29 April 2025.
[377] Goleman (n 156)
[378] The Editorial Team, 'Daniel Goleman's Emotional Intelligence Theory Explained' (27 February 2013) *Resilient Educator* https://resilienteducator.com/classroom-resources/daniel-golemans-emotional-intelligence-theory-explained/ accessed 30 April 2025.

environmentally related planning disputes, and how EI can be used to foster more inclusive and just outcomes.

Addressing these gaps is necessary if EI is to move from aspirational rhetoric to empirically grounded professional doctrine. The absence of a socio-legal account of how emotional judgement operates within institutionally structured mediation contexts remains a significant lacuna in the literature. Future research must therefore develop legal-context-specific measurement tools, explore longitudinal impacts, and integrate EI into structured mediation advocacy training frameworks tailored to public law dispute resolution.

Recent empirical work by Bonomally and Agapiou [379] supports the structural analysis advanced in this chapter by challenging the 'gatekeeper' narrative and demonstrating that adversarial training may be less significant as a barrier to ADR uptake than previously assumed. Instead, their findings highlight enforceability and judicial incentives as more decisive determinants of lawyer engagement with ADR processes. However, that study prioritised statutory and procedural reform. The present analysis extends this perspective by foregrounding transparency, stakeholder legitimacy, and public trust as equally central to the institutional viability of ADR in environmentally related planning disputes.

Despite the conceptual richness of EI frameworks and the growing recognition of their relevance to legal practice, existing scholarship remains limited in its empirical examination of how EI operates in mediation advocacy within public law contexts. This thesis addresses that gap through a socio-legal, mixed methods investigation of environmental planning mediation advocacy, integrating practitioner interviews, survey data, and institutional analysis to examine how emotional competence functions as legally accountable professional judgement within the institutional architecture of UK planning mediation.

4.7 Chapter Summary

This chapter has demonstrated that prevailing EI frameworks remain conceptually under-specified when transposed into legally regulated mediation advocacy. Rather

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[379] Sneha Bonomally and Andrew Agapiou, 'ADR and the Legal Professions in Planning and Environmental Disputes: Strategic Role Positioning and Institutional Barriers' (2025) *International Journal of the Legal Profession* (advance online publication) https://doi.org/10.1080/09695958.2025.2539100 a

than treating EI as a transferable interpersonal competency, the analysis situates emotional judgement within advocacy ethics, procedural fairness, and public accountability as features of legally regulated mediation practice.

Together, the literature demonstrates that prevailing EI frameworks illuminate interpersonal dynamics but cannot adequately account for how emotional judgement is legitimised within adversarial and public law mediation advocacy. Their abstraction from institutional duty, procedural fairness, and structural accountability renders them conceptually incomplete when applied to legally regulated advocacy roles. The following chapter develops the applied dimension of this framework by examining mediation advocacy in environmentally related planning disputes. It analyses how emotional awareness, empathy, and emotional regulation shape negotiation conduct, lawyer–client interaction, and mediation participation within institutionally constrained dispute resolution settings. The empirical chapters that follow then examine how these dynamics are experienced and operationalised by legal professionals in practice.

Chapter 5: Emotional Intelligence in Mediation: Legal Professionalism, Negotiation Dynamics and Ethical Considerations in Environmentally Related Planning Disputes

5.1 Introduction

Building on Chapter 4's conceptualisation of Emotional Intelligence (EI) as legally accountable relational judgement, this chapter examines how emotionally intelligent mediation advocacy operates within the institutional realities of public law planning disputes, including statutory decision-making frameworks, regulatory oversight, and the public-interest obligations that shape planning governance. It provides the theoretical bridge between the conceptual framework developed in Chapter 4 and the empirical analysis in Chapters 6–8 by specifying the ethical and professional stakes that arise when emotion becomes a strategic resource within public-interest, multi-stakeholder environmental mediation.

The chapter proceeds in five sections. It first analyses the procedural tensions inherent in environmental mediation, including flexibility versus enforceability and voluntariness versus coercion. It then examines the role of planning and environmental lawyers, before turning to emotional regulation and negotiation scholarship. The final sections develop a cumulative ethics argument, tracing how empathy and emotional awareness may evolve into strategic influence, partiality, and ultimately the instrumentalisation of EI beyond existing regulatory safeguards.

From this analysis, the chapter develops an original three-stage ethical risk model of emotionally intelligent mediation advocacy: (1) empathic engagement as strategic influence; (2) the emergence of partiality or perceived bias; and (3) the instrumentalisation of emotional competence beyond institutional constraint. This model provides a structured conceptual framework for analysing how emotionally intelligent practice can evolve from benign engagement to ethically consequential influence within public law mediation. The model also acknowledges a more troubling possibility: that emotionally intelligent advocacy may function as a subtle instrument of influence capable of shaping emotional climates, moderating dissent, or steering outcomes without overt coercion. The ethical question is therefore not whether EI is effective, but whether its deployment risks converting empathic attunement into a form of strategic emotional management that obscures power asymmetries.

5.2 The Mediation Process: Navigating Institutional Tensions

This section establishes the institutional and procedural context in which emotionally intelligent mediation advocacy operates by identifying the systemic tensions that characterise environmentally related planning disputes, including statutory planning obligations, regulatory accountability, and the interaction between mediation processes and formal public law decision-making structures. Drawing on socio-legal and Alternative Dispute Resolution (ADR) scholarship, it examines three core dynamics: the relationship between procedural structure and normative complexity; the limits of voluntariness in the presence of power asymmetries; and the constraints of mediation flexibility where agreements lack regulatory force. Together, these tensions clarify why emotional fluency becomes particularly salient in mediation advocacy and why its deployment carries distinctive ethical implications.

5.2.1 Procedural Structure and Normative Complexity

Mediation in environmentally related planning disputes is often framed as a structured yet flexible process that offers an orderly pathway toward resolution. Standardised stages such as initiation, preparation, dialogue, negotiation, and agreement create the impression of predictability and procedural fairness[380]. However, when applied to disputes characterised by normative conflict, including those involving ecological preservation, indigenous land rights, or contested planning developments, this procedural framework may obscure more than it clarifies.

These procedural dynamics matter here not as a general critique of mediation, but because they shape the ethical conditions under which EI is deployed. Where mediation prioritises closure over normative recognition, emotional practices may reinforce settlement without addressing underlying disagreement. This creates a specific ethical vulnerability for mediation advocacy in public-interest disputes.

Furthermore, the formal structure of mediation tends to prioritise outcome over process, encouraging compromise even when parties are not operating from comparable positions of power or legitimacy. This often results in what Kolb &

[380] International Institute for Conflict Prevention and Resolution (CPR), *CPR Mediation Procedure* (effective 1 July 2025) https://drs.cpradr.org/rules/mediation/cpr-mediation-procedure accessed 6 March 2025.

Williams (2000)[381] call a "shadow negotiation"; where the real dynamics of power, authority, and identity play out beneath the surface of seemingly cooperative dialogue.

Even the initial agreement to mediate, often lauded as evidence of party autonomy, has been critically scrutinised in the ADR literature. Environmental NGOs and local community groups may experience pressure to enter mediation in contexts where participation is treated as an expected step in planning engagement. This raises the question: how "voluntary" is a process when one party has no viable alternative?

5.2.2 Reassessing Voluntariness in Environmental Mediation

Building on the concern identified in Section 5.2.1 that mediation proceduralises normative disagreement, this section examines how the principle of voluntariness may be undermined in practice by institutional and resource asymmetries. Voluntariness is conventionally treated as a foundational principle of mediation, underpinning its legitimacy as an alternative to adjudication. The presumption that parties enter the process willingly, and with equal agency, is central to its normative appeal. However, in the context of environmental and planning disputes, where legal, political, and economic asymmetries are pronounced, this assumption warrants critical interrogation.

Prior qualitative research by Bonomally & Agapiou (2025)[382] suggests that the voluntary character of mediation in environmental contexts may be compromised by implicit pressures and structural disparities. A consistent concern in the ADR literature is that community stakeholders may participate in mediation not out of genuine belief in its effectiveness, but due to perceived procedural expectation. In some instances, refusal to mediate was interpreted as withdrawal from the planning process altogether, creating a form of indirect coercion[383, 384].

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[381] Deborah M Kolb and Judith Williams, *Everyday Negotiation: Navigating the Hidden Agendas in Bargaining* (Jossey-Bass 2000).
[382] Bonomally and Agapiou (n 379)
[383] Scottish Government, *A Guide to the Use of Mediation in the Planning System in Scotland* (16 March 2009) https://www.gov.scot/publications/guide-use-mediation-planning-system-scotland/ accessed 7 March 2025.
[384] Penny Brooker and Anthony Lavers, 'Perceptions of Alternative Dispute Resolution as Constraints upon Its Use in the UK Construction Industry' (1997) 15(6) *Construction Management and Economics* 519–526.

This dynamic is exacerbated by resource asymmetries between parties. Planning authorities and developers typically enter mediation with access to legal counsel, planning consultants, and technical experts[385]. In contrast, affected communities often rely on limited or volunteer-based representation. The consequence, as Harder (1995)[386] notes, is that consensus-oriented models may inadvertently reproduce structural inequalities, privileging actors with greater procedural literacy and institutional support. Critiques of consensus-oriented models argue that mediated outcomes can reflect the negotiation strength of dominant stakeholders rather than a genuine convergence of interests. This raises broader questions about the extent to which procedural voluntariness operates meaningfully in highly asymmetrical planning environments.

The role of EI introduces an additional layer of complexity. On one hand, EI competencies such as empathy, emotional awareness, and regulation are frequently invoked as mechanisms for enhancing party engagement and promoting mutual understanding[387, 388]. Yet, as Taylor (2010)[389] cautions, emotional attunement may also generate a false sense of relational equity; obscuring the institutional and normative imbalances that structure the process. Some accounts of mediation practice suggest that the immediate aim of mediation may often be to maintain dialogue and avoid escalation, even if substantive issues remained unresolved. This highlights a procedural use of emotional facilitation that may preserve participation without fully addressing deeper normative concerns. This suggests that emotional facilitation, while procedurally valuable, may risk substituting surface-level harmony for substantive redress. Strategic empathy can soften resistance, encourage compromise, and sustain participation, yet still leave underlying distributive concerns unresolved. The concern is not empathy itself, but its potential to generate relational satisfaction without altering underlying structural conditions.

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[385] Ibid
[386] Harder (n 132)
[387] James Greenstone, Sharon C Leviton and Craig M Fowler, 'Mediation Advocacy: A New Concept in the Dispute Mediation Arena' (2007) 11(3) *Conflict Resolution Quarterly* 293–299.
[388] Kelly and Kaminskienė (n 33)
[389] Brandon T Taylor, *The Mediator's Moral Imperative: Neutrality and Bias* (Mediate.com, 1 November 2010) https://mediate.com/the-mediators-moral-imperative-neutrality-bias/ accessed 10 March 2025.

Furthermore, the institutional entrenchment of mediation within planning frameworks may reinforce these dynamics. Institutional accounts of planning mediation suggest that mediation may be recommended for reasons of procedural expectation or administrative signalling, even where its substantive potential is uncertain. The literature describes mediation as a strategic or administrative step that helps de-escalate tensions or satisfy institutional norms, even when it is unlikely to prevent future litigation.

These dynamics expose an ethical vulnerability in emotionally intelligent mediation practice. These dynamics are significant not because they exhaustively demonstrate structural coercion, but because they expose an ethical vulnerability in emotionally intelligent mediation practice. When participation is procedurally expected rather than freely chosen, emotionally attuned facilitation may generate a false sense of relational equity, masking the institutional and material asymmetries that shape consent. Chapters 6–8 assess whether, how, and under what conditions these tensions are experienced and navigated in practice, and how they shape professional judgement.

5.2.3 Flexibility Without Force: The Enforceability Dilemma

The enforceability dilemma discussed in this section represents a further extension of the institutional tensions outlined in Sections 5.2.1 and 5.2.2, revealing how flexibility without force can undermine both legitimacy and durability in environmental mediation outcomes. Mediation is frequently celebrated for its procedural flexibility and its capacity to accommodate creative, interest-based solutions outside the constraints of adversarial adjudication[390]. In environmentally related planning disputes, this flexibility enables tailored agreements that incorporate technical nuance, community sensitivities, and evolving sustainability goals[391]. Yet, this very adaptability gives rise to a significant institutional paradox: the more flexible and bespoke the agreement, the less enforceable it may become. The literature on public law ADR raises concerns about a lack of confidence in the post-settlement enforceability of mediated outcomes, raising critical questions about the long-term legitimacy and resilience of such agreements.

[390] Susskind and Cruikshank (n 76)
[391] Jin Rui Yap *et al*, 'Trends and Opportunities in Adaptive Planning for the Built Environment: A Literature Review' (2025) *Cities and Communities International* 100196.

In contrast to litigation, where enforceability is embedded in the authority of the court, mediation relies heavily on voluntary compliance. While this can work effectively in private commercial disputes, prior qualitative studies in Bonomally & Agapiou (2025)[392] expressed concern about the suitability of such reliance in public law matters involving statutory obligations or public interest duties. A recurring concern in the literature is the difficulty of translating mediated settlements into enforceable planning conditions or regulatory instruments, raising doubts about their long-term viability and institutional weight. This sentiment reflects a deeper structural issue: creative resolutions may fail to translate into regulatory certainty, particularly when mediated agreements must be reconciled with statutory frameworks or incorporated into formal planning permissions.

For example, commitments related to community benefits or environmental mitigation can be difficult to translate into enforceable planning conditions. This ambiguity can lead to implementation gaps once a mediated agreement is reached, raising concerns about the long-term efficacy and institutional legitimacy of such outcomes.

The enforceability dilemma also intersects with broader concerns about the legitimacy and durability of mediated outcomes in high-stakes disputes[393]. If the outcome of a mediated settlement lacks binding power, or is perceived as lacking institutional weight, parties may disengage or return to conflict when conditions change. This undermines the very premise that mediation offers a more sustainable and participatory form of dispute resolution.

Where mediated agreements lack binding force, greater reliance is placed on emotional legitimacy, trust-building, and perceived fairness to secure compliance. This dynamic shifts reliance toward relational legitimacy where formal legal certainty is weak.

5.2.4 Emotional Intelligence and Lawyer Advocacy in Mediation

In environmentally related planning disputes, the lawyer's role in mediation is increasingly framed not only in adversarial terms but as an emotionally intelligent,

[392] Bonomally and Agapiou (n 379)
[393] Robert P Burns, 'The Enforceability of Mediated Agreements: An Essay on Legitimation and Process Integrity' (1986) 2(1) *Journal on Dispute Resolution* 93–114.

ethically complex practice. Legal professionals are being called to navigate a delicate terrain; balancing client advocacy with broader responsibilities of dialogue, cooperation, and ethical reflexivity. This section critically explores how EI reshapes the function and identity of lawyers in mediation, especially where conflicting public interests and high-stakes environmental values are at play. Drawing on socio-legal scholarship, this section explores the institutional, cultural, and ethical constraints that shape how legal professionals navigate advocacy, cooperation, and interpersonal dynamics in mediation. Client expectations of adversarial performance can make emotionally attuned mediation advocacy appear, to some clients, as a sign of weakness rather than professionalism. These institutional constraints can be further understood through insights from relational contract theory and legal consciousness scholarship. From a relational contract perspective, legal interactions are embedded within ongoing social and professional relationships rather than discrete transactional exchanges, meaning that emotional management becomes part of sustaining trust, legitimacy, and cooperation over time rather than merely resolving a single dispute[394]. Similarly, legal consciousness research highlights how legal actors internalise institutional norms and expectations, shaping how lawyers and mediators perceive appropriate emotional expression, authority, and advocacy in practice[395]. These perspectives reinforce the argument that EI in mediation is not simply an individual skill but a socially situated practice, structured by institutional roles, professional norms, and expectations about legitimacy and compliance.

Balancing Empathy with Legal Realism

Lawyers engaged in planning mediation must routinely manage affective tensions, including community fears, institutional pressures, and ecological values, while upholding their professional duty to represent client interests. This often requires a form of "bounded empathy"[396], where emotional awareness is strategically managed to support effective negotiation without compromising legal representation.

[394] Mieke Brandon, 'Facilitative Mediation Ethics: How Does Our Own Bias and Awareness Inform Our Work?' (2019) *The Arbitrator & Mediator*.
[395] Patricia Ewick and Susan S Silbey, *The Common Place of Law: Stories from Everyday Life* (University of Chicago Press 1998)
[396] Terry A Maroney, 'Law and Emotion: A Proposed Taxonomy of an Emerging Field' (2006) 30 *Law and Human Behavior* 119–142.

The literature suggests that while empathy may foster constructive dialogue and reduce hostility during mediation, it is also commonly framed in pragmatic terms as a means of rapport-building and de-escalation. Rather than viewing empathy as an ethical commitment or relational goal, empathy is often framed in pragmatic terms as a useful means of building rapport or defusing conflict, facilitating smoother discussions while remaining in service of achieving favourable outcomes for their clients. Mediation's conversational format can also be perceived as diluting visible markers of advocacy, which may generate uncertainty about professional legitimacy in outcome-oriented legal cultures. This underscores the risk that emotionally intelligent advocacy may be constrained by expectations of visible adversarial performance and outcome-driven legitimacy.

This instrumental approach to empathy reflects a broader tension, as characterised by Felstiner et al (1980) [397],in which legal practice promotes a professional identity grounded in controlled detachment. In high-stakes, emotionally charged disputes, lawyers are expected to remain attuned to the emotional landscape without becoming entangled in it; an exercise that demands both strategic judgement and emotional regulation.

Systemic Resistance to Emotionally Intelligent Lawyering

Despite increasing discourse around "soft skills," legal culture often remains suspicious of emotionally intelligent approaches. This resistance is grounded in structural and cultural legacies that valorise adversarialism, objectivity, and doctrinal authority [398, 399]. As discussed in Bonomally & Agapiou (2025) [400], legal professionals suggest that traditional adversarial norms and institutional expectations may continue to shape perceptions of professionalism, making emotionally attuned approaches less visible or institutionally prioritised within mainstream legal practice.

This aligns with Krieger & Sheldon (2015) [401] findings on lawyer wellbeing, which suggest that the legal profession structurally disincentivises emotional openness,

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[397] William L F Felstiner, Richard L Abel and Austin Sarat, 'The Emergence and Transformation of Disputes: Naming, Blaming, Claiming …' (1980–81) 15(3–4) *Law & Society Review* 631–654.
[398] Patricia Strach and others, 'In a Different Voice? Explaining the Use of Men and Women as Voice-Over Announcers in Political Advertising' (2015) 32(2) *Political Communication* 1–23.
[399] Hilary Sommerlad, 'Researching and Theorizing the Process of Professional Identity Formation' (2007) 34(2) *Journal of Law and Society* 190–217.
[400] Bonomally and Agapiou (n 379)
[401] Krieger and Sheldon (n 240)

often to the detriment of ethical performance. While emotional engagement is increasingly acknowledged as important in mediation, prior qualitative scholarship suggests that legal professionals still operate within institutional cultures that prioritise procedural objectivity and adversarial norms. The literature suggests that formal support and recognition for emotionally attuned mediation advocacy can be limited within adversarial professional cultures. These structural and cultural dynamics may inhibit the integration of EI, despite its perceived value in fostering trust and resolving planning-related disputes.

The Lawyer as Ethical Actor in Mediation

EI also complicates the ethical position of lawyers within mediation. Traditionally, lawyers are bound to a partisan model of representation, whereas mediation advocacy requires legal professionals to balance robust client representation with constructive participation in a facilitated process[402]. Yet in environmental planning mediation, where community engagement, regulatory complexity, and public interest converge, lawyers acting as mediation advocates must balance their duties to clients with the relational demands of negotiation, stakeholder engagement, and ethical decision-making. This requires them to exercise emotionally informed professional judgement while remaining accountable to their professional obligations and the institutional framework within which mediation takes place.

This hybrid role raises normative questions. If a lawyer uses empathy to influence process design or guide stakeholder expectations, are they performing advocacy, or exercising a broader ethical responsibility to the integrity of the process? As Menkel-Meadow (1999)[403] argues, mediation challenges conventional legal ethics by inviting lawyers to act as "problem solvers" rather than "adversarial partisans."

Mediation theory and socio-legal accounts suggest that lawyers' roles in planning mediation may become increasingly fluid, moving beyond traditional adversarial advocacy to include responsibilities such as managing complex stakeholder relationships and facilitating consensus. This shift reflects the growing expectation that lawyers take on roles as facilitators and ethical actors, balancing legal obligations with the broader societal and environmental concerns at stake. This

[402] Moore (n 144)
[403] Carrie Menkel-Meadow, 'Ethics and Professionalism in Non-Adversarial Lawyering' (1999) *Law and Contemporary Problems* 67–99.

underscores a movement from role-based professionalism to what Cownie (2004)[404] describes as "ethical pluralism," where lawyers must mediate between multiple, sometimes conflicting, obligations: to client, law, and the public good. However, ethical pluralism does not eliminate the risk of instrumentalisation. Where empathy is deployed primarily to secure client advantage or stabilise process legitimacy, emotionally intelligent advocacy may shade into strategic emotional calibration. This raises a central tension: when does empathic engagement constitute relational care, and when does it become affective persuasion? A critical account of EI must remain alert to this boundary. These institutional dynamics set the stage for understanding how EI is operationalised in practice, and how its ethical risks begin to emerge through systemic pressures.

5.3 Applying Emotional Intelligence to Conflict Resolution: Tensions and Limits

This section analyses how specific EI competencies function within environmentally related planning mediation, and how their deployment interacts with the institutional realities of public law planning disputes, including regulatory authority, stakeholder asymmetries, and the legal constraints that shape negotiation dynamics. It evaluates the institutional conditioning of these competencies, examining how their effects vary across differently situated actors and how their operationalisation may produce tensions, limits, and asymmetries within mediation practice.

5.3.1 Emotional awareness in identifying underlying conflicts and interests

This section examines how emotional awareness is operationalised, constrained, and contested in environmentally related planning mediation, where disputes are frequently charged with heightened emotions linked to deeply held values, fears, and concerns.

Emotional Awareness in Environmentally Embedded Conflict

The idea that emotions serve as "signposts" to underlying interests is well established in conflict resolution theory[405]. Yet its practical application in environmentally related disputes is far from straightforward. Emotions in these contexts often reflect collective rather than individual concerns, such as threats to a community's identity, fears of ecological loss, or frustrations over perceived procedural injustice. These

[404] Fiona Cownie, *Legal Academics: Culture and Identities* (Hart Publishing 2004).
[405] Fisher, Ury and Patton (n 122)

cannot always be reduced to basic psychological needs like “respect” or “security,” but may instead reflect complex cultural, political, and environmental values[406].

This tension exposes a structural translation problem: the affective articulation of values within mediation does not automatically convert into legally durable outcomes. The institutional capacity to absorb and formalise emotionally expressed interests remains uneven, a limitation examined empirically in Chapters 6–8.

Rather than viewing emotional expression as disruptive, EI frameworks argue that it should be recognised as a source of insight into the ethical, cultural, and psychological dimensions of conflict. Emotions can help illuminate the deeper values at stake, enhancing not only interest identification but also the legitimacy of outcomes, particularly in high stakes environmental disputes. However, for this potential to be realised, procedural mechanisms must exist to bridge emotional articulation and substantive recognition, ensuring that the emotional dynamics of conflict are not merely acknowledged, but meaningfully integrated into resolution. However, without procedural mechanisms capable of translating affective articulation into legally recognised commitments, emotional recognition risks becoming symbolic rather than substantively transformative.

Addressing Negative and Positive Emotions in Mediation

The emotional landscape of environmental mediation is not limited to hidden interests; it also includes powerful affective dynamics that shape how parties interpret the dispute itself. Negative emotions like anger, frustration, and fear are especially prominent in disputes concerning environmental justice or contested land use. As Clore & Huntsinger (2007)[407] observe, such emotions can inhibit dialogue when left unmanaged but may also signal the presence of deeply rooted grievances. The literature suggests that expressions of anger by community groups may reflect longer histories of institutional exclusion and mistrust. Legal professionals raise the possibility that while mediation can provide a space for emotional expression, its real challenge lies in translating such emotions into actionable and enforceable outcomes. Without deliberate mediation advocacy that helps translate emotional expression into constructive negotiation, there is a risk that emotional engagement remains at the

[406] Jones and Bodtker (n 261)
[407] Gerald L Clore and Jeffrey R Huntsinger, ‘How Emotions Inform Judgment and Regulate Thought’ (2007) 11(9) *Trends in Cognitive Sciences* 393–399.

level of catharsis rather than contributing to forward-looking problem solving. Validating anger without addressing the structural causes of that anger, such as perceived marginalisation or ecological harm, may fail to produce sustainable resolutions. Similarly, fear based resistance to development cannot be resolved by procedural reassurances alone; it must be acknowledged and addressed through substantive measures that protect community values and environmental integrity[408].

Positive emotions, including hope, relief, and pride, also play a key role in shaping outcomes. However, they are not always symmetrically distributed. What developers consider a hopeful compromise may still feel like a loss to community members, particularly when ecological or cultural heritage is at stake[409]. Lawyers acting as mediation advocates must navigate these affective asymmetries carefully, ensuring that optimism is not imposed but genuinely shared[410].

Emotional Awareness and Active Listening

Active listening enables lawyers acting as mediation advocates to reduce hostility, clarify misunderstandings, and promote more constructive engagement between participants[411]. In environmental mediation, however, the practice requires more than interpersonal sensitivity. It also involves fluency in the substantive aspects of disputes, including technical language, planning law, and ecological concerns.

While Bonomally & Agapiou (2025)[412] do not specifically frame practitioner responses in terms of "active listening," several legal professionals underscored the importance of communication, empathy, and stakeholder engagement in resolving disputes. Scholarship indicates that practitioners recognise the value of addressing both the emotional context and substantive content of planning and environmental disagreements. For example, some accounts in the literature observed that

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[408] Evelyn Namakula B Mayanja, *Linking Structural Violence, Conflicts and Ecological Damages* (ICER Mediation, 10 December 2022) https://icermediation.org/structural-violence-and-ecological-damage/ accessed 12 March 2025.
[409] Emily Ann Warren, *Emotions in Conflict Resolution: A New Model of Constructive Conflict* (thesis, Brigham Young University) https://scholarsarchive.byu.edu/cgi/viewcontent.cgi?article=1179&context=intuition accessed 14 March 2025.
[410] Robert A Creo, 'Good Luck Has Arrived: Positive Emotions Means Successful Mediation Is at Hand' (2018) *Alternatives to the High Cost of Litigation*.
[411] Jacques Fischer-Lokou, Lubomir Lamy and Alexandre Dubarry and others, 'Effects of Active Listening, Reformulation, and Imitation on Mediator Success: Preliminary Results' (2016) 118(3) *Perceptual and Motor Skills*.
[412] Bonomally and Agapiou (n 379)

environmental disputes often involve emotionally invested stakeholders, particularly community groups and NGOs, whose concerns go beyond technical planning metrics.

However, a recurring critique is that such emotional dimensions may be sidelined during mediation, particularly when institutional actors prioritise outcome efficiency over participatory deliberation. The literature suggests that this dynamic can generate frustration where mediated agreements fail to reflect deeper stakeholder motivations, a possibility assessed in Chapters 6–8. Taken together, these critiques suggest that genuine stakeholder engagement, including emotional and ethical recognition, remains a key but underdeveloped component of current mediation practice in UK environmental law. These issues raise governance questions about voice, process design, and professional capacity that are examined empirically in Chapters 6–8.

5.3.2 Empathy and active listening as tools for de-escalating conflicts

Empathy and active listening, discussed conceptually in Chapter 4, take on particular significance in environmentally related planning mediation, where affective tension and value-based disagreement are structurally embedded. The focus here is therefore not on restating the conceptual foundations of these competencies, but on examining how they operate within the practical dynamics of mediation advocacy in environmentally related planning disputes. In those disputes, where conflicts often involve not only regulatory complexity but also deeply held ecological, cultural, and social commitments, these skills are indispensable. Yet their value must be situated within a critical understanding of their limitations, particularly when structural inequities and ideological divides are at play.

Empathy and the Ethics of Recognition

Empathy facilitates validation by making parties feel heard and reducing defensiveness. In mediation, this process can be transformative. As Fisher et al (2011)[413] argue, empathy shifts conflict resolution from positional bargaining to interest based negotiation, enabling disputants to reframe grievances around shared concerns. However, in environmental disputes, where values relating to sustainability, identity, and justice may be in fundamental tension, empathy alone cannot reconcile deep ideological differences. While empathising with a

[413] Fisher, Ury and Patton (n 122)

community's fears of environmental degradation is necessary, it may do little to shift the underlying drivers of conflict, such as state backed development agendas or unequal resource access[414].

Moreover, empathy plays a crucial role in recognising unspoken emotional dynamics. Feelings of fear, frustration, or betrayal, particularly among marginalised communities, often underlie what appear to be procedural objections. Lawyers acting as mediation advocates who acknowledge and validate these emotions can help shift the focus from confrontation to constructive negotiation while continuing to represent their clients' interests[415]. Yet there is a risk of emotional placation, in which pain is acknowledged without addressing its causes. This highlights the need for ethical discernment, as empathy must not become a tool for neutralising dissent or absorbing critique without structural redress.

Active Listening as Emotional Practice

Active listening deepens this engagement by enabling lawyers acting as mediation advocates to reflect both verbal and non-verbal cues, clarify misunderstandings, and demonstrate authentic attentiveness[416]. Techniques such as paraphrasing and reflective summarisation not only foster clarity but also signal respect, encouraging parties to move beyond defensiveness. In planning disputes involving multiple stakeholders, from developers to environmental activists, this is vital for uncovering the diverse interests and identities at stake.

While Bonomally & Agapiou (2025)[417] do not explicitly frame their discussion in terms of emotional labour, the wider literature suggests that planning and environmental mediation can involve complex emotional terrain for legal actors. The wider literature on mediation and legal professionalism has identified that mediation advocacy can generate tensions between maintaining professional detachment and responding meaningfully to stakeholder emotion and the emotional dimensions of stakeholder concerns. These accounts imply that emotionally intelligent lawyering involves navigating institutional expectations as much as interpersonal skill,

[414] Brooke (n 90)
[415] Jones and Bodtker (n 261)
[416] Fischer-Lokou and others (n 411)
[417] Bonomally and Agapiou (n 379)

reinforcing the idea that emotional engagement in mediation is shaped by deeper structural norms.

Empathy and Listening in Synergy: Critical Potential and Limits

Together, empathy and active listening can generate powerful moments of recognition and relational repair. They foster mutual respect and promote perceptions of fairness, even when full consensus remains elusive[418]. In environmental mediation, this synergy enables parties to articulate not just what they want, but why it matters, transforming negotiation from positional haggling to shared meaning making.

However, the effectiveness of these tools is contingent on context. While they may enhance perceptions of legitimacy and satisfaction, they do not inherently resolve structural inequalities or reconcile competing normative visions. For instance, a community's emotional testimony about land stewardship may be deeply moving, but unless supported by legal or policy leverage, its influence in shaping outcomes remains fragile. As Abel (1982)[419] argues, informal justice processes like mediation may reframe systemic grievances as private interpersonal misunderstandings, subtly defusing political contestation while leaving structural power imbalances intact.

Empathy and active listening are indispensable in de-escalating conflicts and enhancing procedural engagement[420]. Yet their use in environmental mediation must be approached critically. These tools operate within, and are shaped by, broader institutional constraints. They can deepen trust and promote openness, but they can also be instrumentalised to manage dissent or stabilise legitimacy[421]. Lawyers acting as mediation advocates must not only demonstrate these emotional competencies but also remain alert to the point at which empathy risks replacing rather than supporting justice and ethically grounded client representation.

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[418] Clore and Huntsinger (n 407)

[419] Richard Abel (ed), The Politics of Informal Justice, vol 1 The American Experience; vol 2 Comparative Studies (Academic Press 1982).

[420] Boland and Ross (n 174)

[421] Susan Yates, *De-Escalation Training: Strengthening Unions* (JAMS Pathways, 23 December 2024) https://www.jamspathways.com/insights/workplace-training/de-escalation-training accessed 19 March 2025.

5.3.3 Emotional Intelligence and Collaborative Problem-Solving

EI is frequently cited as a catalyst for more constructive and cooperative problem-solving in mediation, particularly in disputes marked by entrenched conflict, emotional volatility, or structural inequality[422]. In the context of environmentally related planning disputes, EI assumes an even more complex function, not merely as a set of interpersonal competencies, but as a form of affective governance. Here, lawyers acting as mediation advocates must navigate not only interpersonal tensions but also the emotional, legal, and institutional complexities that characterise environmentally related planning disputes[423].

Collaborative problem-solving in mediation relies on the emotional competencies outlined in Chapter 4, but the emphasis here shifts from conceptual description to examining how emotionally informed judgement operates within the institutional and negotiation dynamics of environmentally related planning disputes. As Goleman [424] argues, such competencies enable the management of interpersonal dynamics and the fostering of cooperative engagement.

Self-Awareness and Emotional Regulation

Self-awareness enables lawyers acting as mediation advocates to detect their own affective positioning and potential normative leanings and potential biases, which is essential for maintaining professional neutrality[425]. In disputes involving climate risk, biodiversity loss, or indigenous land claims, lawyers acting as mediation advocates may have personal or professional sympathies that unconsciously shape their judgement and strategic decision-making. While emotional self-regulation is often framed as a competency for remaining calm and impartial[426], its ethical dimensions run deeper. To what extent can self-regulation suppress legitimate affective responses to injustice? Lawyers acting as mediation advocates must tread a fine line between regulating their emotional responses and remaining ethically attuned to the emotional realities of those affected while continuing to fulfil their professional obligations to their clients.

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[422] Boland and Ross (n 174)
[423] Antonio Ferreira, 'Emotions in Planning Practice: A Critical Review and a Suggestion for Future Developments Based on Mindfulness' (2013) 84(6) *Town Planning Review* 703–719.
[424] Daniel Goleman, *Working with Emotional Intelligence* (Bantam Books 1998).
[425] Duffy (n 211)
[426] Goleman (n 156)

Empathy and Social Awareness

Empathy, a hallmark of EI, enables lawyers acting as mediation advocates to grasp not only what parties are saying but how they are feeling, and why those feelings matter. In environmentally related disputes, this often involves recognising non-negotiable attachments to land, ancestral narratives, or ecological futures. As Shapiro et al (2004)[427] observe, empathy here is less about aligning with positions than about decoding emotional signals that point to deeper values or historical grievances.

Social awareness complements this by enabling lawyers acting as mediation advocates to read the emotional temperature of multi-stakeholder settings, where power asymmetries are often stark. It includes the ability to detect when consensus is performative rather than genuine, or when institutional actors invoke procedural fairness while marginalising dissent. This is where Hirschman's (1970)[428] Exit, Voice, Loyalty framework offers valuable insight. Emotional expression, particularly anger or despair, can be understood not as a breakdown of civility, but as a form of voice that signals disengagement from a process perceived as illegitimate. Lawyers acting as mediation advocates must learn to read these signals not as disruptions, but as invitations to redesign the process itself.

Relationship Management and Trust-Building

The capacity to manage relationships, by building trust, fostering mutual respect, and de-escalating interpersonal tensions, is often cited as the final pillar of emotionally intelligent mediation. Yet trust building in environmental disputes is rarely neutral[429]. Lawyers acting as mediation advocates must engage with long-standing community mistrust toward developers or authorities while navigating their professional responsibilities within the mediation process. Relationship management in these settings is not simply about good communication; it is a form of ethical engagement with past harms.

Moreover, durable collaboration is difficult to foster when parties hold incommensurable values, such as the moral imperative to protect land versus the economic rationale for development. Lawyers acting as mediation advocates are

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[427] Daniel Shapiro, Lisa Pilsitz and Susan Shapiro, *Conflict and Communication: A Guide through the Labyrinth of Conflict Management* (International Debate Education Association 2004).
[428] Albert O Hirschman, *Exit, Voice, and Loyalty: Responses to Decline in Firms, Organizations, and States* (Harvard University Press 1970).
[429] Kahn (n 97)

required to identify creative points of convergence without diluting the significance of such divergences. This requires what Menkel-Meadow (2001)[430] refers to as *ethically pluralistic problem-solving*: not consensus at any cost, but agreement that acknowledges ongoing disagreement.

Reframing Conflict through EI

Perhaps the most critical contribution of EI in collaborative problem solving is its capacity to reframe conflict, from a zero sum contest to a joint inquiry into mutual interests. This reframing is not merely discursive; it is affective. It involves transforming affective polarisation, such as fear, blame, and grief, into a shared commitment to understanding[431]. Yet the danger lies in superficial reframing, where emotionally intelligent facilitation creates the appearance of resolution without confronting the structural drivers of conflict.

In high-stakes environmental disputes, where legal frameworks often favour development imperatives, EI must be deployed not just as a communicative tool, but as a means of navigating institutional ambivalence[432]. Lawyers acting as mediation advocates must simultaneously manage emotion and remain alert to the ways in which institutional processes may sideline ecological or community priorities.

Navigating the Limits of EI

Despite its promise, EI is not a panacea. It cannot, on its own, redress deep-seated power imbalances or institutional inertia. In fact, as Delgado et al (1985)[433] caution, emotionally charged but seemingly harmonious processes can mask underlying inequalities, leading to what they term "false consensus." Lawyers acting as mediation advocates who rely too heavily on EI techniques without engaging structural critiques risk facilitating agreements that are emotionally satisfying but politically hollow.

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[430] Carrie Menkel-Meadow, 'Ethics in ADR: The Many "Cs" of Professional Responsibility and Dispute Resolution' (2001) 28 *Fordham Urban Law Journal* 979–990.

[431] Van Kleef GA, De Dreu CKW and Manstead ASR, 'The Interpersonal Effects of Emotions in Negotiations: A Motivated Information Processing Approach' (2004) 87(4) *Journal of Personality and Social Psychology* 510

[432] Harold Coleman Jr and Matthew W Argue, 'Mediating with Emotional Intelligence: The Interplay of Emotions and Rational Decision Making' (2017) 72(3) *Dispute Resolution Journal*.

[433] Richard Delgado, Chris Dunn, Pamela Brown and Helena Lee, 'Fairness and Formality: Minimizing the Risk of Prejudice in Alternative Dispute Resolution' (1985) *Wisconsin Law Review* 1369.

To navigate this terrain, lawyers acting as mediation advocates require not only emotional intelligence but also reflexive awareness of their professional obligations, the institutional framework within which they operate, and the broader socio-environmental context of the dispute[434]. They must see themselves not simply as technicians of consensus, but as stewards of a process that aspires to both emotional resonance and ethical integrity. The competencies examined here form the mechanisms through which EI can either support ethical practice or become a vehicle for unintended influence, setting up the deeper ethical analysis in Section 5.4.

5.4 Emotional Regulation and Negotiation Dynamics

This section examines how emotional regulation operates within negotiation dynamics and how it interacts with institutional power structures. It examines how emotional regulation functions in negotiation practice as a strategic, ideological, and ethically consequential process[435]. While conventional literature tends to treat emotional control as a neutral skill that enhances clarity and composure, this section argues that it also functions as an ideologically loaded practice, one that shapes who gets heard, whose emotions are legitimised, and how negotiation dynamics unfold. Drawing on critical negotiation theory and prior qualitative research, including Kolb & Williams (2000)[436] work on "shadow negotiation," this section unpacks how emotional regulation both enables and constrains transformative outcomes in legal mediation.

5.4.1 Emotional Control as Strategy and Signal in Negotiation

Emotional control is often praised for its tactical value: it helps negotiators stay composed, avoid escalation, and project professionalism[437]. In the environmental planning context, this means navigating disputes where ecological preservation, cultural heritage, and economic development collide. Emotionally controlled negotiators are seen as more "rational," better equipped to defuse conflict, and more credible. Yet this perception is not ideologically neutral, as it reflects institutional norms that often reward restraint while pathologising passion.

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[434] Daniel Bjerknes and Kristine Paranica, *Training Emotional Intelligence For Conflict Resolution Practitioners* (Mediate.com, 15 July 2002) https://mediate.com/training-emotional-intelligence-for-conflict-resolution-practitioners/ accessed 21 March 2025.
[435] Ferreira (n 423)
[436] Kolb and Williams (n 381)
[437] Mulu and Chungo (n 221)

Strategic Trade-Offs and Institutional Consequences

Gross's (1998)[438] emotion regulation theory outlines two dominant strategies: reappraisal (reframing a situation) and suppression (inhibiting emotion). Both have negotiation utility, as reappraisal supports creativity and flexibility, while suppression may help maintain professionalism. However, excessive suppression risks obscuring moral urgency and relational authenticity, particularly when parties are advocating for environmental or social justice[439].

In distributive negotiations, emotional control may serve to protect positional strength. Yet this often disguises asymmetrical power: institutional actors may appear calm because their authority is structurally reinforced, while community members expressing anger or grief risk being cast as irrational or obstructive. Kolb & Williams (2000)[440] describe this as the "shadow negotiation," the unspoken dynamic in which emotional tone, legitimacy, and informal norms shape outcomes behind the scenes.

Power, Performance, and Institutional Constraints

The literature highlights how emotional control can be strategically used and socially interpreted. Community actors may experience pressure to self-censor emotional expression to be deemed "reasonable," while legal actors often equated stoicism with competence. Here, emotional regulation becomes a performance of legitimacy, one that privileges institutional actors and delegitimises emotional dissent.

5.4.2 Balancing Assertiveness and Empathy Through Emotional Intelligence

EI enables negotiators to balance assertiveness and empathy, a dynamic interplay that is critical to success in environmental mediation. Assertiveness ensures that one's position is communicated clearly, while empathy builds relational bridges across differences. When properly balanced, these skills support integrative negotiation[441, 442]. But this balance is contextually fragile, especially where disputes reflect deeper social or environmental inequalities.

[438] James J Gross, 'The Emerging Field of Emotion Regulation: An Integrative Review' (1998) 2(3) *Review of General Psychology* 271–299.
[439] Lorraine Whitmarsh et al, 'Climate Anxiety: What Predicts It and How Is It Related to Climate Action?' (2022) Journal of Environmental Psychology 101866.
[440] Kolb and Williams (n 381)
[441] Susskind and Cruikshank (n 76)
[442] Robert H Mnookin, Scott R Peppet and Andrew S Tulumello, *Beyond Winning: Negotiating to Create Value in Deals and Disputes* (Belknap Press of Harvard University Press 2000).

Assertiveness as Regulated Advocacy

Assertiveness is often misunderstood as aggression. In emotionally intelligent negotiation, it refers to the confident expression of interests, grounded in emotional regulation and self-awareness[443]. In environmental disputes, this might involve strongly advocating for conservation measures without alienating developers. When regulated, assertiveness maintains clarity without resorting to combative rhetoric[444].

Empathy Without Capitulation

Empathy enables negotiators to engage with stakeholder fears and values, such as displacement, environmental loss, or intergenerational injustice. However, empathy is ethically constrained by boundaries; it is not the same as agreement. Over-identification with one party may compromise neutrality, while insufficient empathy can entrench distrust[445].

The Affective Tightrope

Balancing assertiveness and empathy is an emotionally demanding task, especially in public-interest disputes. Lawyers acting as mediation advocates must manage shifting dynamics without losing credibility. As Van Kleef et al (2004)[446] note, the same emotional display can be interpreted differently based on perceived legitimacy. Structural constraints, such as procedural formality or institutional bias, often make this balancing act harder for community advocates than for developers or state actors. Ultimately, emotionally intelligent negotiation requires more than personal skill. It demands institutional structures, such as inclusive process design and culturally sensitive facilitation, that support this balance in practice.

[443] John D Mayer and Peter Salovey, 'The Intelligence of Emotional Intelligence' (1993) 17 *Intelligence* 433

[444] Ingrid Smithey Fulmer and Bruce Barry, 'The Smart Negotiator: Cognitive Ability and Emotional Intelligence in Negotiation' (2004) 15(3) *International Journal of Conflict Management* 245–272.

[445] Peter J D Carnevale and Alice M Isen, 'The Influence of Positive Affect and Visual Access on the Discovery of Integrative Solutions in Bilateral Negotiation' (1986) 37(1) *Organizational Behavior and Human Decision Processes* 1–13.

[446] Van Kleef, De Dreu and Manstead (n 432)

5.4.3 Rethinking "Success" in Mediation Through the Lens of Emotional Intelligence

EI is widely associated with successful mediation outcomes, but what counts as "success"?[447] Is it resolution, emotional satisfaction, enforceability, or long-term transformation? This section interrogates the assumptions behind emotionally intelligent mediation and critically assesses whether EI alone can deliver meaningful and durable outcomes in environmentally complex disputes.

EI and Procedural Success

EI enhances procedural clarity: it supports better communication, reduced hostility, and improved party satisfaction[448, 449]. In this sense, emotionally intelligent mediation advocates contribute to more civil, efficient processes. Empirical studies (e.g., De Dreu & Gelfand, 2012)[450] suggest that EI correlates with lower impasse rates and improved party perceptions.

Substantive Outcomes and Their Limitations

Emotionally intelligent mediation can support integrative solutions that meet overlapping interests[451, 452]. In environmental planning, this might mean negotiating sustainable development plans that account for biodiversity and economic needs. Yet EI alone cannot force such outcomes. When parties hold fundamentally incompatible values, such as market driven growth versus ecological protection, emotional fluency may facilitate dialogue but not resolution.

Moreover, many mediated agreements lack enforceability. A recurring critique is that emotionally satisfying processes can still produce vague or non-binding outcomes that may prove fragile over time. This reinforces the idea that EI must be integrated with legal, institutional, and policy mechanisms to ensure long term legitimacy, not just procedural harmony.

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447 Joan Kelly, 'Measuring Clients' Perceptions and Satisfaction' (1988) *Conflict Resolution Quarterly.*
448 Mayer and Salovey (n 444)
449 Goleman (n 31)
450 Carsten K W De Dreu and Michele J Gelfand (eds), *The Psychology of Conflict and Conflict Management in Organizations* (1st edn, Psychology Press 2007).
451 Carnevale and Isen (n 446)
452 United States Environmental Protection Agency, *Resource Guide: Resolving Environmental Conflicts in Communities* (EPA Conflict Prevention and Resolution Center, May 2000).

Toward Transformative Success

If successful mediation is defined more ambitiously as transformative change in relationships, institutions, or systems, then EI is a necessary but insufficient condition. It fosters trust, compassion, and engagement, but does not address deeper inequalities or regulatory failures. For transformative success, EI must be linked to broader structural interventions, such as inclusive policy design, participatory planning, and legal reform[453].

Emotional regulation therefore influences how emotional expression is interpreted within negotiation settings. The emotional tone of negotiation, including who gets to be passionate, who must remain calm, and who is seen as reasonable, is shaped by unspoken norms of legitimacy and exclusion.

EI, when used critically and contextually, is not just about feeling better; it is about building fairer and more inclusive systems of decision making. Thus, the future of emotionally intelligent negotiation lies not only in individual mastery, but in institutional transformation. These dynamics of emotional regulation sharpen the ethical stakes of emotionally intelligent mediation, which are critically synthesised in Section 5.5 as a structured evaluative framework.

5.5 The Evaluative Framework: Ethical Risk Conditions in Emotionally Intelligent Mediation

This section formalises the cumulative ethical risks identified in Sections 5.2-5.4 into a structured three-stage ethical risk model. It conceptualises how emotionally engaged mediation practice may evolve from recognition to strategic influence and, in some contexts, to partiality or institutional instrumentalisation. The ethical argument that follows proceeds in a cumulative sequence. It begins with emotionally engaged practice in its benign form, where empathy supports recognition and de-escalation. It then examines how emotional competencies are strategically deployed under institutional constraint. From there, it identifies the ethical risks that arise; manipulation, partiality, and emotional instrumentalism before concluding with a

[453] Judith E Innes and David E Booher, 'Collaborative Policymaking: Governance through Dialogue' in Maarten A Hajer and Hendrik Wagenaar (eds), *Deliberative Policy Analysis: Understanding Governance in the Network Society* (Cambridge University Press 2003) 33–59.

governance problem: emotionally skilled influence increasingly shapes mediation outcomes without corresponding regulatory safeguards.

The progression of ethical risk identified in this analysis is illustrated conceptually in Figure 2 and explained in greater detail in Table 5.1.

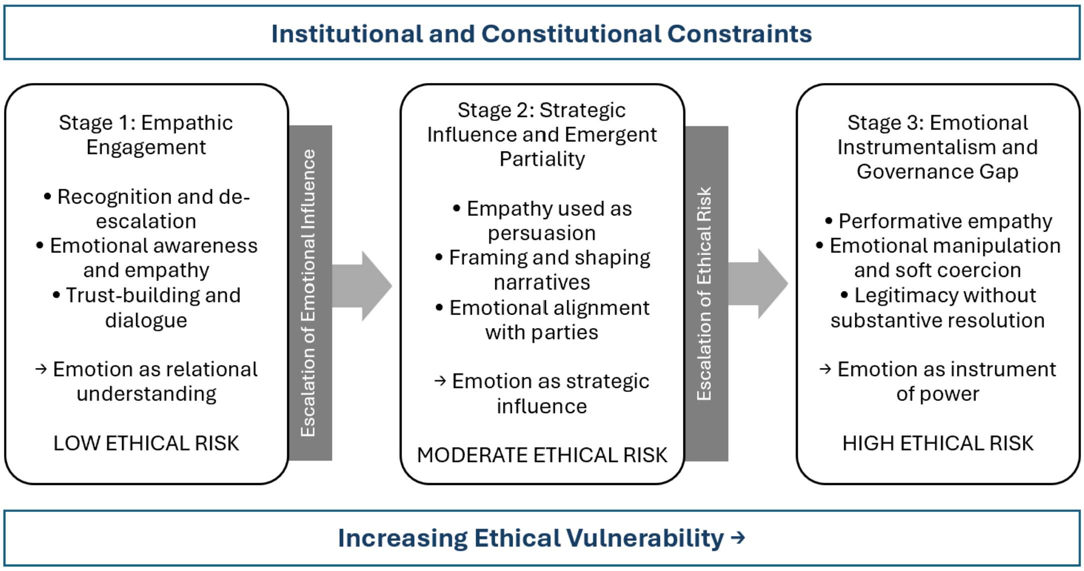

Figure 2: Ethical Risk Escalation in Emotionally Intelligent Mediation Advocacy

This figure illustrates the cumulative progression through which emotionally intelligent mediation advocacy may evolve from empathic engagement toward more ethically complex forms of influence. While initial emotional attunement supports recognition, trust-building, and dialogue, the strategic deployment of emotional competencies introduces risks of partiality and persuasive influence. At its most advanced stage, emotional intelligence may be instrumentalised in ways that shape outcomes, stabilise legitimacy, or manage dissent without corresponding institutional safeguards. The model therefore highlights not only the value of emotionally intelligent practice, but also its potential to generate ethical vulnerability within structurally constrained public law mediation contexts.

5.5.1 Stage 1: From Empathic Engagement to Strategic Influence

In its most benign form, empathic engagement supports recognition, de-escalation, and dialogue by enabling parties to feel heard. EI can be a catalyst for understanding, but it can also function as a mechanism of subtle coercion. Emotional manipulation arises when empathy is deployed strategically rather than ethically, when it is used not to understand the other, but to guide, shape, or steer them toward a particular outcome[454]. This is particularly problematic in environmental mediation, where one party may have greater control over narrative tone or public legitimacy.

Prior qualitative research by Bonomally and Agapiou (2025)[455] suggests that emotional narratives can significantly influence how disputes are framed and mediated, especially when institutional actors deploy emotionally resonant language. Some socio-legal accounts suggest that emotional appeals, such as references to community cohesion or wellbeing, may be used strategically in planning mediation to shift attention away from more contentious issues like ecological harm or long term sustainability. While such rhetoric may create a more conciliatory tone, it can also obscure deeper normative conflicts and hinder rigorous scrutiny of underlying environmental concerns.

Such scenarios illustrate a key critique from Kolb & Williams' (2000)[456] work on "shadow negotiation" namely that behind every formal dialogue a second negotiation unfolds, one shaped by emotional tone, symbolic legitimacy, and informal cues of credibility. When emotional fluency is unevenly distributed, often favouring institutional actors more familiar with technocratic or strategic communication, the playing field is anything but level.

While not always intentional, this dynamic raises serious concerns. As Van Kleef et al (2006)[457] note, emotionally intense environments can create "soft coercion," where decisions appear consensual but are shaped by emotional pressure rather than informed choice. The literature suggests that emotionally intense environments can produce outcomes that feel consensual while being shaped by affective pressure. Once emotional skill is understood as a form of influence rather than merely a form of care, the next ethical question becomes whether empathic attunement can be exercised without sliding into partiality.

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[454] Daisuke Akamatsu and Claudia Gherghel, 'The Bright and Dark Sides of Emotional Intelligence: Implications for Educational Practice and Better Understanding of Empathy' (2021) 13(1) *International Journal of Emotional Education* 3–19.
[455] Bonomally and Agapiou (n 379)
[456] Kolb and Williams (n 381)
[457] Van Kleef, De Dreu and Manstead (n 432)

5.5.2 Stage 2: From Strategic Influence to Risks of Partiality

The core ethical dilemma in EI-informed mediation is this: Can lawyers acting as mediation advocates empathise deeply while continuing to exercise independent professional judgement and fulfil their duties to their clients?

Lawyers acting as mediation advocates must often attune themselves emotionally to the parties they are working with. But as Goleman (1995)[458] and others point out, true emotional attunement means not just recognising but feeling with the other. And once that happens, once a mediation advocate resonates more strongly with a grieving community than with a corporate stakeholder, does neutrality remain intact? Or has it already been ethically compromised?

Environmental mediation often involves disputes rooted in moral and political values, such as ecological preservation, community autonomy, or sustainable development, which complicate the mediator's task. Bonomally & Agapiou (2025)[459] highlight the ethical and emotional pressures legal professionals face in these contexts, particularly when balancing empathy with professional neutrality. While the study does not specifically focus on emotional partiality, it underscores how emotionally charged disputes can challenge traditional notions of mediator detachment. The literature suggests that emotionally expressive community groups may be framed as 'difficult', while more restrained institutional actors may be more readily treated as credible, raising concerns about how emotional expression is interpreted and legitimised.

These concerns suggest that EI in mediation may extend beyond interpersonal skill. It requires critical awareness of the institutional and cultural frameworks that shape how emotions are received, valued, or marginalised within dispute resolution processes. Even where mediation advocates engage constructively with all participants, they remain professionally committed to representing their clients. This creates an ongoing ethical challenge in balancing emotional engagement with independent professional judgement.

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458 Goleman (n 156)
459 Bonomally and Agapiou (n 379)

5.5.3 Stage 3: From Partiality to Emotional Instrumentalism and the Regulatory Gap

One of the most subtle dangers of EI in mediation is its performative dimension. As Hochschild (1983)[460] observed in her theory of emotional labour, professionals are often asked to "feel" in accordance with institutional expectations, not because they genuinely feel empathy, but because empathy is required to maintain credibility and effectiveness. Lawyers acting as mediation advocates may likewise engage in emotional management as part of their professional role, using emotional intelligence to facilitate constructive dialogue while continuing to fulfil their professional obligations to their clients.

But what happens when this performance becomes disconnected from authenticity? What if a lawyer acting as a mediation advocate reflects a community's grief not out of shared concern, but because they have been trained to do so? Is that still empathy, or is it affective theatre? These questions raise critical ethical concerns. At what point does empathy shift from a means of connection to a tool for maintaining legitimacy?

While the literature does not explicitly address 'performed empathy', some accounts of mediation practice suggest that emotional engagement may be used strategically to de-escalate conflict and maintain momentum in the mediation process. These efforts may often be framed as procedurally effective but not always substantively satisfying. Some accounts in the literature acknowledged a tension between achieving agreement and addressing the deeper normative concerns raised by stakeholders, particularly when emotional expression was validated but not meaningfully integrated into final outcomes. This highlights a broader ethical question: can procedural success, in which parties feel heard, substitute for genuine resolution when underlying values remain unresolved? The risk here is twofold. First, performative empathy may become a mask for systemic exclusion by presenting an illusion of care while sidelining dissent. Second, lawyers acting as mediation advocates may themselves become alienated from their own emotional judgement, internalising a professional role in which sincerity, client representation, and ethical responsibility become increasingly difficult to reconcile.

[460] Hochschild (n 237)

Safeguarding against this requires more than skill; it demands a culture of ethical reflexivity within the mediation field. A normative governance question is whether mediation training should require practitioners to ask not only how empathy is used, but why[461]. Who benefits from emotional alignment in this moment? Whose legitimacy is being bolstered, and whose might be diminished? These are questions of power as much as of emotion. EI is a powerful resource in environmental mediation, enabling compassion, clarity, and connection in deeply divisive contexts. But its power cuts both ways. It can illuminate or obscure, include or manipulate, bridge or bias[462]. This analysis suggests that ethical use of EI cannot be reduced to technique alone, but raises questions about the role of self-awareness, structural critique, and ongoing ethical scrutiny in mediation practice.

This raises the governance issue of what ethical safeguards, including narrative checks and impartial supervision, would be required if EI is relied upon as a source of legitimacy in public-interest mediation. It also entails the development of frameworks that distinguish genuine empathy from emotional performance, as well as the cultivation of a mediation culture in which emotional reflexivity is treated not as an afterthought, but as a foundational principle. Ultimately, ethical mediation is not only about managing emotion; it is about governing the systems through which emotion becomes power. As EI becomes more central to ADR practice, the literature raises questions about how attentiveness to emotions in the room intersects with the institutions, histories, and biases that shape how those emotions are interpreted, received, and acted upon. Mediation practice increasingly rewards emotional competence and relies on affective legitimacy to secure compliance, yet the ethical governance of that competence remains under-specified.

The preceding sections have developed a conceptual and ethical framework for understanding emotionally intelligent mediation advocacy in environmentally related planning disputes. By analysing the institutional tensions of environmental mediation, the role of legal professionals, and the ethical risks associated with emotionally informed advocacy, Chapter 5 has clarified the conditions under which emotionally intelligent mediation practice operates. Having established this conceptual foundation, the thesis now turns to empirical investigation. Chapters 6–8

[461] Jay Rothman, 'The Reflexive Mediator' (2014) 30(4) *Negotiation Journal* 441–453.
[462] Brandon (n 394)

examine how legal professionals in the United Kingdom engage with ADR in practice and explore the institutional, professional, and relational conditions under which mediation advocacy and emotionally informed legal judgement emerge in environmentally related planning disputes.

5.6 Governance and Professional Development Issues Raised by EI in Mediation

This section does not advance prescriptive recommendations. Instead, it identifies the professional, ethical, and institutional considerations that arise when EI is treated as a desirable competency in mediation advocacy. The purpose here is diagnostic rather than programmatic: to clarify the limits, risks, and governance challenges associated with EI-oriented practice. Questions of training design, institutional reform, and professional development are examined empirically and normatively in later chapters.

5.6.1 Training and development of emotional competencies for lawyers

The discussion below does not propose a training model, but identifies recurring ethical and professional tensions associated with EI-oriented legal training. In high-stakes fields like planning and environmental disputes, EI becomes a tool not only for resolving conflict but for fundamentally reshaping how lawyers engage with stakeholders. EI training therefore cannot be treated as a substitute for technical legal expertise, but rather as a complementary capacity that operates within, not above, legal and institutional constraint.

The Necessity of Emotional Competency Training

As established in Chapter 4, EI is a critical component of effective mediation; this section focuses on the challenges of embedding EI within legal training and professional practice. Emotional awareness allows lawyers to recognise and interpret the often-unspoken concerns of stakeholders, while empathy and regulation provide the framework for guiding constructive dialogue. For example, in planning disputes, the emotional stakes for all parties, whether environmental groups, developers, or community members, are often as high as the legal ones. Lawyers with high EI are better equipped to navigate these emotional undercurrents, fostering trust and managing the tension between opposing viewpoints[463, 464]. This raises questions about the limits of EI when confronting technical, legal, and institutional complexity.

Some scholarship suggests that lawyers with higher EI may be more effective at de-escalating conflicts and identifying areas of common ground, a skill particularly important in planning disputes where the parties often hold strong, and polarising, views on issues like land use and environmental protection[465]. Here, we must balance emotional sensitivity with the recognition that not all issues can be solved through EI alone.

Components of EI Training for Lawyers

The development of EI in lawyers requires a nuanced approach. It is not simply about teaching lawyers to be "nicer" or more empathetic; rather, it is about refining the cognitive and emotional skills necessary for navigating complex emotional and legal landscapes. The following key components highlight what this training entails:

- Self-Awareness and Self-Regulation: For lawyers, the ability to identify and regulate personal emotions is foundational. While a lawyer's emotional response to a particularly contentious environmental issue might be one of frustration or impatience, EI training teaches lawyers to recognise these emotions before they affect their professional conduct. Mindfulness practices, a central element of EI training, help lawyers maintain composure and stay focused on the larger objective: resolving the dispute, not escalating it[466]. Excessive emotional suppression can undermine ethical attunement, particularly in disputes involving deeply felt environmental concerns, and therefore raises the need for reflexive safeguards rather than uncritical emotional restraint.

- Empathy and Active Listening: Empathy, and the ability to engage in active listening, can transform the mediation process by ensuring that all parties feel

[463] Jerry Don Smith Jr, *The Pivotal Role of Emotional Intelligence in Effective Mediation* (Medium, 24 September 2024) https://medium.com/@jds3232/the-pivotal-role-of-emotional-intelligence-in-effective-mediation-1a58e5217d49 accessed 24 March 2025.

[464] Amy Lieberman, *Mediation and Emotional Intelligence* (Attorney at Law Magazine, 12 June 2019) https://attorneyatlawmagazine.com/legal-vendors/mediation/mediation-emotional-intelligence accessed 26 March 2025.

[465] Fisher, Ury and Patton (n 122)

[466] Nathalie Martin, 'Gaining Self-Awareness' in Nathalie Martin, *Lawyering from the Inside Out* (Cambridge University Press 2018) ch 1.

heard and validated. Yet, there is a fine line between empathetic engagement and emotional bias. For example, a lawyer in an environmental dispute might empathise with an environmental activist's concerns over land degradation, but how does that empathy translate when negotiating with developers focused on economic growth? Active listening, though essential, may not always prevent biases from forming, particularly when the stakes are high, and both parties present equally legitimate but conflicting interests[467]. Empathy can generate unconscious partiality, particularly in asymmetrical disputes, and therefore requires ethical reflexivity and boundary awareness within mediation advocacy.

- Communication and Persuasion: Clear, neutral, and empathetic communication is indispensable in mediation. Training in communication techniques, including the use of neutral language and summarising opposing viewpoints, enhances the lawyer's ability to create space for productive dialogue[468]. Persuasion in mediation is never value-neutral, and emotionally intelligent communication therefore raises ethical questions about influence, credibility, and boundary management. Lawyers, especially in planning disputes, are trained to advocate fiercely for their client's position. The challenge, then, is how to integrate EI in a way that facilitates persuasion without undermining impartiality. This is where balancing EI with the core principles of legal advocacy becomes critical.
- Stress Management: Mediation, especially in complex disputes like those involving environmental or planning issues, can be emotionally taxing. EI training incorporates stress management techniques, such as cognitive reframing and mindfulness exercises, to help lawyers maintain focus and resilience[469]. Stress management may enhance individual resilience, but without institutional support it risks functioning as a coping mechanism that

[467] Goleman (n 156)
[468] Monarch Solicitors, *Cross-Cultural Mediation* https://www.monarchsolicitors.com/international/international-and-cross-border-disputes/cross-cultural-mediation/ accessed 28 March 2025.
[469] Owen Kelly, 'Coping with Stress and Avoiding Burnout: Techniques for Lawyers' (Canadian Bar Association, 13 October 2009) https://www.cba.org/resources/cba-practicelink/coping-with-stress-and-avoiding-burnout-techniques-for-lawyers/ accessed 9 April 2025.

stabilises emotionally demanding processes without addressing their underlying ethical or structural pressures.

Challenges in Implementing EI Training

Despite the evident benefits, significant challenges remain in implementing EI training across the legal profession. For one, many lawyers may perceive EI as a "soft skill" that is secondary to the hard skills of legal analysis and argumentation[470]. This scepticism toward EI is compounded by the lack of standardised curricula in legal education. While some law schools have begun integrating EI training into their programs, its inconsistency across institutions raises questions about its long-term effectiveness and broad applicability[471]. Should EI be a mandatory part of legal education, or does its integration risk overburdening an already rigorous curriculum? These are questions that merit deeper consideration as we move toward more comprehensive legal training programs.

Implications for Mediation Practices

The integration of EI into legal practices offers significant potential for transforming mediation outcomes, especially in the context of environmentally related planning disputes. Lawyers trained in EI are better able to navigate the emotional landscapes of these disputes, facilitating constructive dialogue and identifying shared interests that might otherwise be obscured by entrenched positions. These tensions highlight that while EI can facilitate dialogue and engagement, it cannot resolve deeply polarised environmental disputes without parallel legal, institutional, and regulatory support.

5.7 Chapter Summary

This synthesis consolidates the conceptual and normative analysis developed in this chapter. It does not report empirical results, but instead identifies the ethical tensions, institutional constraints, and analytical orientations that structure emotionally intelligent mediation practice. These themes provide the interpretive framework for

[470] eSoftSkills, *Developing Emotional Intelligence for Legal Success* (eSoftSkills) https://esoftskills.com/legal/developing-emotional-intelligence-for-legal-success/ accessed 3 April 2025.

[471] Join the Collective, *Emotional Intelligence Strategies for Collaborative Conflict Resolution* (14 December 2023) https://www.jointhecollective.com/article/emotional-intelligence-the-keystone-of-collaborative-conflict-resolution/ accessed 7 April 2025.

the empirical chapters that follow, which examine how legal professionals actually experience, negotiate, and operationalise EI in practice.

The analysis suggests that emotionally intelligent mediation can enhance communication and procedural engagement, while also interacting with structural asymmetries in ways that require careful scrutiny. These tensions are particularly acute in environmentally related planning disputes, where conflicts are embedded in public interest, regulatory complexity, and deeply contested values. Ethical unease may be especially pronounced where mediation requires compromise on matters framed as moral or environmental imperatives. This highlights a core limitation of emotionally intelligent facilitation in disputes where compromise may be experienced as trading off non-negotiable environmental or social commitments.

Despite growing normative endorsement of emotionally intelligent mediation, there remains a notable lack of empirical research examining how lawyers and mediators navigate these ethical tensions in real-world planning contexts, how EI shapes professional judgement, and how institutional constraints condition its use. This gap underlines the need for empirical investigation that moves beyond prescriptive models to examine EI as it is enacted, constrained, and negotiated in practice. These analytical insights guide the empirical investigation in Chapters 6–8, where the lived experience of emotionally intelligent advocacy is examined across professional roles and institutional settings.

Chapters 6–8 take the ethical risk-conditions identified in this chapter as empirical questions rather than settled claims. Chapter 6 examines how environmentally related planning disputes are channelled into mediation and how procedural conditions shape participation. Chapter 7 analyses how lawyers describe using, resisting, or managing EI in mediation advocacy, including how they navigate neutrality, credibility, and emotional pressure. Chapter 8 then tests the ethical sequence developed here; moving from benign empathy to strategic deployment and ethical risk; against practitioner accounts, examining where this framework holds and where it requires refinement.

Taken together, the literature reviewed in this chapter suggests that emotionally intelligent practice in mediation may be oriented in different ways, depending on professional role, institutional context, and ethical positioning. The ethical framework developed in this chapter therefore conceptualises emotionally intelligent mediation advocacy as operating along a continuum of escalating ethical risk. At its most benign, emotionally intelligent practice supports recognition, dialogue, and relational engagement between disputing parties. However, under institutional pressure or strategic advocacy conditions, these same emotional competencies may evolve into forms of influence that shape negotiation dynamics, stakeholder perceptions, and procedural legitimacy. The framework identifies three cumulative ethical risk conditions: strategic influence, where empathic engagement becomes a tool of persuasion; partiality, where emotional alignment risks compromising neutrality; and emotional instrumentalism, where emotional competence is deployed performatively beyond existing regulatory safeguards. These stages do not represent inevitable outcomes but analytical conditions through which emotionally intelligent advocacy may generate both ethical value and ethical vulnerability within environmentally related planning mediation.

While these orientations are not presented here as a formal typology, they point toward recurring patterns in how EI is mobilised in legal mediation. These include emotionally responsive advocacy, where empathy is used to advance client interests within adversarial constraints; ethical stewardship, where emotional regulation is oriented toward procedural fairness and legitimacy; and affective management, where emotional competence functions as a technique for stabilising conflict and facilitating agreement. These orientations remain analytically provisional and are not treated as fixed roles or classifications. Their relevance and limits are explored empirically in the chapters that follow. Table 5.1 summarises these escalating stages and the empirical questions they generate for Chapters 6–8.

Table 5.1 – Explanation of the Three-Stage Ethical Risk Model (Figure 2)

Table 5.1 expands upon the conceptual model presented in Figure 2 by summarising the ethical characteristics, associated risks, and empirical implications of each stage of the three-stage ethical risk model.

Stage	Ethical Risk Condition	Description	Empirical Implication
Stage 1 -Empathic Engagement	Low ethical risk	Recognition, de-escalation, emotional	Examine how emotionally informed advocacy facilitates

		awareness, trust-building and dialogue.	constructive mediation while remaining professionally accountable.
Stage 2 - Strategic Influence and Emergent Partiality	Moderate ethical risk	Empathy begins to shape persuasion, framing and emotional alignment.	Examine whether EI is strategically deployed and whether neutrality becomes vulnerable.
Stage 3 - Emotional Instrumentalism and Governance Gap	High ethical risk	Emotional competence becomes performative or strategically deployed beyond existing safeguards.	Examine whether ethical regulation adequately constrains emotionally informed advocacy.

The three-stage ethical risk model developed in this chapter identifies three interlinked stages of normative escalation (strategic influence, emotional partiality, and emotional instrumentalism) as structurally embedded risks within emotionally intelligent mediation advocacy. These stages operate as a transferable analytical model for examining how emotionally intelligent mediation functions under institutional constraint and where ethical vulnerability intensifies. Chapter 6 investigates how the institutional design of mediation creates conditions for these risks. Chapter 7 explores how legal professionals understand and navigate these risks in practice. Chapter 8 evaluates whether the cumulative ethical sequence proposed here is supported or challenged by real-world experiences, and what this means for professional governance in emotionally intelligent mediation.

The normative position of this thesis is therefore deliberately calibrated. It enhances relational legitimacy, supports procedural engagement, and may deepen the quality of dialogue in environmentally related planning disputes. However, it does not, and cannot, correct structural inequities, institutional asymmetries, or distributive injustices embedded within planning governance. Nor does emotionally intelligent practice confer moral superiority on its practitioners. Rather, it intensifies ethical responsibility. The more emotionally influential mediation becomes, the greater the obligation for reflexive scrutiny, boundary awareness, and institutional accountability. EI is positioned as a relational capacity whose legitimacy depends on its alignment with professional accountability and institutional safeguards.

Chapter 6: Legal Professionals’ Engagement with ADR in Environmentally Related Planning Disputes

6.1 Introduction

This chapter focuses on Alternative Dispute Resolution (ADR) in environmentally related planning disputes. This domain sits at the intersection of public and private law and raises distinct challenges around legitimacy, enforceability, and procedural fairness. As environmental and planning conflicts grow increasingly complex and multi-dimensional, traditional litigation is often criticised for its high cost, procedural rigidity, and tendency to escalate conflict. These limitations have prompted renewed interest in integrating ADR into the civil justice system.

Unlike private commercial contexts, where ADR mechanisms such as adjudication are statutorily embedded through instruments like the Housing Grants, Construction and Regeneration Act 1996, the planning field in the UK lacks equivalent procedural mandates. While ADR is well established in commercial and construction law, supported by contractual norms and regulatory expectation, environmental disputes in the UK remain largely dominated by formal legal processes.

Building on the conceptual framework developed in Chapters 4 and 5, this chapter shifts the thesis from conceptual analysis to empirical investigation by examining how legal professionals in the United Kingdom engage with ADR in environmentally related planning disputes. The focus here is the institutional context in which such practices occur, examined through legal professionals’ engagement with ADR in environmentally related planning disputes. Understanding this institutional landscape is necessary before analysing the emotional and ethical dimensions of mediation advocacy examined in Chapter 7.

Drawing on data from the first two phases of research, a national survey of 120 legal professionals and twelve follow-up interviews, it explores how lawyers in the UK engage with ADR in planning-related environmental disputes. The emphasis here is not on EI (which is the focus of Chapter 7), but rather on the broader professional, procedural, and institutional factors that shape whether ADR is perceived as viable, effective, or appropriate.

Throughout this chapter, lawyers’ engagement with ADR refers specifically to their conduct and judgement as mediation advocates representing clients within facilitated processes, rather than to general policy engagement with ADR as an institutional concept. Before turning to the emotional dimensions of mediation advocacy examined in Chapter 7, it is necessary to understand the institutional and cultural landscape in which ADR is situated. This includes how legal professionals assess its legitimacy, the extent to which it is supported by the system, and how role identity and adversarial norms constrain or enable its use.

6.2 Methodological Recap and Analytical Framing

This chapter draws on data from the first two phases of a mixed methods research design, as outlined in Chapter 2. These phases were structured to examine how legal professionals in the UK perceive and apply ADR within the specific context of environmentally related planning disputes, a domain where legal, procedural, and ethical stakes are notably complex. While ADR has gained increasing attention across the civil justice system, its application in public law remains under-researched, particularly in disputes marked by regulatory discretion, long-term spatial implications, and diverse stakeholder claims.

6.2.1 Survey Design and Participant Profile

The first phase of the research involved a national online survey distributed to 267 legal professionals working in environmental and planning law. Participants were selected using purposive sampling based on predefined eligibility criteria. To be included, individuals had to be qualified legal professionals practising, or having substantial professional experience, in planning or environmental law within the United Kingdom. This included solicitors, barristers, in-house counsel, legal advisers to public authorities, and practitioners working within environmental organisations whose work involved planning or environmental disputes. The sampling strategy deliberately excluded non-legal professionals and individuals without direct professional engagement in this field, ensuring that respondents possessed relevant expertise for addressing the research questions.

The sampling frame was derived from professional directories and practitioner networks such as the UK Environmental Law Association (UKELA), the Planning and Environmental Bar Association (PEBA), and Planning Aid Scotland (PAS). These organisations were chosen because they represent practitioners actively engaged in planning and environmental law across public, private, and third-sector settings, thereby providing access to respondents with direct professional experience of ADR and mediation within the scope of this research.

Out of the initial sample, 120 full responses were received, representing a robust response rate for an online legal survey. Respondents included solicitors, barristers, and legal professionals working in advisory or regulatory capacities, and the majority had over a decade of post-qualification experience. Nearly half reported involvement in high-stakes cases, including nationally significant infrastructure projects, environmental permitting regimes, and planning challenges via judicial review.

Respondents were geographically distributed across the UK, reflecting a broad cross-section of legal practice. The survey was administered through Qualtrics and analysed using SPSS, focusing on trends in ADR awareness, usage patterns, perceived barriers, training history, and institutional support.

6.2.2 Interview Sampling and Depth

To complement the survey's breadth, a second phase of qualitative research was conducted. This phase involved twelve semi-structured interviews with legal professionals drawn from the survey cohort. A purposive sampling strategy ensured diversity in practice area, seniority, and institutional affiliation. Interviewees were selected from survey respondents who indicated their willingness to participate in a follow-up interview. Selection was based on predefined criteria designed to maximise variation across professional role, years of post-qualification experience, sector of practice (public, private, and third sector), and level of engagement with ADR in environmentally related planning disputes. This approach ensured that the interview sample captured a broad range of professional perspectives while remaining closely aligned with the research objectives.

Participants included senior partners at national law firms, barristers with planning expertise, in-house legal advisers to local authorities, NGO legal officers, and lawyers engaged in advocacy and enforcement work.

Interviews were conducted via videoconference and typically lasted between 60 and 75 minutes. A semi-structured guide was used to explore both general and case-specific experiences with ADR. Topics included familiarity with various ADR mechanisms such as mediation, negotiation, and arbitration, comparisons with litigation, concerns regarding enforceability and legitimacy, and the impact of judicial incentives or planning culture on ADR uptake.

Interviewees were also asked to reflect on their professional role in shaping ADR processes and outcomes, whether acting as advocates, facilitators, or institutional agents. These reflections provided insight into the self-conceptions that underpin legal practice in this field and helped to surface the complex interplay of ethics, client expectations, and structural constraints.

6.2.3 Thematic Analysis and Conceptual Anchoring

Qualitative data were analysed using Reflexive Thematic Analysis[472], consistent with the critical-pragmatist epistemology outlined in Chapter 2. Inductive coding was conducted in NVivo, involving an iterative process of categorising, refining, and reframing codes as themes emerged across transcripts. Thematic development was guided by both empirical significance and conceptual relevance to the thesis's broader focus on justice, power, participation, and professional identity in public law dispute resolution.

Particular attention was paid to narrative tensions; for example, instances where legal professionals voiced support for ADR yet declined to use it, or where rhetorical commitments to empathy and procedural openness contrasted with more cautious or adversarial decisions in practice. These tensions were not interpreted as contradictions, but rather as windows into the professional strategies and institutional constraints shaping ADR engagement in the absence of clear mandates.

Thematic analysis revealed four dominant clusters:

- Professional attitudes toward ADR, including scepticism, strategic deployment, and normative ambivalence
- Institutional functions and constraints, such as perceived cost-efficiency, enforceability concerns, and procedural flexibility
- Structural and procedural barriers, including legal uncertainty, judicial inertia, and resource asymmetries

[472] Braun and Clarke (n 25)

- Cultural and ethical tensions, shaped by planning norms, adversarial habits, and the performative dimensions of engagement

These themes address the core question of Phases 1 and 2: under what conditions ADR is perceived as legitimate, effective, and ethically navigable. In analysing the interview data, a distinction was drawn between participants speaking about ADR in general terms (for example, as a policy tool, institutional process, or abstract dispute resolution mechanism) and participants reflecting on their own practice as mediation advocates acting on behalf of clients. Analytic emphasis was placed on extracts describing advocacy decisions, strategic judgement, and professional conduct in mediation contexts, with more general commentary on ADR used to contextualise, rather than define, mediation advocacy practice.

While interview data formed the primary source for thematic analysis, survey responses provided valuable complementary insights. In particular, they helped to triangulate patterns concerning perceived barriers, strategic positioning, and institutional variance.

Survey findings provide quantitative context for these themes. Of the 120 respondents (a 44% response rate), 62% were solicitors, 28% barristers, and 10% other legal professionals working in advisory or regulatory roles, with more than 70% having over a decade of post-qualification experience. Geographically, respondents were distributed across England, Scotland, Wales, and Northern Ireland, with England accounting for 58%, Scotland 22%, Wales 14%, and Northern Ireland 6% of the sample. A clear majority regarded ADR as both time- and cost-effective and procedurally more flexible than litigation (61.3% and 67.5%, respectively). At the same time, 34% reported having received no formal ADR training, and fewer than half had encountered ADR in their initial legal education. Power and institutional support also emerged as concerns: around 40% of respondents identified power imbalances as a significant issue in ADR, a similar proportion perceived ADR as being used primarily to create the appearance of engagement rather than to resolve disputes, and fewer than one-third reported consistent institutional support for ADR across local government bodies. These figures underpin the qualitative analysis that follows and are referred to narratively in later sections rather than repeated in full.

Table 6.1: Summary of Survey Sample Characteristics (n = 120)

Characteristic	Result
Invitations distributed	267
Completed responses	120
Response rate	44%
Solicitors	62%
Barristers	28%
Other legal professionals (advisory/regulatory roles)	10%
More than 10 years' post-qualification experience	>70%
England	58%
Scotland	22%
Wales	14%
Northern Ireland	6%

Reflexivity and limitations

The survey sample was drawn from professional networks and may over-represent practitioners already engaged with ADR or environmental planning, and the twelve interviewees cannot represent the full diversity of UK practice. These risks were mitigated through maximum-variation sampling, transparent coding memos, and triangulation across data sources, but they remain important context for interpreting the findings.

6.3 Attitudes to ADR: Between Endorsement and Scepticism

This section examines how legal professionals understand and evaluate the role of ADR in environmentally related planning disputes. Their perspectives range from viewing ADR as a practical solution to seeing it as a peripheral or uncertain element of legal strategy. Drawing on both survey responses and interview insights, the section explores how these attitudes are shaped by institutional norms, legal training, and professional identity. Survey data provide an overview of prevailing professional attitudes toward ADR, while interview accounts offer deeper insight into how these attitudes are interpreted and enacted within everyday mediation advocacy practice. In doing so, it sets the stage for a more detailed analysis of how practitioners approach ADR in principle and in practice. Throughout, the analysis treats these evaluations as part of lawyers’ mediation advocacy, shaping how they advise and prepare clients, frame negotiation strategies, and decide whether to recommend or resist ADR processes.

6.3.1 ADR as Pragmatic Necessity in the Planning System

Across interviews and survey responses, ADR was framed less as a principled commitment to deliberative justice and more as a pragmatic instrument within broader litigation and planning strategy.

Survey results confirm this instrumental logic: a clear majority of respondents agreed that ADR offers a time- and cost-effective alternative to litigation and viewed it as procedurally more flexible. The interviews help to explain how this instrumental framing operates in practice, revealing how lawyers incorporate ADR into broader litigation and planning strategies rather than treating it as a principled commitment to collaborative dispute resolution. For many planning lawyers, especially those advising developers or local authorities, ADR functions as a way to pre-empt objections or mitigate reputational risk. This framing positions ADR less as a justice-enhancing forum and more as a risk-management instrument within adversarial case strategy. Decisions to use it are therefore operational rather than normative.

Several participants expressed cautious or sceptical views about ADR's utility. One barrister remarked, "Some colleagues think mediation's a waste of time unless the inspectorate tells us to do it," reflecting the sense that ADR lacks institutional authority unless formally endorsed. Another solicitor similarly stressed that clients prioritise concrete results over extended dialogue, which shapes how many practitioners evaluate the strategic value of ADR.

Yet this pragmatism reveals underlying tension. Many interviewees described professional cultures that privilege accountability and procedural rigour. ADR's informality can therefore be both an advantage and a liability, efficient when legal pathways are uncertain but problematic where public interest considerations demand transparency or when negotiated outcomes lack firm legal standing.

Practitioners often endorse it in principle but rarely perceive it as a fully integrated or normatively secure element of the legal process. For mediation advocates, this ambivalence translates into cautious advice to clients, selective use of mediation as a tactical step in wider case strategy, and a tendency to treat ADR as contingent on how it will affect their ability to secure acceptable outcomes for those they represent.

These decisions illustrate the role of relational legal judgement in mediation advocacy, as lawyers must assess not only legal merits but also interpersonal dynamics, stakeholder expectations, and the strategic implications of negotiation within the planning process.

6.3.2 Structural Resistance and the Endurance of Adversarial Norms

Although principled opposition to ADR was rare, many participants identified structural and institutional obstacles that discourage its use in environmentally related planning disputes. The most frequently cited barrier was the absence of formal procedural integration. Unlike in construction law, where adjudication is mandated under the Housing Grants, Construction and Regeneration Act 1996 (HGCRA), planning law provides no statutory guidance that encourages ADR. Several participants observed that this procedural silence fosters uncertainty about when, how, and under whose authority ADR should be pursued.

One barrister remarked, "You can't just 'ADR' your way through public law; it's not like contract disputes," highlighting the difficulty of reconciling ADR with public accountability.

This institutional gap has practical implications. Without judicial encouragement, statutory backing, or regulatory benchmarks, legal professionals must decide on ADR use at their discretion. Survey data from Phase 1 showed that only a minority of respondents believed ADR was institutionally supported in the planning system. Many reported wide variation in its adoption, depending on local authority policy or client expectations.

These challenges are compounded by enduring professional norms and cautious institutional cultures. Legal education and training have not consistently embraced ADR. According to the survey, a substantial minority of respondents had received no formal ADR training, and fewer than half had encountered it in their legal education. Several interviewees noted that ADR was seen as peripheral unless they worked in specialist fields such as family or commercial law. As one planning solicitor explained, "You learn ADR if your practice forces you to, not because the profession expects it. Moreover, legal professionals are shaped by adversarial training, which reinforces litigation as the normative mode of resolution. As Brooker (2007)[473] argues, lawyers often serve as “gatekeepers” who guide dispute trajectories based on their confidence in, or scepticism toward, alternatives like mediation. This role was evident in the interviews, where several participants described ADR as unfamiliar territory, particularly when cases involved issues of public accountability or environmental risk.

Institutional and organisational structures further inhibit ADR uptake. Participants reported that billing systems, procedural timetables, and organisational inertia reduced incentives for early resolution unless explicitly requested by clients. As Genn (2012)[474] notes, the notion of voluntariness in ADR policy often conceals deeper institutional inattention. This observation also resonates with Fiss (1984)[475], who warns that ADR in public law contexts can obscure rights-based adjudication under the guise of procedural efficiency.

These findings highlight how structural resistance and entrenched legal habits sustain the peripheral status of ADR in planning contexts. Without clear mandates, systemic incentives, or cultural shifts within the profession, the move away from adversarial norms remains limited and inconsistent. As a whole, the survey findings and interview insights point to the same conclusion: structural conditions rather than individual professional preference largely explain the irregular use of ADR in planning practice. While survey responses highlight patterns of limited institutional support and training gaps, interview accounts illustrate how these structural constraints are experienced and navigated by lawyers in their everyday mediation advocacy. Strategic considerations also reinforce the endurance of adversarial norms.

Several interviewees described how ADR is often used instrumentally: as a way to demonstrate that engagement has occurred, manage reputational risk, or satisfy procedural expectations - rather than as a forum for substantive negotiation. In these cases, ADR is adopted when it fits existing litigation or planning strategy, not because it represents a distinct normative commitment. This strategic use of ADR aligns with the broader patterns of institutional caution described above and

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473 Penny Brooker, ‘An Investigation of Evaluative and Facilitative Approaches to Construction Mediation’ (2007) 25 *Structural Survey* 220
474 Hazel Genn, ‘What Is Civil Justice For? Reform, ADR, and Access to Justice’ (2012) 24 *Yale Journal of Law & the Humanities* 397
475 Owen M Fiss, ‘Against Settlement’ (1984) 93 *Yale Law Journal* 1073

contributes to the perception of ADR as a peripheral, low-authority process within planning disputes. From the perspective of mediation advocacy, these patterns show lawyers deploying ADR as one element of a broader advocacy repertoire, choosing when to propose, resist or shape mediation in light of their obligations to protect clients' legal positions and manage expectations.

6.3.3 Professional Identity and Ethical Role Ambivalence

Beyond structural barriers, the interviews also revealed a deeper form of ambivalence regarding the professional identity of legal practitioners within ADR processes. This was not characterised by opposition to ADR, but by discomfort with its institutional ambiguity, especially when outcomes are unenforceable or when collaborative approaches clash with traditional advocacy norms.

Several participants acknowledged that engaging with ADR disrupted their default legal identity. Litigation relies on procedural clarity, adversarial skill, and formal authority. ADR, by contrast, requires flexibility, negotiation, and affective skills. As discussed in Chapter 4, many public law lawyers see themselves as stewards of procedural legitimacy. In the absence of formal mandates or consistent enforcement mechanisms, they reported uncertainty about their role: are they advocates, facilitators, or something more hybrid?

One local government solicitor reflected, "I often don't know what 'hat' I'm wearing, are we mediating or lawyering? It's blurry," capturing the uncertainty that accompanies boundary-crossing roles in informal settings. For mediation advocates, this uncertainty is experienced in concrete advocacy decisions: how far to press a legal argument in the interests of principle, when to encourage a client to compromise for relational or reputational reasons, and how to respond when a mediator's framing of the dispute appears to sit uneasily with the client's rights or expectations. These moments reveal how mediation advocacy requires relational legal judgement, as practitioners must continuously balance legal obligations, client interests, and the interpersonal dynamics of negotiation within institutionally constrained dispute resolution settings.

Some interviewees also spoke to the emotional labour involved in navigating this ambiguity. Although not the main focus of this research phase, early signs of emotional themes, such as frustration, empathy, and professional exhaustion, began to emerge. One participant described the challenge of "managing conflict in a space that doesn't always support compromise," underscoring the interpersonal effort required to make ADR viable in resistant environments.

Techniques such as active listening, softening legal language, and building rapport were occasionally cited, though usually framed as tactical tools rather than central elements of legal identity. This suggests a tendency to instrumentalise affective strategies, reflecting broader uncertainty about whether ADR constitutes legitimate legal practice or remains a supplementary skillset more appropriate to other domains.

6.3.4 Mediation Advocacy Behaviours

Although mediation advocacy is woven throughout the preceding analysis, it is useful to draw together explicitly the core advocacy behaviours described by participants. Across interviews, lawyers did not speak about ADR merely as a procedural option, but as a site of active professional judgement in which they exercised strategic, relational, and ethical decision-making on behalf of clients. These behaviours illuminate how ADR is operationalised in practice and clarify the distinct role played by lawyers acting as mediation advocates.

A central advocacy task involved advising clients on whether and when settlement through ADR was appropriate. Participants described evaluating the suitability of mediation in light of legal merits, political context, resource asymmetries, and reputational risk. Decisions to recommend ADR were rarely framed as neutral or principled endorsements; rather, they were positioned as strategic judgements about whether mediation would advance or undermine broader case objectives. In some instances, lawyers described steering clients away from ADR where it was perceived to legitimise predetermined outcomes or weaken litigation positions.

Interviewees also described advocacy work within mediation itself, including negotiating with opposing counsel, managing mediator dynamics, and calibrating the disclosure of information. One participant explained, "You're constantly judging how much to reveal, when to stay silent, and when pushing harder will actually make settlement less likely." Lawyers spoke of actively reading the room, moderating tone, and selectively deploying relational techniques to maintain momentum or protect client interests. These practices included softening legal language, reframing emotionally charged claims, and engaging in reality-testing with both clients and mediators. While often described in pragmatic terms, such practices reflect the routine use of emotional and interpersonal judgement as part of advocacy strategy.

Another recurrent aspect of mediation advocacy concerned managing the relationship between mediated discussions and formal planning processes. Several participants highlighted the work involved in translating mediated understandings into legally and institutionally viable outcomes, such as planning conditions, Section 106 agreements, or procedural commitments. This translation work was described as both technically demanding and ethically sensitive, particularly where informal agreements risked creating expectations that could not ultimately be delivered within statutory frameworks.

Collectively, these mediation advocacy behaviours demonstrate that lawyers' engagement with ADR extends well beyond passive participation. Instead, mediation operates as a site of professional agency in which advocates actively shape process, manage emotion, and navigate institutional constraints on behalf of clients. Making these behaviours explicit helps to clarify how the empirical findings in this chapter relate to the emotional and ethical dimensions of advocacy examined in Chapter 7 and to the broader patterns identified through survey triangulation in Chapter 8.

6.4 Perceived Strengths and Institutional Functions of ADR

This section examines how legal professionals describe ADR's perceived strengths and institutional functions in practice. Rather than treating ADR as a principled commitment to deliberative justice, the analysis here examines its operation as a procedural, strategic, and reputational instrument within institutionally constrained environments. In practice, these functions are exercised through mediation advocacy: advising clients on whether to enter ADR, shaping the agenda and tone of negotiation sessions, and translating mediated understandings back into legally and politically acceptable outcomes.

6.4.1 Early Resolution, Cost-Saving, and Flexibility

As noted above, respondents valued ADR's efficiency and adaptability, seeing it as a mechanism for practical dispute containment rather than transformative dialogue. In early-stage planning discussions, ADR offers predictability and the chance to avert delays or appeals. Several practitioners framed mediation and negotiation as tools for "keeping things moving" and "avoiding everything grinding to a halt once it gets to court," especially in politically sensitive schemes.

However, participants also acknowledged that flexibility carries distributive risks. As discussed in Chapter 3, informal processes may reinforce power asymmetries when community actors lack technical or financial capacity. Several interviewees observed that pre-application consultations, though framed as inclusive, often privilege well-resourced developers. This reflects a tension between *procedural efficiency* and *distributive fairness*: ADR may streamline decision-making while leaving underlying inequalities untouched.

Some participants also questioned whether ADR genuinely altered outcomes. As one local authority lawyer observed, ADR was often used primarily to calm tensions and improve the appearance of the timetable and participation, while leaving the underlying planning balance largely unchanged; it made the process smoother, but not necessarily fairer. This comment illustrates how ADR can satisfy expectations of orderly process while falling short of what deliberative theories of justice would regard as meaningful reason-giving and power-sensitive negotiation.

Thus, while procedural adaptability remains ADR's central strength, its fairness and legitimacy depend on institutional design and stakeholder balance. Participants frequently distinguished between participation as opportunity and participation as influence, suggesting perceived limits to ADR's substantive impact. For mediation advocates, these tensions surface in the advice they give about settlement, the way they frame compromise options to clients, and the emotional work of reconciling efficient resolution with concerns about substantive justice.

6.4.2 Procedural Visibility and Stakeholder Inclusion

A recurring observation in the interviews was that ADR, particularly in the form of informal negotiation or early mediation, can enhance procedural transparency during the planning process. Several legal professionals described instances where pre-application engagement revealed community concerns or regulatory tensions ahead of formal submissions. One participant, involved in a large renewable energy development, explained that consultations with rural councils provided useful local insights, though these were later sidelined during formal review. Another interviewee similarly noted: "Early engagement with community reps allows developers to anticipate objections before things go legal.” A planning solicitor offered a more optimistic example: “In one recent case, early mediation helped residents redesign parts of the scheme, so it’s not always just box-ticking.”

While such processes may increase transparency, they do not always lead to meaningful stakeholder influence. Survey responses reflected this concern: a significant minority of participants cited power imbalances as a major issue in ADR settings, particularly when community actors lacked legal knowledge or institutional support. This dynamic recalls the “procedural illusion of participation” discussed in Chapter 3, in which processes appear participatory but fail to redistribute influence or alter outcomes. In terms of normative frameworks, ADR may deliver *procedural justice* in the narrow sense of providing a forum and opportunity to speak, while falling short of *deliberative justice*, where reasons are exchanged on equal terms and can genuinely reshape decisions.

Several interviewees expressed reservations about confidential mediation forums. Although often framed as open and flexible, these spaces may reduce public accountability. As one lawyer observed, “It looks like engagement, but often nothing changes after the meeting.” These survey concerns mirror the interview accounts, indicating that perceived inclusion often fails to translate into influence across settings. In this respect, stakeholder participation risks becoming largely symbolic unless accompanied by institutional guarantees that community input can modify, rather than merely accompany, planning outcomes. Lawyers acting as mediation advocates sit at the centre of these dynamics, mediating between institutional expectations of visible engagement and clients’ interests, and using their EI to judge when to amplify community voices, when to temper expectations, and how to communicate the limits of what ADR can realistically deliver.

6.5 Structural and Procedural Barriers to ADR Engagement

Although legal professionals recognise the potential advantages of ADR, its systemic adoption in planning and environmental disputes remains constrained. These constraints stem from both structural design features and professional role tensions that shape how mediation advocacy is practised in planning disputes. These issues form the foundation for the discussion in Chapter 7 and shape the conditions under which mediation advocates can exercise emotionally intelligent, ethically grounded advocacy within ADR processes.

6.5.1 Institutional Fragility: Enforceability, Voluntariness and Procedural Ambiguity

While practitioners recognise ADR's procedural flexibility as explored before in this chapter, that adaptability is also the source of its fragility when outcomes lack enforceable standing. A central limitation identified by legal professionals is the absence of mechanisms giving mediated outcomes the legal force of judicial decisions. In the absence of instruments such as binding planning conditions or Section 106 agreements, settlements often remain informal or aspirational. As one solicitor explained: "Sometimes you agree something in principle, but if it's not written into the consent, it vanishes." Another described outcomes as "morally persuasive but legally fragile," and a third reflected, "I'm never sure if flexibility is a strength or just more uncertainty when you can't actually bind anyone." One participant added, "Until the courts or government make ADR part of the process, we're improvising every time," encapsulating frustration about the ad hoc and uneven nature of current practice.

A further structural challenge lies in the voluntary nature of ADR and the limited institutional frameworks that support its use. While respondents generally expressed theoretical support for ADR, they also noted an absence of procedural incentives or expectations that would normalise its integration. Survey data from Phase 1 indicate that only a minority believed ADR is embedded structurally within planning practice, with uptake varying significantly across authorities and firms. In the absence of statutory clarity, planning law offers few formal cues or obligations to pursue ADR. Participants described relying on case-specific discretion in the absence of clear procedural guidance. As one interviewee observed, "Every authority seems to have its own way of doing things, so you're often making it up as you go along." Participants' descriptions of ADR as formally available yet practically unsupported resonate with Genn's (2012)[476] critique of the 'myth of voluntariness,' in which

[476] Genn H, 'What Is Civil Justice For? Reform, ADR, and Access to Justice' (2012) 24 *Yale Journal of Law & the Humanities* 397

procedural availability masks institutional inattention. Without enforceable rules or judicial reinforcement, ADR often occupies a marginal role in legal strategy. Additional constraints arise within legal practice itself. Phase 1 results pointed to significant gaps in ADR training, and the absence of institutional incentives, such as billing recognition or procedural deadlines, discourages its use. In many firms and public bodies, litigation continues to function as the default mode, and diverging from that path requires additional justification. These findings highlight the institutional ambiguity that continues to limit ADR's routine use. Collectively, these constraints demonstrate that mediation advocates operate within statutory planning frameworks that ultimately determine enforceability and authority.

In practical terms, this ambiguity requires mediation advocates to exercise significant judgement in deciding when to recommend mediation, how to manage clients' expectations about the durability of outcomes, and how assertively to press for the conversion of mediated understandings into binding planning instruments. Such decisions illustrate the relational dimension of legal judgement in mediation practice, where lawyers must navigate legal uncertainty while simultaneously interpreting institutional constraints, stakeholder relationships, and the strategic dynamics of negotiation.

6.5.2 Resource Asymmetries and Participation Inequality

Another key barrier concerns unequal access to resources within ADR processes, particularly in planning disputes. Although the interviews did not include direct references to stark power imbalances, several participants alluded to conditions under which community and NGO voices are structurally disadvantaged. Legal professionals noted that less-resourced participants often lacked legal or technical representation during early consultations and informal negotiations, compromising their ability to participate effectively.

Quantitative survey results reinforce this concern, indicating that a significant proportion of practitioners perceive power imbalances as a persistent issue within ADR processes. The interview data add qualitative depth to this finding, illustrating how lawyers encounter these asymmetries in practice and how they attempt to manage them within mediation advocacy. A sizeable minority of respondents reported apprehensions about power imbalances in ADR processes. These responses reflect a broader anxiety that ADR might be used to contain dissent rather than genuinely resolve disputes; a theme further explored in Chapter 4's discussion of institutional legitimacy.

For legal professionals acting as mediation advocates, such disparities also carry emotional consequences. Several interviewees described discomfort when facilitating processes that appeared procedurally sound but were structurally inequitable. One participant explained, "It's uncomfortable facilitating something that looks fair but feels stacked," highlighting the ethical unease of navigating imbalanced negotiations. Another interviewee described walking into meetings where developers were backed by full legal and consultancy teams while community groups relied on basic publicly available guidance; formally, everyone was in the same 'process', but the playing field felt far from level and their own role risked legitimising an arrangement they perceived as unfair. For mediation advocates, such situations involve not only managing their own ethical discomfort but also supporting clients (whether public authorities, developers or community representatives) through emotionally charged discussions where the limits of what can be achieved may already be structurally constrained.

Even where not explicitly framed as emotional labour, these accounts demonstrate how structural inequality generates affective strain within mediation advocacy practice.

6.6 Institutional Contexts and the Role of Planning Culture

The dynamics surrounding the use of ADR in environmentally related planning disputes cannot be fully understood without attending to the institutional cultures and administrative frameworks within which legal professionals, developers, and planning authorities operate. This section examines how the discretion of local authorities, the influence of developers, and broader administrative expectations affect both the uptake and function of ADR. In many instances, these factors redirect ADR from its intended function as a genuine dispute resolution tool toward a more procedural or reputational exercise. These contextual factors shape not only whether ADR is available, but also the kinds of mediation advocacy that are possible for lawyers seeking to balance institutional loyalty, client interests and public obligations.

6.6.1 Local Authority Discretion and ADR Path Dependency

Interviewees consistently emphasised the significant variation in how local authorities approach ADR in planning contexts. Rather than following clear procedural mandates, decisions to engage with ADR often hinge on the personal attitudes of planning officers or the specific political landscape of a given local authority. This pattern gives rise to what can be described as "ADR path dependency," where institutional routines and professional culture, rather than formal regulation, determine whether ADR is considered appropriate or effective. Interviewees noted significant variation across authorities, reflecting the discretionary nature of ADR integration.

Survey data from Phase 1 reinforce this observation: only a minority of respondents reported consistent institutional support for ADR across local government bodies. Several interviewees also remarked on the ad hoc use of external facilitators, which often substitutes for developing internal expertise or protocols. This further suggests that ADR remains peripheral to formal institutional design, appearing sporadically rather than being embedded in a coherent procedural framework.

In the absence of statutory clarity or systematic training, planning authorities are likely to continue exhibiting wide variation in their ADR practices. This variability generates a broader climate of uncertainty, thereby limiting the legitimacy and strategic coherence of mediation in environmentally related planning disputes. For mediation advocates, this variability means that the form and intensity of advocacy they can credibly undertake in mediation sessions is often dictated as much by local authority culture as by the legal merits of the dispute. Comparative international approaches to embedding ADR in planning regimes are discussed further in Chapter 8.

6.6.2 Developer Dominance and Stakeholder Marginalisation

The interviews also highlighted how developer-led initiation of ADR can intensify participation inequalities already identified earlier in the chapter. Well-resourced applicants often participate with legal and technical support, while community groups engage with limited capacity. When ADR is structured around developer priorities or timetables, it risks functioning as a stakeholder-management device rather than a forum for shared problem-solving. This dynamic reinforces perceptions of "ritualised participation" and consultation fatigue, underscoring the need for procedural safeguards if ADR is to enable, rather than dilute, meaningful public engagement in planning. Lawyers representing developers or community groups must therefore deploy EI to navigate perceptions of legitimacy, manage clients' frustration or overconfidence, and decide how far to endorse or challenge the framing of ADR processes that may be structurally tilted in favour of one side.

6.6.3 ADR as Administrative Performance vs Genuine Engagement

A recurring theme across the interviews was concern that ADR in planning disputes often functions as a procedural ritual, rather than a sincere attempt to resolve disagreement. While some lawyers acknowledged that ADR can be helpful in diffusing tension or satisfying procedural expectations, they expressed scepticism about whether such processes actually influence outcomes or redistribute authority. This view aligns with broader socio-legal critiques of participation mechanisms that appear inclusive but lack genuine decision-making power (see Chapter 3).

Interviewees also described instances where mediation was used primarily to meet procedural requirements in politically sensitive cases, without any real intention of altering the proposed outcome. A mediator similarly cautioned that "sometimes ADR is about optics… the parameters are already fixed," suggesting that such processes reduce tension without altering underlying decisions, leaving participants feeling heard but not substantively empowered. Several interviewees described how, in such settings, they modified their advocacy strategy using the mediation primarily to gather information, reality-test clients' expectations or signal future litigation positions; rather than treating it as a genuine forum for settlement. This pattern reflects the critiques advanced by Kolb & Williams (2000)[477] and Genn (2012)[478], who caution that ADR can operate as institutional ritual rather than transformative justice.

This instrumental approach to ADR has significant professional implications, generating additional ethical tension for practitioners facilitating such processes. When lawyers are called upon to facilitate processes that serve largely symbolic functions, they face ethical tensions that complicate their professional identity. These

[477] Kolb and Williams (n 381)
[478] Genn (n 477)

moments raise fundamental questions about the authenticity of stakeholder engagement and the emotional labour required to support processes that may lack genuine intent.

Chapter 7 turns to how lawyers understand and deploy EI in navigating the ambivalence and ethical strain that accompany ADR practice in public law settings. Ultimately, the procedural deployment of ADR without a commitment to redistributive outcomes not only weakens the legitimacy of participatory planning but also complicates the ethical posture of the legal professionals who act as mediation advocates within these processes.

These institutional and cultural dynamics delimit the practical scope of mediation advocacy. The discretion of local authorities, developer dominance, and the performative deployment of ADR narrow mediation to reputation management, information-gathering, or procedural compliance rather than substantive negotiation. These conditions generate ethical tensions for mediation advocates, particularly where participation risks legitimising predetermined outcomes. At the same time, they delimit the extent of lawyer influence within ADR processes, revealing that even skilled, emotionally intelligent advocacy operates within structural boundaries that lawyers cannot readily overcome. Making these constraints explicit underscores that mediation advocacy in this context is not simply a matter of professional choice or competence, but is fundamentally shaped by institutional design and planning culture. These dynamics show that mediation advocacy in planning law is shaped by statutory authority and institutional discretion. Altogether, these patterns indicate that ADR remains unevenly embedded in planning practice and continues to depend on local culture, discretion, and strategic calculation rather than systemic design.

6.7 Chapter Summary

This chapter demonstrates that ADR in environmentally related planning disputes is widely endorsed in principle yet remains marginal and uneven in practice. The findings show how structural and professional conditions shape everyday mediation advocacy.

6.7.1 Summary of Empirical Findings

The findings portray a profession suspended between the perceived benefits and practical limitations of ADR. As demonstrated across Sections 6.3–6.6, three interlinked constraints recur throughout the findings: weak enforceability of mediated outcomes, institutional ambiguity surrounding ADR's status in planning law, and the strategic or performative deployment of ADR within adversarial and administrative frameworks. A clear majority of legal practitioners acknowledged its usefulness in reducing costs, managing reputational risk, and promoting early-stage dialogue, even while expressing uncertainty about its institutional status and enforceability.

This marginal status is reinforced by dominant professional norms. Adversarial training, traditional billing structures, and a cultural emphasis on litigation contribute to a legal environment in which ADR is viewed with caution. Legal professionals often prioritise certainty and control, characteristics more closely aligned with litigation than with facilitative or dialogic approaches.

Moreover, the data expose a gap between the symbolic promise and the operational reality of ADR in planning contexts. The limited and inconsistent support from local authorities, the strategic or reputational use of mediation by developers, and the procedural marginalisation of less powerful stakeholders all contribute to a broader legitimacy deficit. Rather than acting as a forum for transformative resolution, ADR frequently functions as an administrative exercise, raising fundamental concerns about procedural justice in public law.

This chapter provides an empirically grounded account of the institutional, cultural, and procedural conditions that shape ADR's marginal status in planning disputes. By tracing these dynamics across attitudes, perceived strengths, structural barriers, and planning cultures, the chapter situates ADR within a broader landscape of professional norms and institutional design, rather than as a purely technical add-on. In doing so, it clarifies the conditions under which ADR is experienced as legitimate, strategic, or ethically troubling for practitioners. Viewed through mediation advocacy practice, the findings show that lawyers operate within institutional and cultural conditions that shape, and sometimes limit, their strategic choices. This empirical mapping provides the foundation for Chapter 7's focus on EI, which examines how lawyers navigate the affective and ethical tensions that arise within the structurally constrained ADR environments described here.

6.7.2 Implications for ADR Legitimacy in Public Law

These patterns have significant implications for how ADR should be understood and reformed within the public legal domain. Unlike private commercial disputes, planning conflicts are situated within broader socio-political contexts that involve uneven distributions of power, access to knowledge, and legal resources. The very structures that ADR aims to navigate or mitigate often inhibit its effectiveness.

Against the enforceability and institutional-status constraints identified earlier in the chapter (see Sections 6.3–6.6), ADR risks becoming a mechanism through which existing inequalities are maintained under the appearance of participatory engagement. For legal professionals, this creates both ethical and institutional dilemmas. For mediation advocates in particular, these dilemmas concern the scope for emotionally intelligent advocacy on behalf of clients when the structures within which they operate may privilege efficiency and appearances of engagement over substantive fairness. The professional expectation to foster consensus sits uneasily alongside adversarial norms, fiduciary duties, and organisational incentives that favour litigation.

The analysis above is empirical: it synthesises what participants reported about ADR's perceived legitimacy deficits, institutional fragility, and participation constraints in planning disputes. The brief reform-oriented observations that follow are therefore presented as normative suggestions informed by these findings, rather than as direct empirical claims about what will (or will not) work in practice. Participants indicated that clearer statutory guidance, more consistent institutional support, and improved training frameworks would be necessary for ADR to function more effectively in planning contexts. Absent such measures, ADR will continue to function as a discretionary gesture rather than a reliable forum for resolving environmentally related planning disputes.

Advancing ADR in public law requires attention not only to procedural reform but to the professional norms that shape its uptake. However, feasibility depends on political appetite, judicial capacity, and budgetary priorities. Recent cycles of UK planning reform have tended to prioritise streamlining, housing delivery, and digitalisation over resource-intensive participatory mechanisms, and civil justice initiatives around ADR have often framed it primarily as a tool for efficiency rather than redistribution. In such a context, there is a risk that statutory references to mediation become largely symbolic unless accompanied by ring-fenced funding for community representation, clear judicial guidance on when ADR should be expected, and monitoring frameworks capable of distinguishing genuine engagement from box-ticking. Any statutory move toward embedded ADR would therefore need to be coupled with material support and accountability mechanisms to avoid reproducing the very legitimacy problems it is meant to address.

Overall, the findings suggest that ADR's legitimacy in public law depends not only on procedural access, but on enforceability, institutional embedding, and distributive safeguards. Chapter 6 reveals a paradox of procedural enthusiasm without consistent institutional support. Legal professionals endorse ADR's ideals yet operate within frameworks that neither require nor reward its use. This tension between strategic pragmatism and ethical uncertainty frames the emotional and professional burden explored in Chapter 7.

Across the chapter, lawyers' accounts reveal a persistent ethical ambivalence toward ADR, rooted not in opposition to its aims but in uncertainty about role boundaries, responsibility, and influence within structurally constrained processes. Mediation advocates described navigating tensions between adversarial loyalty and facilitative engagement, between procedural inclusion and substantive fairness, and between professional authenticity and strategic performance. These tensions are experienced not only institutionally but in the everyday interpersonal judgements lawyers make in mediation settings. Chapter 7 examines how legal professionals understand and deploy EI in navigating these dilemmas.

6.7.3 Emotional Labour in Legal Practice

These tensions reveal the emotional labour embedded in mediation advocacy. Interview data revealed that lawyers increasingly manage emotions such as empathy, frustration, and ethical discomfort while navigating ambiguous procedural environments.

Chapter 7 extends this analysis by exploring the emotional dimensions of legal professionalism in greater depth. It focuses on how lawyers understand and apply EI in the mediation of environmentally related planning disputes. Drawing on Phase 3 interview data, it asks whether these emotional competencies can be interpreted as an emerging domain of legal ethics or whether they merely represent an added burden for professionals working within a system that offers little structural recognition or support for their affective labour.

Beneath these structural patterns, participants consistently described emotional dynamics shaping mediation advocacy in ways not captured by procedural design alone. Chapter 7 examines these dynamics in detail, focusing on how lawyers understand and deploy EI in mediation advocacy.

Chapter 7: Emotional Intelligence in Legal Mediation Advocacy

7.1 Introduction

This chapter examines the emotional dimensions of legal professionalism in planning and environmental dispute resolution. It focuses on how legal professionals interpret, manage, and negotiate EI within this complex environment. Building on the theoretical analysis developed in Chapters 4 and 5, this chapter examines how emotional competence manifests in the everyday practice of mediation advocacy within planning and environmental disputes. It explores how EI is enacted, negotiated, and managed in mediation advocacy practice. The analysis therefore examines how Emotional Intelligence (EI) manifests in concrete mediation advocacy practices, including how lawyers prepare clients for negotiation, interpret emotional cues from mediators and parties, regulate emotional disclosure in caucus, and strategically frame arguments within emotionally charged dispute environments.

The chapter focuses on EI as a component of advocacy practice, influencing how lawyers prepare clients, construct persuasive narratives, manage emotional disclosure in caucus, and respond strategically to mediators and other parties. Section 7.2 sets out how participants conceptualised EI; Sections 7.3-7.4 analyse how it is enacted and constrained in practice; Section 7.5 examines practitioner-framed ethical dilemmas; and Section 7.6 records participant-identified implications for training and institutional support. Although the interview sample included both lawyers and mediators, the empirical analysis throughout this chapter is interpreted through the perspective of mediation advocacy. References to mediator participants are retained only where they provide contextual insight into the relational and institutional environment within which lawyers acting as mediation advocates exercise professional judgement, rather than as findings about mediator practice itself.

7.2 Conceptualising Emotional Intelligence in Legal Mediation

Against this background, participants illustrated how EI operates in everyday mediation advocacy practice, particularly when lawyers must interpret emotional signals, manage client reactions, and strategically calibrate communication within institutionally constrained negotiation environments. Emotional labour becomes especially visible where procedural scaffolding is thin. Socio-legal scholarship shows how legal professionals manage emotional display within hierarchical contexts that privilege neutrality. In public law mediation, that expectation persists even as lawyers are required to absorb and manage emotional tensions that formal procedure does not address.

Interviewees repeatedly described situations where they were expected to contain emotion, both their own and others, while lacking institutional support or guidance. In this sense, emotional labour provides the practical context within which participants described how EI operates in mediation advocacy. These dynamics take on specific significance in mediation advocacy. Lawyers are not simply present in mediation; they are responsible for shaping client narratives, managing client emotion, assessing mediator cues, and negotiating outcomes on emotionally charged terrain. EI therefore operates as an advocacy resource. It influences how lawyers frame persuasive arguments, when they encourage or restrain emotional disclosure, and how they balance client alignment with a professionally credible presentation to mediators and opposing parties.

Mediation advocacy scholarship has long recognised that emotional awareness is central to effective representation in negotiated processes, even where it is not explicitly framed as "Emotional Intelligence." Macfarlane's work on lawyer negotiation practices highlights how advocates routinely manage client emotion, calibrate tone, and shape narratives in response to both procedural uncertainty and relational dynamics[479]. Menkel-Meadow similarly emphasises the affective dimensions of problem-solving advocacy, noting that persuasion in mediation often depends on lawyers' capacity to engage with emotion without abandoning strategic clarity[480]. Welsh further observes that mediation competence for advocates involves reading emotional cues, managing expectations, and exercising restraint as well as empathy, particularly where legal authority is diffuse and outcomes are contingent[481].

The ethical stakes of EI therefore differ for advocates and mediators. For mediation advocates, EI is inseparable from questions of loyalty, influence, and professional

[479] Macfarlane J, *The New Lawyer: How Settlement Is Transforming the Practice of Law* (2nd edn, UBC Press 2008)
[480] Carrie Menkel-Meadow, 'Toward Another View of Legal Negotiation: The Structure of Problem Solving' (1984) 31 *UCLA Law Review* 754.
[481] Nancy A Welsh, *Stepping Back Through the Looking Glass: Real Conversations with Real Disputants About Institutionalized Mediation and Its Value* (2004) 19 *Ohio State Journal on Dispute Resolution* 573 https://core.ac.uk/download/pdf/159574532.pdf accessed 11 June 2025.

responsibility, making it a distinctly ethical and strategic dimension of legal practice rather than a generic facilitative skill.

This conceptual foundation shapes how participants described EI itself. In the interviews, EI did not emerge as a singular or stable category. Instead, it was presented as a situated practice encompassing three broad orientations:

1. Emotional Intelligence as strategic interpersonal competence

Several senior lawyers, particularly in infrastructure planning and inquiry work, conceptualised EI in strategic terms: reading the room, anticipating reactions, and modulating tone to maintain progress. One participant framed EI as “understanding what people really want” and identifying where compromise might be acceptable within rigid statutory procedures. Here, EI is less about emotional expression than emotional perception, an ability to manage interpersonal dynamics to achieve procedural movement. This echoes Chapter 6’s observations that Alternative Dispute Resolution (ADR) in planning often functions to manage appearances, pre-empt opposition, or stabilise institutional legitimacy rather than deliver transformative consensus.

2. Emotional Intelligence as ethical responsiveness and relational care

Junior solicitors, NGO practitioners, and community-facing lawyers described EI as an orientation grounded in empathy, attentiveness, and care. They emphasised the need to engage with grief, anger, fear, and distrust, emotions often present but unspoken in public-interest disputes. For these practitioners, EI signified how one relates: with humility, respect, and an awareness of the emotional histories shaping a conflict. Their accounts aligned with relational conceptions of legal practice, where lawyers act not only as technical experts but as democratic intermediaries who facilitate participation and recognition.

3. Emotional Intelligence as self-regulation and boundary management

Across roles, emotional self-management was repeatedly identified as central. Participants described EI as recognising how one’s emotional stance affects clients, colleagues, inspectors, or the mediation atmosphere. A trainee noted that “if you are tense, everyone is tense,” reflecting EI as a form of professional discipline. This involved regulating one’s own reactions to maintain clarity and support collective functioning. Yet self-regulation was often learned informally: through experience, trial and error, or personal histories, rather than through structured training.

These three orientations demonstrate that participants understood Emotional Intelligence not as a single fixed concept but as a context-dependent form of professional judgement encompassing strategic interpersonal competence, ethical responsiveness, and emotional self-regulation. This conceptualisation is consistent with scholarship emphasising that emotional awareness influences negotiation, client management, mediation practice, and ethically accountable dispute resolution. Rather than treating EI as a discrete personal attribute, the literature positions it as a professional capability that supports lawyers in exercising judgement within complex mediation settings while remaining attentive to professional responsibilities and ethical boundaries[482, 483, 484].

7.3 Empirical Findings: How Lawyers Encounter and Use EI

Building on the conceptual framings outlined in Section 7.2, this section examines how EI is enacted in practice. While participants agreed that EI was significant, their accounts reveal how lawyers actively deploy emotional awareness during mediation advocacy, including timing negotiation moves, preparing clients for emotionally difficult discussions, interpreting mediator interventions, and adjusting advocacy strategies in response to shifting interpersonal dynamics. The examples below show how lawyers acting as mediation advocates operationalised EI in real encounters, while reflections from mediator participants are used only to illuminate the relational context within which mediation advocacy is practised. The findings highlight the pressures, improvisations, and consequences of emotional work in planning and environmental disputes.

The empirical findings suggest that emotionally intelligent mediation advocacy operates as a dynamic and iterative process, which can be represented schematically as shown in Figure 3 below.

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[482] Macfarlane (n 480)
[483] Kathy Douglas and Catherine A Coburn, 'Attitude and Response to Emotion in Dispute Resolution: The Experience of Mediators' (2014)
[484] Kovach KK, *Mediation: Principles and Practice* (3rd edn, West Academic Publishing 2014)

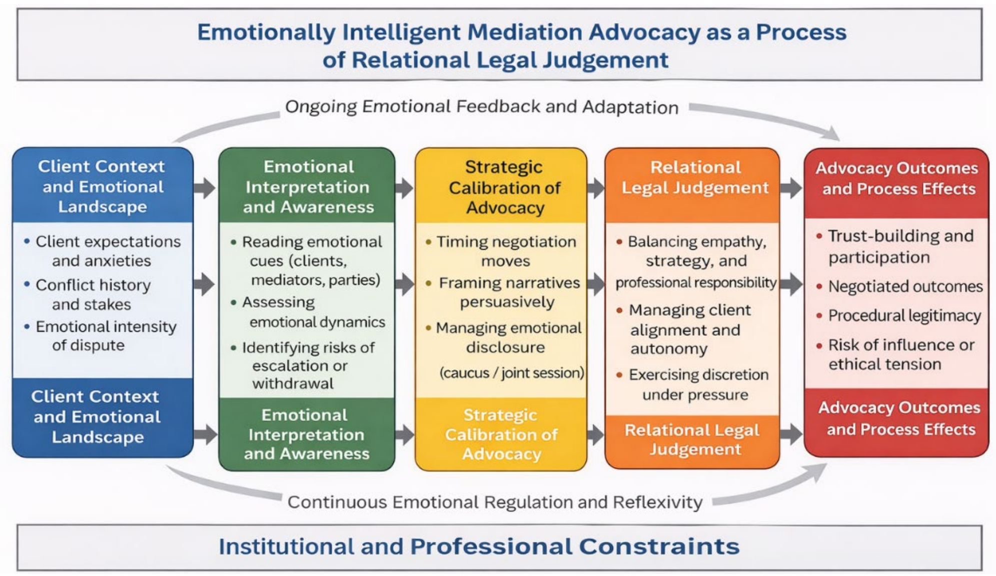

Figure 3: Emotionally Intelligent Mediation Advocacy as a Process of Relational Legal Judgement

Figure 3 is an author-developed conceptual model derived through the integration of the literature reviewed in Chapters 4 and 5 with the qualitative findings presented in this chapter. The model synthesises established concepts from the literature, including emotional awareness, emotional regulation, advocacy strategy, relational judgement, and institutional constraint, with the recurring themes identified across the interview data. It therefore represents an interpretive synthesis of the theoretical framework and the empirical findings rather than a direct reproduction of any existing model.

Figure 3 illustrates the interpretive synthesis developed in this study. It conceptualises emotionally intelligent mediation advocacy as a dynamic and iterative process in which lawyers continuously interpret emotional cues, calibrate advocacy strategies, and exercise relational legal judgement within evolving interpersonal and institutional contexts. The process is iterative: outcomes reshape subsequent emotional dynamics, requiring ongoing adaptation, reflexivity, and boundary management. This model reflects participants' accounts that emotionally intelligent practice involves balancing empathy, persuasion, and professional responsibility within structurally constrained environments.

The interview findings further demonstrate that EI is embedded in a set of practical advocacy behaviours that reflect relational legal judgement, as lawyers continuously interpret interpersonal dynamics, client expectations, and institutional constraints when deciding how to frame arguments, manage emotion, and pursue negotiated outcomes. Lawyers described drawing on emotional judgement when formulating and timing offers, including assessing when parties were receptive to movement and when further pressure risked entrenchment or client withdrawal.

Emotional awareness was also evident in preparing and delivering opening statements in mediation, where advocates balanced legal framing with sensitivity to tone, audience, and the emotional temperature of the room. Decisions about whether to speak in joint session or to rely on caucus were frequently described as emotionally informed, with lawyers weighing the possibilities of constructive dialogue against risks of escalation, loss of face, or client exposure. Managing client expectations before, during, and after mediation was repeatedly framed as a core emotionally intelligent practice, requiring advocates to absorb frustration or anxiety while maintaining professional credibility and supporting autonomous client decision-making.

7.3.1 Empathy, Rapport-Building, and Stakeholder Trust

Rather than functioning as a general interpersonal skill, rapport-building emerged as an emotionally intelligent advocacy practice through which lawyers stabilised trust, managed emotional expression, and preserved strategic credibility in mediation. A senior infrastructure lawyer described tailoring their affective stance to different audiences, suggesting that commercial clients tended to "see the world in black and white," whereas public bodies had to be "taken on the journey" and "won over." Empathy here functions as a strategic bridge that often substitutes for procedural clarity in discretionary planning negotiations. These findings also highlight the importance of training and institutional design in supporting practitioners to manage emotional dynamics.

In international human rights work, another practitioner emphasised the need to build "a dynamic of trust within a relatively short time" by explaining confidentiality and actively encouraging disclosure. This illustrates what Hochschild (1983)[485] termed "emotional labour": the professional performance of care and regulation that supports both client participation and ethical advocacy. Notably, this was not framed

[485] Hochschild (n 237)

as manipulative but as a sincere effort to create safety. Earlier discussions of emotional self-regulation underscore its role as a professional boundary practice; a way of maintaining impartiality and composure while still fostering fairness and trust. This reinforces the idea that trust in legal processes is not earned through facts alone, but also through affective attunement.

A junior solicitor recounted a client who, frustrated and distressed, “snapped” at her. She responded by the interaction and “talking them through it,” framing this not as personal resilience but as part of her professional responsibility to preserve the relationship. This account reflects a quiet professionalism; a commitment to emotional containment not for self-protection alone, but to uphold relational integrity. The literature indicates that emotional labour in mediation is often unevenly distributed; frequently falling to women and junior practitioners, whose contributions to de-escalation and relational work are seldom formally recognised. Feminist scholarship on emotional labour cautions that such uneven distribution is rarely incidental. Relational and affective work within professional settings is frequently feminised, undervalued, and rendered invisible within formal metrics of competence. When women and junior lawyers disproportionately perform de-escalation, emotional containment, and relational repair, EI risks reinforcing rather than challenging existing hierarchies of recognition and authority within the profession. In mediation advocacy, these rapport-building practices directly influence the persuasiveness of client narratives and the advocate’s ability to present a coherent emotional framing to the mediator and opposing counsel.

Mediator participants also reflected on the emotional dynamics surrounding mediation. Their observations are presented here solely as contextual insight into the relational environment within which lawyers acting as mediation advocates exercise professional judgement. As one mediator recalled: “I paused and gently invited them to speak. What emerged wasn’t a planning argument at all; it was a deeply emotional narrative about childhood memories of the land, of walking there with their grandparents, of feeling that a part of their family history was being taken away. At that moment it wasn’t about the technicalities; it was about loss, belonging, and identity.” This recalls Kolb and Williams’ (2000)[486] concept of the ‘shadow

[486] Deborah M Kolb and Judith Williams, *The Shadow Negotiation: How Women Can Master the Hidden Agendas That Determine Bargaining Success* (Scribner 2000).

negotiation': the unspoken emotional and identity-based dynamics that underpin formal interactions. It also aligns with Chapter 3's argument that environmentally related planning disputes often turn on issues of belonging, grief, and community attachment: dimensions that formal legal scripts tend to sideline.

Others reflected on the emotional toll of advocacy itself. One lawyer acknowledged: "You kind of do care about the client and the outcome, you can't help it. And when you lose a case it's not just losing the argument; it's watching the impact on someone who trusted you. That can be quite demoralising. I've had days where it really got to me, even though you try to keep the distance you're taught to keep." Here, empathy becomes not just a tool, but a challenge to professional norms. It unsettles the adversarial ideal of detached representation, long central to professional culture. In emotionally saturated disputes, particularly those involving ecological harm or contested community interests, lawyers are called to roles that extend beyond advocacy into forms of emotional engagement; roles that remain uneasy within dominant legal culture. These experiences demonstrate how emotionally intelligent advocacy operates in practice: lawyers prepare clients for emotionally difficult negotiations, interpret mediators' verbal and non-verbal cues, frame client narratives in ways that resonate with opposing parties, and adjust their tone or argumentation in response to escalating or stabilising emotional dynamics.

A junior barrister summarised this shift as "trying to see things from another person's perspective" and remembering "there's a human being on the other side." This sentiment, modest in delivery, reflects a move toward what Westaby & Jones (2018)[487] describe as a more relational model of professionalism, where understanding and respect are not counterposed to legal efficacy but integral to it.

Interpreting these affective narratives required attention not only to what was said but also to how it was said. Hesitations, silences, and disclaimers such as the frequent "I'm not sure this counts as EI…" revealed discomfort in naming this affective work. Such ambivalence reflects the profession's enduring valorisation of detachment and scepticism toward emotion as professional currency. How such strategies of

[487] Chalen Westaby and Emma Jones, 'Empathy: An Essential Element of Legal Practice or "Never the Twain Shall Meet"?' (2018) 25 *International Journal of the Legal Profession* 107

regulation and adaptation unfold under professional pressure is the focus of Section 7.3.2.

7.3.2 Managing Emotion Under Constraint: Regulation, Role Pressures, and Pedagogical Gaps

These accounts reveal not only individual coping techniques but a structural misalignment between professional expectation and institutional provision. Participants described emotional self-regulation as a routine part of mediation advocacy practice, particularly when managing client expectations, responding to mediator interventions, and maintaining credibility during negotiation. For mediation advocates, emotional self-regulation is integral to performing advocacy effectively: it enables them to manage client emotion during negotiation, maintain credibility during tense exchanges, and respond strategically to mediator interventions without allowing their own emotional reactions to destabilise the advocacy strategy. Advocates must regulate their own emotional presence while simultaneously managing clients' affective reactions in ways that support principled and persuasive negotiation.

Many participants linked these pressures to deeper cultural expectations within the profession. Emotional stoicism was widely described as a tacit requirement of competence, particularly in settings where composure signals authority and credibility. Junior lawyers, in particular, spoke of policing their own emotions to avoid appearing unable to "handle the job," while senior practitioners characterised courtroom and inquiry environments as "intellectually aggressive" spaces that reward detachment. These norms shaped how emotional regulation was learned and practised long before formal training, creating an internalised expectation that lawyers should absorb emotion privately while presenting neutrality in public.

Coping Strategies: Responses to these pressures varied widely. Some practitioners described deliberate distancing techniques; reminding themselves "I don't own it"; to avoid emotional overload. Others turned to journaling, supervision, or private tears after hearings or mediations, learning to "separate caring from carrying." These contrasting approaches reveal a profession split between stoic control and relational ethics, with little institutional support for either. For mediation advocates, these regulatory pressures become particularly acute during negotiation phases, where maintaining composure is essential to protecting client interests, signalling credibility, and sustaining productive engagement with the mediator. Several participants described waking early with dispute-related anxiety, carrying antagonism long after hearings ended, or needing to physically remove themselves from a mediation room to regain composure.

Training Gaps: Participants repeatedly noted the absence of structured preparation for emotionally intense work. One senior lawyer observed that training was geared towards “adversarial excellence, not relational intelligence.” Where EI appeared in professional development, it tended to be framed narrowly as civility or stress management rather than as a substantive ethical concern. Without guidance, lawyers relied on instinct to manage grief, anger, or trauma in public-interest disputes, sometimes risking over-identification and at other times defaulting to defensive detachment. Without structured training, mediation advocates are left to improvise, increasing risks of advocacy error and ethical overreach.

Consequences and Reform: The absence of scaffolding created professional and psychological strain. Several practitioners reported periods of burnout or temporary withdrawal from emotionally demanding fields; one environmental lawyer stepped back for several months because she “just couldn’t hear about it any more.” Others sought out alternative frameworks; such as Nonviolent Communication or reflective practice; to sustain ethical clarity and personal resilience. However, participants also cautioned against superficial fixes. As one senior solicitor remarked, a poorly designed EI module risked becoming “another compliance ritual.” Many instead advocated for clearer boundaries, reflective supervision, and institutional recognition of affective labour as part of professional work.

Across these accounts, emotional regulation emerged as necessary but structurally unsupported. When institutions rely on lawyers to privately absorb emotional strain, maintain relational stability, and manage client distress without formal recognition or structural reform, EI risks functioning as a compensatory device. In such contexts, EI may inadvertently stabilise processes whose underlying asymmetries remain unaddressed. Lawyers are expected to manage emotion in themselves and others, yet rarely given the training, space, or ethical frameworks required to do so. This gap between cultural expectation and institutional provision forms a central tension in emotionally intelligent practice, and provides the bridge to Section 7.4’s examination of the professional norms and organisational structures that constrain or enable such work. These findings illustrate how emotional regulation is learned and enacted in practice, without presuming that such arrangements are ethically sufficient or desirable.

7.3.3 Reflexivity, Boundary Management, and Lawyer Identity

As outlined in 7.2, EI was framed as both strategic and relational. Here, participants reflect on how those framings evolved with career stage and personal experience. For mediation advocates, reflexivity is a crucial dimension of advocacy judgement, shaping how they balance empathy with objective advice, decide how much emotional information to disclose in caucus, and calibrate tone and framing during negotiation. As lawyers and mediators engage more deeply with the emotional dimensions of their work, many describe a parallel process of reconfiguring professional identity. EI, rather than being viewed as a fixed trait, was frequently characterised as an evolving capacity shaped by experience, personal development, and shifting ethical perspectives.

The ability to navigate emotion was often described as essential not only for effective practice but also for maintaining a sense of integrity in complex legal environments. In this sense, reflexivity does not simply guide emotional disclosure; it structures how advocates understand their influence within the mediation process and how they exercise that influence responsibly. Decisions about tone, timing and emotional disclosure thus become core elements of relational legal judgement in mediation advocacy, requiring practitioners to balance legal strategy, emotional awareness, and professional responsibility when guiding negotiation processes.

Participants consistently emphasised that EI was something learned over time rather than acquired through formal training. This learning process was attributed to career seniority, increased relational demands, or significant life events. One senior solicitor commented that as lawyers become more senior “it becomes more about relationships, not so much about do you know the law.” This reflects a broader shift in legal culture; from an emphasis on technical rationality and doctrinal mastery toward recognition of emotional competence as central to emerging relational models of professionalism.

Some accounts located this evolution in deeply personal experience. An environmental lawyer with a history of intimate partner abuse explained that this had changed how she used EI, making her more alert to the unseen experiences shaping clients' reactions. These insights resonate with Chapter 5's exploration of how legal practice in planning mediation often blurs personal and professional identities, particularly where lawyers work with vulnerable clients and communities in high-stakes disputes. In such contexts, EI emerges less as a neutral skill than as an ethically charged practice of sensitivity and attunement. For mediation advocates, this emotional attunement directly shapes the quality of advice they provide to clients, the timing and tone of concessions, and the strategic calibration of how much emotional information to disclose during caucus or joint session.

Comparable reflections also emerged from senior mediator participants, whose accounts provide contextual insight into the relational environment within which lawyers acting as mediation advocates develop professional judgement. One reflected that over a career you "fine-tune" the sense of what can be said and how others are likely to react. These remarks support the argument in Chapter 6 that emotional engagement in mediation is often situated at the intersection of empathy and strategy. These findings suggest that lawyers acting as mediation advocates learn not only to recognise emotional currents but also to respond to them in ways that sustain trust, minimise escalation, and enable constructive negotiation. These reflections often raised difficult questions about authenticity and persuasion; the ethical dimensions of such tensions are considered further in Section 7.5.

Gender and structural context also shaped how participants described the development of emotional reflexivity. For some women lawyers, caregiving roles were said to transfer into professional life, as they were already "navigating emotional lives daily." Others pointed to the profession's historic valorisation of detachment and the implicit demand on women to perform unacknowledged emotional labour. This reflects Chapter 5's discussion, drawing on feminist and emotional-labour scholarship, that the burdens of relational and emotional work in legal practice often fall disproportionately on women and junior practitioners.

In navigating the boundary between empathy and over-identification, many participants described moments of professional self-scrutiny. One senior lawyer stressed the importance of remembering that "we are not the client," framing law as a service industry with its own limits. Another emphasised the need to "know where to draw the line," noting that clients "are not our friends." Yet maintaining this professional distance was not always straightforward. A junior associate admitted uncertainty about "when it gets a bit too compassionate or too empathetic." These tensions speak directly to the core of legal professionalism, highlighting the need for ethical clarity in emotionally complex work.

Participants also drew attention to the risks associated with the strategic deployment of EI. A specialised planning lawyer cautioned that one must be "sensitive to the limits of emotional intelligence" and avoid overstepping. Chapter 6 similarly observed that empathy and rapport-building are often instrumentalised as tactical tools, raising ethical concerns about authenticity and manipulation, themes further discussed in section 7.5. When affective insight is used to coerce rather than to build understanding, its legitimacy is undermined; echoing the caution in legal ethics scholarship (e.g. Boon and Levin)[488] that self-regulation and awareness of affective influence are fundamental to trustworthy practice. The distinction between persuasion and manipulation is rarely self-evident. Emotional reflexivity therefore requires not only awareness of others' affective states but also scrutiny of one's own influence. Without explicit ethical anchoring, these practices risk crossing from relational judgement into affective leverage.

Throughout these narratives, EI is revealed as an iterative practice: constantly adjusted, context-dependent, and ethically situated. Participants' reflections trace a broader transformation in how legal professionals see themselves: not as detached technicians, but as affectively aware interlocutors navigating human conflict. Emotional reflexivity thus emerges as a cornerstone of professional identity, enabling lawyers to calibrate responses, recognise their influence, and sustain a model of practice grounded in dignity, clarity, and relational responsibility.

7.4 Institutional and Cultural Barriers to Emotionally Intelligent Practice

While many participants valued EI, they also described profound structural and organisational barriers to practising it. This section considers how time pressures,

[488] Andrew Boon and Jennifer Levin, *The Ethics and Conduct of Lawyers in England and Wales* (2nd edn, Hart Publishing 2008)

billing metrics, role ambiguity, and professional hierarchies constrain affective engagement. It also foregrounds the emotional toll borne disproportionately by junior lawyers, women, and professionals in under-resourced sectors.

7.4.1 Structural Constraints: Time Pressure, Role Ambiguity, and Organisational Disincentives

This subsection turns from individual regulation to the structures that shape or stifle emotionally intelligent practice. Across sectors, time compression, billing targets, and ambiguous role expectations made listening, reflection, and debriefing hard to justify. As one partner put it: "Emotional Intelligence requires time… but our structures reward only quantifiable outputs."

A mid-level solicitor described the same pressure from below: "There is no time to check in with anyone; you just move to the next file." A junior lawyer in local government added: "It is constant triage, public contact, internal politics, and not enough hours." These comments illustrate how organisational design erodes the space for relational engagement long before questions of ethics or training arise.

In NGOs and local government, under-resourcing produced the same effect. "There is emotional pressure but no institutional support," said a junior lawyer. Mediators described one day formats that "create performative mediation where we tick boxes but do not resolve much." Mid-level practitioners felt what one partner described as "the squeeze," managing upwards for profitability while absorbing team distress. Juniors reported balancing empathy against budgets and professional image: "Those are all conflicting pressures."

Hierarchy also mattered. Some KCs acknowledged autonomy, noting, "I have as much time as I want," which highlights a stark contrast with junior precarity. As one senior mediator observed, "Freedom to practise empathy is a privilege of seniority." A small number of mediators reframed time pressure as a focusing device, explaining, "If you do not build empathy by mid-morning, you will not get the day done," although this was the exception rather than the norm.

"It is like being asked to care faster," summarised one NGO solicitor, capturing the mismatch between institutional tempo and emotional competence. These structural pressures restrict mediation advocates' capacity to engage in the careful emotional framing and client preparation that effective advocacy requires, limiting their ability to present persuasive narratives or respond strategically to mediator interventions. Without changes to time allocation, supervision, and appraisal criteria, emotionally intelligent practice remains aspirational. For how individuals cope within these constraints, see Section 7.3.2.

7.4.2 Cultural Norms, Professional Codes, and Emotional Scepticism

Building on Section 7.3.2's account of internalised display rules and informal coping, this subsection turns to the institutional and cultural frameworks that shape those expectations. While many participants recognised the value of EI, they described a professional environment in which overt emotional expression is treated with suspicion, and where codes of conduct, courtroom practices, and hierarchical norms collectively reinforce a preference for detachment.

Several interviewees linked this scepticism directly to dominant images of the "good lawyer." As argued in Chapter 4, emotional restraint remains a dominant professional ideal; here, participants' accounts show how that ideal constrains emotionally intelligent mediation advocacy in practice. Participants' accounts reflect how this ideal continues to be reinforced through everyday professional expectations, including judicial tone, chambers culture and the broader association of composure with competence. In this climate, emotional sensitivity is not simply undervalued; it is frequently cast as a threat to professional credibility.

At the same time, some participants framed emotional restraint as an ethical necessity rather than merely a cultural expectation. A senior judge remarked that "you cannot cry. It's not your grief… You really do have to stay in role," capturing the perceived duty to preserve neutrality and avoid becoming the focus of a hearing. Mediators similarly spoke of the need to "recentre" themselves to prevent empathy from slipping into partiality. These accounts reveal a tension between emotional engagement as a marker of humanity and its potential to unsettle ideals of impartiality and role fidelity.

Taken together, these narratives suggest a fundamental misalignment between the emotional skills needed for effective ADR and the professional codes and cultures that continue to privilege detachment. Emotional literacy is essential to building trust and managing conflict, yet it remains marginal in formal ethics and training frameworks. Unless professional standards are reconfigured to recognise emotional competence as a core ethical value rather than a private, optional attribute, lawyers will continue to navigate contradictory demands: to care, but not too visibly; to be attuned, but not "emotional." This analysis provides the cultural backdrop for the gendered dynamics explored in Section 7.4.3.

These cultural expectations are reinforced by formal regulatory frameworks governing legal professionalism. In the English context, professional standards emphasising independence, integrity, and the exercise of judgement in clients' best interests shape how emotional engagement is understood and performed in mediation settings. While EI may support effective advocacy, it must be exercised within regulatory norms that caution against undue influence, loss of professional distance, or the appearance of partiality. EI in mediation advocacy is therefore not only culturally situated but also regulated, operating within professional codes and judicial expectations that delimit how emotion can be mobilised ethically and legitimately.

7.4.3 Gendered Expectations and Emotional Labour

Gendered emotional expectations were described by participants in ways that illuminate how care, composure, and relational labour are differentially valued within professional hierarchies in mediation advocacy. These accounts invite analysis not only as patterns of bias, but as reflections of how legal professionalism continues to privilege detached authority over relational competence. Rather than generalising across the profession, this section focuses on recurring empirical patterns reported by women and junior practitioners in emotionally intensive and relationally exposed roles. These practitioners reported being expected to perform empathy and relational care, yet often penalised when those performances became visible. Their reflections resonate with feminist critiques of legal professionalism, particularly Thornton's argument that emotional restraint continues to be equated with competence. In this context, gendered emotional labour is not advanced as a general claim about women in law, but as a pattern specific to mediation advocacy roles where care work is central but institutionally devalued.

From the perspective of care ethics, these dynamics reveal a structural tension within legal professionalism. Fineman's vulnerability framework emphasises that dependency and relational responsibility are universal features of institutional life, not deviations from it. Yet within mediation advocacy, care work remains feminised and hierarchically subordinated to adversarial authority. Emotional attentiveness is relied upon to stabilise negotiation, sustain participation, and prevent escalation, but it is rarely recognised as constitutive of professional expertise. The accounts in this study therefore suggest not merely individual bias, but a deeper misalignment between the relational demands of mediation and the gendered valuation of professional authority.

Within a care ethics framework, this pattern exposes a normative contradiction. Mediation advocacy depends upon attentiveness, responsiveness, and relational sensitivity; qualities central to care-based models of justice; yet institutional valuation continues to privilege adversarial detachment and hierarchical authority. Emotional labour becomes simultaneously indispensable and subordinated. Care is operationally necessary for process legitimacy, but structurally marginal within professional reward systems. This tension reinforces Chapter 5's argument that EI functions as an ethical amplifier: it enhances relational legitimacy while leaving deeper institutional asymmetries intact.

One NGO lawyer recounted: "I have had senior men in chambers tell me I was 'hysterical' for saying exactly what a male colleague had said ten minutes earlier, and he was praised for being passionate and persuasive. It was the same tone, the same content, the same level of frustration, but when he says it he is being a strong advocate, and when I say it I am being emotional. You end up constantly second guessing yourself and adjusting everything, including tone, posture and facial expression, because you know you will be judged differently."

This illustrates how participants experienced a double standard in emotional expression that directly affected their perceived competence as advocates. These accounts did not emerge from abstract theorising, but from repeated experiences in high-stakes, emotionally charged mediation settings. This example also illustrates how emotional labour is both demanded and discredited, depending on who performs it. It also echoes feminist critiques of legal professionalism, such as Thornton's analysis[489] of how emotional distance is equated with intellectual authority, and how

[489] Margaret Thornton, *Dissonance and Distrust: Women in the Legal Profession* (Oxford University Press 1996)

women are positioned as simultaneously too emotional and responsible for doing the relational work of care.

Within this study, women and junior practitioners described a double bind: being expected to absorb emotional strain, smooth relational conflict, and support participation, while being judged more harshly for visible emotional expression. These findings are therefore situated within the specific institutional and professional contexts examined, and are not extrapolated beyond the mediation advocacy settings analysed here.

These findings also expose how emotional labour intersects with professional hierarchy. Junior lawyers and women practitioners reported absorbing client distress, smoothing conflict, and managing team dynamics without corresponding status recognition or institutional reward. In contrast, senior practitioners often retained greater discretion over how visibly they engaged emotionally, reflecting what Section 7.4.1 described as the "privilege of seniority" in practising empathy. Emotional competence thus appears stratified: expected of those lower in hierarchy, yet more freely exercised by those with institutional authority.

This stratification is not incidental but structurally embedded within professional hierarchy. As Section 7.4.1 demonstrated, senior practitioners retain greater autonomy over time, tone, and emotional expression, whereas junior lawyers and women practitioners frequently operate within tighter constraints of scrutiny and performance evaluation. EI therefore operates unevenly across professional rank. Those lower in hierarchy are more likely to perform relational stabilisation, de-escalation, and client containment work, yet possess less institutional authority to define that labour as expertise. The governance of emotion in mediation advocacy is thus hierarchically mediated: discretion expands with seniority, while emotional labour intensifies under precarity. This stratification reinforces the invisibility of relational labour within formal measures of professional excellence.

Importantly, these gendered dynamics emerged inductively from participants' accounts rather than being imposed as an a priori analytic category, and their analytical significance derives from how consistently they were linked by interviewees to mediation advocacy work characterised by high emotional exposure, limited institutional support, and blurred professional boundaries. These gendered asymmetries also sharpen the ethical tensions identified in Chapter 5: where EI functions as both a stabilising relational practice and a potential site of influence. When care labour is disproportionately assigned yet institutionally unrecognised, the risks of over-identification, emotional exhaustion, or strategic instrumentalisation intensify under uneven professional conditions. The significance of these findings extends beyond descriptive gender disparity. They indicate that emotionally intelligent mediation advocacy, while often presented as a professional virtue, is sustained through uneven distributions of relational burden. Emotional competence stabilises negotiation and protects client dignity, yet the responsibility for performing this work often falls on structurally vulnerable practitioners. In this respect, EI operates not merely as a skill but as a site of governance: its legitimacy-enhancing function depends upon hierarchically mediated labour that remains institutionally undervalued. These accounts demonstrate how emotional labour is unevenly distributed within mediation advocacy settings.

7.5 Ethical Tensions in the Deployment of Emotional Intelligence

"Empathy isn't a virtue or a risk. It's both."

For mediation advocates, these tensions manifest as concrete advocacy dilemmas: when empathic engagement supports client autonomy, when it risks steering client decisions, and when emotional framing begins to function as covert persuasion. These ethical tensions arise specifically because advocates must manage clients' emotions during negotiation, frame persuasive emotional narratives for mediators, and decide how to use or contain emotional information strategically within the limits of professional ethics. Building on the strategic–relational distinction set out in 7.2, this section examines the ethical consequences of those enactments. This section examines three recurring tensions: empathy as persuasion versus care, the invisibility of emotional labour, and the risks of bias and manipulation. Together, these dynamics highlight that EI is never value-neutral but deeply entangled with the ethical foundations of legal professionalism. These tensions are presented as practitioner dilemmas rather than settled ethical conclusions.

7.5.1 Empathy as Persuasion and Care

This section explores when empathy functions as ethical attunement and when it risks manipulation. In mediation advocacy, this tension is particularly acute.

Empathy can help an advocate build trust, frame client concerns persuasively, and de-escalate conflict; but the same techniques can risk nudging client decisions or subtly influencing the mediator's perception. These are fundamentally advocacy dilemmas, not generic mediation concerns. As Boon (2023)[490] and Rhode (2003)[491] note, affective sincerity and performative empathy often blur. The boundary between professional persuasion and emotional coercion is fragile. For mediation advocates, this boundary is especially significant because emotional techniques; such as reframing, strategic silence, or empathic alignment ; can influence not only the client's decision-making but also the mediator's perception of the dispute. Ethical dilemmas therefore arise not at the abstract level of 'emotion in mediation' but within the concrete advocacy task of presenting a persuasive yet non-manipulative case.

Participants drew that line differently. "*Your emotional intelligence is a vehicle for manipulation,"* said a barrister; *"If the goal is collaboration, it's ethical; if it's control, it's not,"* countered a mediator. A junior solicitor located the test in intent: *"Making someone feel heard is fine; nudging their choices feels wrong."* For others, emotional tuning was second nature. *"To call it deliberate makes it sound manipulative; it's just part of what we do,"* said one KC.

Techniques such as strategic silence, reframing anger, or signalling empathy were praised for easing tension but recognised as power-laden. Occasionally, empathy misfired: *"She vented years of rage and it went badly; we couldn't recover,"* recalled a mediator.

The ethical test emerging from these accounts is intent, transparency, and effect. Does emotional expression widen understanding and preserve autonomy, or narrow it covertly? Without reflexive checks and supervision, empathy risks sliding from care to coercion; especially in the asymmetrical settings described in Chapter 6. Empathy thus appears as both a professional necessity and a site of ethical ambiguity, its value contingent on motive and context rather than its mere presence. In mediation advocacy, this boundary is especially critical because empathic techniques (such as

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[490] Boon and Levin (n 489)
[491] Deborah L Rhode, *In the Interests of Justice: Reforming the Legal Profession* (Oxford University Press 2003)

reframing, tone modulation, and affective alignment) can shift the balance between supporting client agency and subtly influencing their negotiation position.

7.5.2 Emotional Labour and the Mask of Professional Detachment

As demonstrated in Sections 7.3.1 and 7.3.3, mediation advocacy requires practitioners to navigate a persistent tension between emotional engagement and professional detachment. This tension becomes ethically salient when EI is experienced not simply as relational competence but as emotional labour. For mediation advocates, this labour includes absorbing client distress, maintaining composure during high-stakes negotiation, and performing confidence even when outcomes are uncertain. These affective performances directly shape advocacy effectiveness and client trust. As Hochschild (1983)[492] observed, emotional labour often involves the suppression or management of feeling to conform to institutional roles; a tension acutely felt in law, where detachment is equated with competence[493, 494, 495]. The daily demand to remain composed and neutral in high-stakes environments produces a largely invisible form of affective work that participants frequently experienced as gendered.

Building on Section 7.4's discussion of detachment as a marker of professionalism, participants here emphasised how this norm translates into hidden affective labour. One senior lawyer noted that detachment is treated as part of the professional code: you must not get too involved or make matters personal. The demand is to remain outwardly calm even when emotions are present beneath the surface. In mediation advocacy, this emotional performance is intertwined with strategic judgement: advocates must decide when visible emotion will strengthen their client's position, when it will undermine credibility, and how to manage client outbursts without appearing partial or losing authority. These are advocacy dilemmas that require both emotional sensitivity and boundary clarity. Importantly, this was not described as emotional coldness but as a coping mechanism in the face of intense work. In this

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[492] Hochschild (n 237)

[493] Martha Albertson Fineman, 'The Vulnerable Subject: Anchoring Equality in the Human Condition' (2008) 20 *Yale Journal of Law and Feminism* 1

[494] Richard Collier, '"Be smart, be successful, be yourself …"? Representations of the training contract and trainee solicitor in advertising by large law firms' (2005) 12 *International Journal of the Legal Profession* 51

[495] Richard Collier, 'Rethinking Men and Masculinities in the Contemporary Legal Profession: The Example of Fatherhood, Transnational Business Masculinities, and Work–Life Balance in Large Law Firms' (2013) 13 *Nevada Law Journal* 410.

way, emotional containment rather than open expression becomes the ethical performance expected of practitioners.

Yet this performance is not without consequence. Several practitioners admitted that when they personally identified with a client or issue, their ability to maintain detachment was tested. One warned that if a lawyer becomes too emotionally involved or begins to take a stance alongside their client, they risk compromising ethical clarity. This echoes broader concerns around professional objectivity, where neutrality is valorised, even as it requires affective disavowal.

These pressures are particularly fraught in public interest and environmental law, where lawyers frequently confront trauma, systemic injustice, and ecological loss. As one environmental advocate noted, *"I've never met a public interest lawyer who wasn't emotionally engaged."* But engagement, they added, requires discipline. EI must be aligned with strategic communication, not simply empathetic expression, to avoid burnout or role confusion.

Mediators described their work as requiring the ability to *"hold"* the emotions of others without absorbing them. This was articulated not only as an ethical skill but as a survival mechanism. Without clear boundaries, empathy risks becoming over-identification, leading to exhaustion or bias. One mediator put it succinctly: *"You have to remain present, but not porous."*

Participants also distinguished between empathy and sympathy; between being emotionally attuned and being emotionally overwhelmed. While some advocated for detachment, few equated it with suppression. Instead, they described a form of calculated authenticity: knowing how to care without becoming enmeshed; how to show respect without overstepping. This aligns with Fineman's (2008)[496] conception of relational vulnerability, where ethical care is contingent on self-awareness and social context rather than emotional retreat. As one female solicitor reflected: *"We're expected to show care without becoming 'too involved.' It's a moving target."*

Mediators also called attention to the need for professional infrastructure: supervision, reflective practice, and peer support. These are rare in traditional legal spaces, where emotion remains peripheral to conceptions of competence. In their

[496] Fineman (n 494)

absence, the emotional load is absorbed privately, often by junior or marginalised staff. This echoes Sommerlad (2007) [497]analysis of legal aid and community lawyering, where the emotional labour of care disproportionately falls on women and junior professionals without institutional recognition.

There were also clear role-based differences. Barristers and solicitors described the need to separate personal feeling from legal performance. Mediation, by contrast, was seen as requiring affective fluency and relational presence. But as one mediator reflected, *"If you become too emotionally involved, it becomes about you."*

The implications for legal professionalism are profound. Emotional labour is therefore not merely a soft skill but a demanding ethical task embedded within professional responsibility. There is also a danger of professional colonisation of emotion: where lawyers *'manage'* affect to maintain control, rather than respecting emotion as an independent dimension of justice. It requires boundary work, institutional scaffolding, and cultural legitimacy. Yet in most legal contexts, it remains invisible and unsupported. One participant noted, *"You can care deeply and still be clear-headed, but that takes discipline."* Another added, *"Knowing what's yours and what's the situation's is a learned skill, not one we're taught."*

7.5.3 Impartiality, Performativity, and the Risk of Emotional Bias

EI can deepen understanding and humanise practice, yet when deployed without safeguards it risks undermining fairness and autonomy. In mediation advocacy, maintaining impartiality and emotional balance is essential to avoid inadvertently steering clients or appearing aligned with one party's emotional narrative. Advocates must constantly assess whose emotions they are attuning to, and how this shapes the negotiation trajectory. These assessments are uniquely advocacy-specific because emotional alignment can shift negotiation strategy and subtly steer client decision-making. Such risks make impartial emotional attunement an ethical obligation for mediation advocates. As one mediator cautioned, *"You have to be very careful that your empathy doesn't steer someone toward what you think is best."* Another senior solicitor reflected that *"If you are too attuned to one side's emotions, you start to lose the balance. That's the danger."* To reduce that risk, participants described pragmatic safeguards. Practitioners can maintain contemporaneous reflection notes

[497] Sommerlad (n 399)

distinguishing influence from support; seek explicit consent when using reframing, silence, or affective mirroring techniques; build in brief autonomy checks during mediation to ensure that parties' choices remain voluntary and informed; and normalise supervision and structured debriefing for high-emotion matters. Embedding these practices ties emotional competence to accountability, ensuring empathy operates within the boundaries of impartiality and professional integrity.

When empathy is unevenly distributed, invisibly required, or deployed without ethical safeguards, it affects who feels heard, whose vulnerability is acknowledged, and how far ADR processes can plausibly claim procedural fairness. As Section 7.4.1 has shown, time pressure and organisational incentives play a decisive role in shaping whether such ethical safeguards are realistically available in practice. The strategic use of EI without reflexive limits risks reinforcing existing power asymmetries under the appearance of consensus, weakening the legitimacy that ADR is expected to provide. By contrast, when emotional labour is recognised, supported, and ethically framed, EI strengthens participation, recognition, and accountability in planning and environmental disputes. In this way, the governance of emotion shapes the perceived legitimacy of ADR and central to efforts to build more relational and responsive forms of institutional justice. These ethical tensions sharpen the contours of reflexive professionalism, highlighting how emotionally intelligent advocacy depends on continuous self-monitoring, boundary judgement, and accountability rather than intuitive empathy alone. Table 7.1 summarises the three dilemmas participants returned to most often, expressed here in advocacy terms.

Table 7.1: Ethical Tensions in the Use of Emotional Intelligence by Mediation Advocates

Ethical Tension	**Description in Mediation Advocacy Practice**
Emotional alignment vs client autonomy	EI may support trust and alignment between lawyer and client, but risks shaping or constraining client decision-making where emotional reassurance substitutes for full exploration of alternatives.
Persuasion vs manipulation	The strategic use of empathy and emotional insight can facilitate agreement, yet raises ethical concerns where emotional influence shades into undue pressure or instrumentalisation of vulnerability.

Empathy vs professional distance	While advocates are expected to demonstrate empathy toward clients and other parties, emotionally attuned engagement may conflict with expectations of professional detachment or fairness within public law mediation contexts.
Rapport vs strategic distance	Building rapport can enhance communication and de-escalation, but excessive closeness may compromise strategic judgement or blur professional boundaries in adversarial negotiations.

What these tensions reveal is that EI operates as an ethical amplifier: it can either deepen participatory fairness and client autonomy, or intensify asymmetries and influence, depending on how reflexively it is deployed. Its legitimacy therefore depends not on the presence of empathy, but on the conditions of its exercise. This reinforces the chapter's central claim that emotionally intelligent mediation advocacy is a form of bounded professional discretion rather than intuitive moral responsiveness.

7.6 Practical Implications Identified by Participants

Building on the ethical tensions identified in Section 7.5 and the institutional constraints set out in Section 7.4, this section turns to implementation: how EI might be more meaningfully supported within legal and ADR practice. Participants' reflections focused less on highly theorised interventions than on modest but concrete shifts: integrating emotional awareness into training, providing structured spaces for reflection, and aligning organisational incentives with relational work.

7.6.1 Implications for ADR Training, Ethics, and Legal Design

Building directly on the training gaps identified in Section 7.3.2, participants offered a diverse set of reflections on how EI could be embedded into legal and ADR practice. They highlighted shortcomings in training, the absence of reflective spaces, and the lack of institutional support for managing emotionally intense work. One junior lawyer remarked that "we train lawyers to analyse and argue, but not to listen, feel, or reflect," capturing a common concern that legal education prioritises cognitive mastery over relational competence.

Several participants suggested embedding emotional literacy across the curriculum rather than treating it as an optional "soft skill." Others argued that training must be integrated into case simulations, ethics teaching, and clinical modules so that emotional competence becomes part of legal reasoning rather than an add-on. Some interviewees emphasised the need for interdisciplinary input, including psychology, to improve lawyers' understanding of conflict, trauma, and human behaviour.

Senior practitioners often framed emotional regulation as core to mature judgement. Advice such as "never send an email when you're angry" reflected the expectation that EI develops through reflective habits rather than formal instruction alone. Many described the need for pauses, supervision, and deliberation to avoid escalation or over-identification with clients.

Participants also emphasised that emotional resilience cannot depend solely on individual coping strategies. Mentorship, supervision, and structured debriefing after emotionally intense cases were described as ethical necessities. "You're not a machine," one NGO lawyer observed, urging junior lawyers to build reflective routines to sustain their wellbeing. Without such support, emotional labour becomes privatised, falling disproportionately on junior and marginalised practitioners.

Viewed as a whole, these reflections suggest that EI is not merely a communication technique but a foundational element of professionalism. This is also consistent with professional competence and ethics frameworks that already require lawyers to exercise judgement, maintain integrity and independence, and act in clients' best interests. In England and Wales, the SRA Competence Statement[498] and related professional standards implicitly rely on emotional capacities such as self-management, reflective practice, and effective communication, particularly in high-conflict and high-emotion contexts. Framing EI as an ethically bounded aspect of mediation advocacy therefore positions it as part of professional competence and continuing development, rather than as an optional "soft skill" or an informal coping strategy. Embedding it meaningfully in ADR and legal training requires a shift in institutional culture: one that recognises emotional work as legitimate professional labour.

7.6.2 Participant-Identified Practice Measures

Measure	Who Should Act	**What This Involves**

[498] Solicitors Regulation Authority, *Statement of Solicitor Competence* (SRA 2015) https://www.sra.org.uk/solicitors/resources/statement-solicitor-competence/ accessed 24 June 2025.

1. Integrate emotional literacy into legal education	Law schools; SRA; BSB; CPD providers	Embed emotional skills into advocacy, ethics and clinical modules; assess reflection on boundaries and relational judgement.
2. Provide structured supervision and debriefing	Firms; chambers; NGOs; mediation providers; Planning Inspectorate	Offer short, regular debriefs after emotionally demanding work (mediations, inquiries, community disputes) to support wellbeing and ethical clarity.
3. Adopt trauma-informed practices	Firms and chambers; SRA/BSB; mediation bodies	Use simple protocols to protect clients and practitioners; allow breaks, prepare clients for emotional moments, ensure support for practitioners.
4. Align incentives with emotionally intelligent practice	Firm/chambers leadership; practice heads; NGO directors	Recognise listening, preparation and debriefing in workload planning and performance appraisals; treat relational work as legitimate professional labour.
5. Introduce ethical safeguards to prevent emotional manipulation	SRA/BSB ethics committees; firm ethics groups; mediation providers	Provide clear guidance on ethical use of empathy, including when emotional techniques risk undue influence or bias; encourage reflective notes.

7.7 Chapter Summary

This chapter has examined how legal professionals interpret, enact, and negotiate EI within the emotionally and institutionally complex field of planning and environmental dispute resolution. Extending the empirical arc of Chapters 3–6, it showed that EI is shaped by structural pressures, professional norms, and contested ethical judgments. Rather than treating EI as a personal trait, the chapter has shown how emotionally intelligent mediation advocacy operates as a relational and situated form of professional judgement within planning and environmental disputes.

7.7.1 Reflexive Professionalism and Emotional Intelligence in Practice

Across the interviews, EI emerged as a hallmark of what can be called “reflexive professionalism.” Practitioners’ accounts demonstrate that emotionally intelligent mediation advocacy involves a set of concrete professional practices that together constitute relational legal judgement: reading the emotional dynamics of negotiation sessions, advising clients when to advance or moderate their positions, managing emotional disclosure in joint sessions or caucus, and adjusting advocacy strategies to maintain credibility while preserving opportunities for agreement. Lawyers portrayed themselves not merely as technicians but as intermediaries who must manage emotional atmospheres as well as legal arguments. This was especially evident in planning and environmental disputes, where trust, public legitimacy, and procedural integrity depend on relational sensitivity. Across the interviews, EI was shown to underpin key advocacy tasks in mediation, including reading the emotional dynamics of the room, guiding client decisions, framing persuasive narratives, and responding strategically to mediator interventions.

Participants also described the cultural tensions they navigate: an entrenched expectation of detachment on the one hand and the practical necessity of emotional engagement on the other. Reflexive professionalism involves recognising when emotional openness is needed for trust-building, when restraint is required to protect impartiality, and how institutional structures either support or hinder this judgement.

Career trajectory and personal experience shaped these capacities. Senior practitioners described gradual shifts towards relational judgment as their careers progressed. Junior lawyers expressed more uncertainty, wanting to practise authentically while feeling pressure to perform confidence and detachment. These generational differences underline the need for training and institutional scaffolding rather than relying on individual resilience or informal mentoring. These findings show that EI is not simply relevant to mediation processes, but central to the craft of mediation advocacy itself.

7.7.2 Emotional Dimensions of Justice

The chapter also demonstrates that EI contributes to what might be called the emotional dimensions of justice. This includes recognising emotional dignity, acknowledging grief and frustration, and enabling parties to be heard in ways that transcend formal legality. Drawing on Ahmed's[499] account of how emotions circulate and Fineman's[500] vulnerability theory, emotionally literate practice is shown to support justice by recognising dependency, uncertainty, and human significance without displacing the importance of rights or outcomes. In this sense, EI does not replace legal rationality; it conditions how legal rationality is experienced, communicated, and legitimised in mediation settings.

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[499] Sara Ahmed, *The Cultural Politics of Emotion* (2nd edn, Routledge 2014).
[500] Fineman (n 494)

At the same time, the chapter warned against romanticising EI. Empathy can strengthen understanding but can also become coercive when used without reflection. The risk of emotional bias and manipulation, explored in Section 7.5, shows that EI requires ethical safeguards as well as enthusiasm.

7.7.3 Looking Forward: From Interviews to Survey Triangulation

Chapter 8 extends this analysis by testing how widely the patterns identified in these interviews are distributed across the professional field. It examines whether dynamics such as gendered expectations, generational differences, strategic deployment of EI, and structural disincentives for ADR are isolated to particular contexts or reflect broader institutional tendencies. By moving from qualitative depth to quantitative breadth, the thesis strengthens its empirical foundation and evaluates the consistency of its claims across professional settings.

Taken together, these findings show how emotional competence is experienced as integral to mediation advocacy while shaped by structural constraint, professional culture, and ethical tension. The chapter has documented how practitioners describe, enact, and negotiate these pressures in practice. Chapter 8 tests the distribution of these patterns across the wider professional field.

Chapter 8: Triangulation Survey Findings and Integrated Analysis

8.1 Introduction

This chapter presents the findings from Phase 4 of the research: a targeted national survey designed to explore the extent to which the qualitative patterns identified in Chapters 6 and 7 are reflected across a broader group of practitioners. In keeping with the sequential mixed methods design outlined in Chapter 2, the function of this survey is not to "validate" qualitative insights in a positivist sense, but to *test their resonance, coherence, and plausibility* across a wider professional community.

The chapter therefore adopts a confirmatory orientation in the sense articulated by Greene, Caracelli and Graham's typology of triangulation purposes [501] and Creswell's explanatory-sequential logic. [502] In this design, the survey provides a secondary lens that *supports*, *extends* or *qualifies* the interpretive accounts derived from interviews. The survey's purposive design appropriately bounds the scope of inference to analytically relevant professional populations. Accordingly, the findings should be read as contextually grounded patterns rather than population-level claims.

Within these defined methodological boundaries, the survey provides complementary evidence concerning how legal professionals conceptualise and apply Emotional Intelligence (EI) in mediation advocacy. The specific purpose of the triangulation survey within this thesis is therefore to examine whether the relational, ethical and institutional patterns identified in the qualitative phases recur across a wider cohort of planning and environmental law practitioners. By translating the interview-derived constructs into measurable indicators, the survey enables the study to assess the broader resonance of emotionally intelligent mediation advocacy as a form of relational legal judgement within contemporary legal practice.

It offers quantitative structure to the relational, ethical and institutional themes developed in the preceding chapters and allows for systematic comparison across professional roles, levels of experience and mediation-advocacy experience (i.e. experience acting as mediation advocates in planning and environmental mediation

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[501] Jennifer C Greene, Valerie J Caracelli and Wendy F Graham, 'Toward a Conceptual Framework for Mixed-Method Evaluation Designs' (1989) 11 *Educational Evaluation and Policy Analysis* 255.
[502] John W Creswell and Vicki L Plano Clark, *Designing and Conducting Mixed Methods Research* (2nd edn, SAGE Publications 2011).

cases). The aim is to advance a richer, multi-layered understanding of EI as a socio-legal construct by situating qualitative insights within a broader empirical frame.

This chapter proceeds as follows. Section 8.2 outlines the methodological features of the survey. Section 8.3 presents the quantitative findings, including descriptive patterns, reliability testing, correlational relationships and group differences. Section 8.4 integrates these results with the qualitative analysis from Chapters 6 and 7, examining how EI is enacted, constrained and legitimised in professional practice. In line with the focus of Chapters 6 and 7, the analysis in this chapter is concerned specifically with how lawyers enact EI in the role of mediation advocate, rather than with mediation in general or mediator practice. Section 8.5 concludes by summarising the key contributions of the survey to the overall thesis argument and setting the foundation for the broader discussion in Chapter 9.

8.2 Overview of Survey Methodology

8.2.1 Objectives and Rationale

The final phase of the research was designed to strengthen the empirical foundations of the study by examining the extent to which the qualitative findings developed in Chapters 6 and 7 were reflected across a broader cohort of practitioners. As set out in Chapter 2, the mixed methods design followed an explanatory-sequential logic in which the survey examined the scale-level corroboration, patterned convergence, and construct reinforcement of the qualitative findings within the wider professional community. The function of triangulation in this study is therefore epistemic rather than statistical, reflecting the purposes of complementarity and convergence described by Greene, Caracelli and Graham[503] and subsequently developed by Creswell and Plano Clark[504] in the mixed methods research literature.

A central objective of the survey was to translate the qualitative constructs into measurable indicators that could be assessed systematically. This required a process of construct operationalisation in which themes identified through interviews were converted into item-level variables. The domain of relational professionalism, which emerged from accounts of emotional regulation, self-awareness, reflective capacity and client-centred judgement, was represented by Likert-type items assessing critical

[503] Greene, Caracelli and Graham (n 502)
[504] Creswell and Plano Clark (n 503)

awareness, the ability to read emotional cues, emotional steadiness and reflective practice. Strategic and ethical empathy was operationalised through items addressing the use of empathy as a communicative resource, awareness of ethical boundaries, sensitivity to the effects of emotional engagement and the capacity to reframe narratives in mediation. Parallel procedures informed the operationalisation of gendered emotional expectations, training and professional development, and affective legitimacy within institutional culture. This ensured that the quantitative instrument directly reflected the analytic framework developed earlier in the thesis.

Procedures were implemented to enhance the validity and clarity of the instrument. Content validity was strengthened through expert review, in which senior practitioners assessed whether the items adequately captured the constructs generated in the qualitative phases. Cognitive testing principles were applied during the piloting stage, focusing on the comprehensibility of item wording, the consistency of interpretive understandings among pilot participants and the potential for ambiguous or leading phrasing. Measures to reduce respondent bias were incorporated through neutral Likert anchors, balanced item formulation and the inclusion of open-text fields that allowed respondents to contextualise their numerical responses. These steps ensured that the questionnaire captured practitioners' perceptions without imposing evaluative direction.

The sampling strategy was purposive and reflected the methodological commitments of socio-legal inquiry. The aim was not to achieve statistical representativeness but to reach practitioners with substantive experience in planning, environmental law and mediation advocacy. Within socio-legal research, experiential depth and professional positioning provide a more meaningful basis for conceptual triangulation than population inference. The purpose of the survey was to examine whether the qualitative themes concerning relational professionalism, strategic and ethical empathy, gendered emotional expectations and institutional legitimacy were recognised across a diverse and information-rich practitioner group.

Together, these objectives enabled the survey to provide a structured assessment of the resonance and scope of the qualitative findings, while also allowing for the examination of how professional role, experience and engagement in mediation advocacy shape attitudes toward EI. The results of this phase provide a crucial evidentiary bridge between the earlier qualitative analysis and the integrated interpretation developed in Chapter 9.

8.2.2 Instrument Design

The survey instrument was developed through a structured process that translated the qualitative findings from Chapters 6 and 7 into measurable constructs suitable for quantitative analysis. Its design followed principles associated with construct validity, content representativeness and methodological coherence with the mixed methods framework outlined in Chapter 2. The instrument was administered through the Qualtrics platform and consisted of Likert-scale items, frequency-based behavioural indicators, binary variables and open-text prompts. These formats were selected to reflect the complex socio-professional nature of EI within mediation advocacy.

The five-domain structure of the questionnaire was derived directly from the thematic analysis conducted during Phases 2 and 3. These domains, namely relational professionalism, strategic and ethical empathy, gendered emotional expectations, training and professional development, and affective legitimacy within institutional culture, were not imposed in advance. Rather, they emerged inductively from participants' accounts of how EI is enacted, constrained and evaluated within mediation contexts. Their distinction reflects the multidimensional model developed in Chapter 7, which conceptualises EI as a composite professional capacity shaped by ethical reasoning, institutional norms and interpersonal judgement. The complete Phase 4 triangulation survey questionnaire, including the questionnaire items and their alignment with the analytical domains, is reproduced in Appendix D.

The operationalisation of these domains involved a detailed process of item construction. Each thematic category generated during the qualitative phases was examined to identify its behavioural, attitudinal or ethical dimensions. These dimensions were then translated into closed-ended survey items that could be consistently interpreted by respondents. To ensure clarity and conceptual fidelity, the piloting process incorporated cognitive interviewing techniques such as comprehension probing and paraphrasing tasks. Participants in the pilot phase were asked to explain how they interpreted particular items and whether the terms used reflected their understanding of EI in practice. Feedback from this stage informed minor adjustments to item wording, sequencing and scale descriptors. This process strengthened the content validity of the instrument by ensuring that each question corresponded to practitioners' accustomed ways of describing emotional and ethical engagement during mediation advocacy.

The inclusion of binary indicators alongside Likert-scale items was deliberate and reflected the nature of several constructs examined in the survey. Some domains involved structural conditions, such as the presence or absence of formal training, gendered expectations or institutional barriers. These factors cannot be meaningfully expressed on a gradated scale without distorting their conceptual character. Binary variables allowed the instrument to capture these contextual conditions precisely and without conflating them with attitudinal measures. Although this mixed format affects the applicability of certain psychometric indices, such as Cronbach's alpha, it is appropriate for socio-legal inquiry where constructs are often hybrid, institutional and context-specific. Section 8.3.4 discusses these implications in detail and explains why conventional internal consistency benchmarks are of limited applicability to the full instrument.

The qualitative prompts embedded within the questionnaire served two important functions. First, they provided respondents with the opportunity to elaborate on their closed-ended responses, thereby giving insight into how EI features in their mediation advocacy practice. Second, they supported the explanatory-sequential design of the study by generating narrative material that explained and contextualised the quantitative findings, enabling direct comparison with the earlier interview data and allowing areas of convergence, divergence and refinement to be identified during the triangulation process described in Section 8.3. These qualitative components ensured that the instrument preserved the interpretive richness characteristic of the earlier phases while producing data that could be systematically compared across practitioners.

The instrument reflects the study's conceptual and methodological commitments. It maintains coherence with the qualitative foundations of the study, captures the multidimensional nature of EI in legal practice, and provides a transparent evidentiary basis for the quantitative findings that follow in the next section.

8.2.3 Sampling and Response Profile

The triangulation survey was distributed through purposive channels to planning and environmental law practitioners across the United Kingdom, including professional networks, mailing lists and peer referral within specialist groups. A total of 60 practitioners completed the questionnaire. The Phase 4 survey was distributed to the same professional recruitment pool used in Phase 1, thereby maintaining continuity in the study's sequential mixed methods design. However, participation remained entirely anonymous and voluntary. Consequently, it is not possible to determine which individual practitioners completed both surveys or to establish respondent-level matching across phases. Rather than tracking the same individuals, Phase 4 sought to examine whether the qualitative themes developed in Phases 2 and 3 resonated across the same professional population from which the original survey sample had been drawn. This approach is consistent with the study's triangulation strategy, which focuses on pattern convergence within a relevant professional community rather than longitudinal analysis of individual respondents.

Because the survey invitation was disseminated through open professional networks rather than a fixed sampling frame, the number of individuals who received the invitation is unknown and a formal response rate cannot be calculated. All 60 respondents proceeded to the end of the questionnaire; however, several participants left individual items unanswered. As a result, analytic sample sizes for domain-level calculations vary (typically 50–57 cases) depending on item completion. The achieved sample is methodologically sufficient for examining patterned convergence across professional roles within a triangulation-oriented mixed methods design.

Purposive sampling was selected to ensure that the survey captured the perspectives of practitioners who engage meaningfully with planning and environmental mediation advocacy. Representativeness was not the objective of this stage of the research. Instead, the purpose was to assess the transferability of the qualitative findings developed in Chapters 6 and 7. The survey therefore sought practitioners with relevant experience rather than a statistically representative cross-section of the broader legal profession. This decision is consistent with socio-legal methodological standards, where the aim is to examine the coherence and explanatory reach of conceptual categories rather than to generalise to a population. The sample is sufficient for the triangulation strategy adopted here, which relies on comparative patterning rather than probabilistic inference.

Participants were recruited through established professional networks, including the UK Environmental Law Association (UKELA), the Planning and Environment Bar Association (PEBA) and associated planning and environmental law groups. Additional participants were recruited through chain-referral methods, in which early respondents shared the invitation with colleagues who met the study criteria. While these recruitment channels enabled access to a highly experienced group of practitioners, they reflect the purposive design of the study and appropriately bound the scope of inference.

The composition of the sample also reflects the professional positioning associated with the recruitment networks used. Organisations such as the UK Environmental Law Association and the Planning and Environment Bar Association primarily comprise senior practitioners, specialists, and those already engaged with policy, reform or interdisciplinary aspects of practice. As a result, certain perspectives are likely to be under-represented, including junior private-sector lawyers with limited exposure to mediation, local authority officers participating in mediation as non-legal or hybrid actors, and in-house environmental lawyers operating outside advocacy-focused professional networks. These exclusions delineate the contextual boundaries within which the domain findings should be interpreted. This design characteristic reflects the purposive logic of the study, which prioritised experiential depth over breadth, and defines the contextual boundaries within which the distribution and prominence of domains should be interpreted.

Individuals who are familiar with or supportive of EI in legal practice may have been more inclined to participate than practitioners who hold more traditional or sceptical views. This sampling characteristic is consistent with the purposive logic of the study and frames the scope of inference appropriately. In a triangulation design, the purpose is not to eliminate such biases but to examine whether the patterns observed in the qualitative phases reappear across a broader, though still purposive, cohort.

The respondent group represented a broad range of professional roles within the field. Approximately 34% identified as solicitors, 27% as barristers, 9% as in-house lawyers and 5% as legal advisers within public bodies. The remaining 25%

comprised mediators, consultants and academics involved in environmental or planning dispute resolution. This distribution reflects the multi-disciplinary nature of mediation advocacy and ensures that both facilitative and adversarial practice perspectives are represented.

The sample was also characterised by substantial professional experience. Approximately 68% of respondents reported more than ten years of post-qualification experience, including 41% who had practised for more than twenty years. A smaller group of 18% had fewer than five years of experience, contributing perspectives shaped by more recent legal training and professional socialisation. Engagement with mediation advocacy varied across the sample. Approximately 27% had acted as legal representatives in mediation more than five times in the previous five years, while 25% had participated three to five times. A further 18% had taken part once or twice, and approximately 30% had not yet represented clients directly in mediation. This variation provides a useful contrast between regular mediation advocates and practitioners whose experience of mediation is primarily advisory or policy based.

All responses were anonymised and securely coded prior to analysis. Ethical approval and data-handling procedures followed the framework described in Chapter 2, ensuring confidentiality and compliance with recognised research ethics standards. The characteristics of the sample, while shaped by the purposive recruitment strategy, support the triangulation aims of the study by allowing the qualitative themes to be examined across a wider but still thematically relevant professional community.

8.2.4 Data Handling and Ethical Considerations

All procedures for data handling and participant protection followed the ethical framework established in Chapter 2, and ethical approval was secured prior to data collection. Documentary evidence of the research ethics approvals obtained for each empirical phase of the study is reproduced in Appendix E. Participants received an electronic information sheet outlining the purpose of the study, the voluntary nature of participation, and the measures taken to ensure confidentiality. Informed consent was obtained digitally before participants could proceed to the questionnaire.

The survey was administered anonymously through the Qualtrics platform, and no identifying personal or organisational details were collected. All responses were automatically assigned a numerical identifier on export to the secure university research storage system. Open-ended responses were screened for any inadvertent identifying information during the data-cleaning stage. Any references that could reveal professional affiliation, role, or specific cases were removed or generalised to preserve confidentiality while retaining the substantive meaning of the comment.

The quantitative data were analysed using SPSS and Python, and the qualitative comments were examined in NVivo. These datasets were stored separately to reduce the risk of deductive disclosure, and analytic files remained accessible only to the researcher. The open-text responses were coded according to the thematic framework established from the qualitative phases, allowing for triangulation while maintaining the anonymity of contributors.

The data-management procedures complied with institutional ethical requirements and ensured that the analysis remained confidential, secure and methodologically consistent with the earlier phases of the research. The treatment of both closed and open responses was guided by principles of transparency, reflexivity and respect for participant privacy, all of which are central to socio-legal research ethics.

8.3 Quantitative Analysis: Domain Structure, Reliability and Descriptive Patterns

8.3.1 Domain Structure and Analytical Framework

The survey instrument was organised around five conceptual domains derived directly from the qualitative analysis presented in Chapters 6 and 7. The purpose of this structure is to translate interpretive constructs into analytically tractable categories, consistent with the qualitative foundations of the study. This approach is consistent with the explanatory sequential design set out in Chapter 2, in which qualitative insights provide the basis for subsequent quantitative structuring rather than the reverse.

The five domains capture the multi-layered nature of EI identified across the interview phases. Relational Professionalism reflects self-awareness, emotional regulation and reflexive judgement as features of professional identity. Strategic and Ethical Empathy represents the dual role of empathy as a communicative technique and an ethical stance within mediation advocacy. Gendered Emotional Expectations concerns the influence of gendered professional norms on emotional expression in legal practice. Training and Professional Development examines the institutional provision of emotional competence within formal legal education and continuing professional development programmes. Each of these domains is rooted in the advocacy-focused analysis developed in Chapters 6 and 7: they map onto specific mediation-advocacy tasks such as framing client narratives, managing clients' emotional responses, interpreting and responding to the other party's emotions, and negotiating emotionally charged concessions within mediation sessions.

The domains are conceptually derived analytic groupings intended to organise triangulation patterns rather than to model latent traits. For that reason, and given the mixed measurement formats and modest sample size, factor-analytic modelling is not pursued here (see Section 8.3.4). The domains contain unequal numbers of items and, in some cases, combine Likert-type and binary indicators. This reflects the conceptual and institutional heterogeneity of the constructs rather than an expectation of scale homogeneity. Reliability statistics are therefore reported only as descriptive indicators and interpreted with caution (see Section 8.3.4).

Together, the five domains provide a structured yet theoretically anchored framework through which quantitative and qualitative data can be integrated. They allow the analysis to examine how emotional competence is variously enacted, constrained and institutionalised across different forms of mediation advocacy, while maintaining fidelity to the constructs generated from the interpretive stages of the research.

8.3.2 Descriptive and Reliability Results

The descriptive analysis examined the central tendencies and dispersion of the Likert-based items within each domain, together with Cronbach's alpha coefficients. Panel A presents the means and standard deviations for the Likert items, while Panel B reports the proportions of affirmative responses for the binary indicators. These statistics are presented for descriptive patterning; psychometric assumptions are discussed centrally in Section 8.3.4.

Sixty practitioners participated in the survey; several did not complete every item. As a result, analyses involving multiple variables (such as domain means and reliability statistics) used listwise deletion. The pattern of missing data was limited in scope and dispersed across items rather than concentrated within particular domains, making an assumption of missing completely at random (MCAR), or at least missing at random (MAR), reasonable in this context. Alternative approaches such as pairwise deletion risked producing inconsistent comparison bases across analyses, while common imputation techniques were ill-suited to a dataset combining Likert-type and binary indicators and would have introduced unwarranted assumptions of continuity. Given the modest sample size and the descriptive, triangulation-oriented purpose of this phase, listwise deletion was adopted as the most transparent and methodologically conservative approach. Analytic sample sizes therefore ranged from fifty to fifty-seven respondents depending on the number of completed items for each domain. Domain means thus reflect the number of respondents who answered the relevant items, rather than the full sample of sixty. All item responses were coded in the positive direction and none required reverse coding.

Cronbach's alpha is reported as a descriptive indicator for domains with multiple Likert items and is interpreted cautiously given the formative structure, mixed measurement formats and triangulation-oriented purpose of the instrument (see Section 8.3.4).

Panel A: Likert Items – Means, Standard Deviations, and Cronbach's α

Domain	**Mean**	**SD**	**Relative Prominence (Descriptive)**	**Number of Likert Items**	**Cronbach's α**
1. Relational Professionalism	3.541	0.803	2nd	8	0.612
2. Strategic and Ethical Empathy	3.601	0.954	1st	6	0.241
3. Gendered Emotional Expectations	N/A	N/A	—	—	N/A
4. Training and Professional Development	2.815	0.830	3rd	2	–0.638
5. Affective Legitimacy within	N/A	N/A	—	—	N/A

Institutional Culture					

Panel B: Binary Indicators – Percentage of “Yes” Responses

Domain	Statement	% Yes
1. Relational Professionalism	Behavioural indicator reported separately (see text below).	N/A
2. Strategic and Ethical Empathy	EI serves as a communication strategy.	10.53%
	EI serves as an ethical commitment.	15.79%
	EI serves both strategic and ethical purposes.	63.16%
3. Gendered Emotional Expectations	Gendered expectations discourage EI practice.	17.54%
	EI is viewed as “soft” or unprofessional.	42.11%
4. Training and Professional Development	EI was taught in undergraduate training.	3.51%
	EI was taught in vocational/professional training.	1.75%
	EI was covered in CPD or workplace seminars.	17.54%
	Respondent had no formal EI training.	54.39%
	EI learning was self-directed only.	14.04%
5. Affective Legitimacy within Institutional Culture	Time or billing pressures discourage EI practice.	40.35%
	Cultural scepticism discourages EI practice.	50.88%
	Lack of formal guidance discourages EI practice.	28.07%
	Respondent was unsure of EI’s role.	3.51%

One binary item relating to the deliberate use of emotional-intelligence techniques to shift mediation dynamics is conceptually linked to relational professionalism but is reported separately, as it functions as a behavioural indicator rather than as a component of a formative domain grouping. Across domains, mean scores ranged from 2.82 to 3.60, indicating generally positive orientations toward EI, though with substantial variation between interpersonal and institutional constructs. The alpha coefficients ranged from –0.64 to 0.61. These coefficients are not treated as indicators of latent-scale reliability but as descriptive artefacts of a formative, concept-driven instrument in which internal homogeneity is neither assumed nor required. Given the formative domain structure, mixed measurement formats and modest item counts, these coefficients are not interpreted as indicators of latent-scale reliability but as descriptive indices consistent with the triangulation-oriented purpose of this instrument. In this context, internal consistency is less analytically significant than conceptual coherence between item groupings and the qualitative framework from which they were derived. Accordingly, reliability is interpreted here as conceptual stability across domains rather than psychometric scale homogeneity. The descriptive results therefore provide an empirical summary of practitioner perceptions consistent with the triangulation purpose outlined above.

8.3.3 Domain Analysis

This section interprets domain-level patterns descriptively and in conjunction with the qualitative findings in Chapters 6 and 7. Percentages reported for binary items should be treated cautiously, as small absolute differences within a sample of fifty seven respondents can shift the proportions noticeably.

8.3.3.1 Relational Professionalism

Relational Professionalism produced a mean of 3.54 (SD = 0.80) and an alpha coefficient of 0.61. As noted earlier, alpha is reported descriptively only and does not denote formal evidence of internal reliability. The eight items within this domain displayed broadly consistent response patterns, suggesting that participants regarded emotional awareness, self-regulation and reflective practice as interconnected aspects of their professional identity. Variation within the domain appears to reflect differing levels of confidence or practice style rather than conceptual disagreement.

These descriptive results correspond closely with the qualitative evidence, in which practitioners characterised emotional reflexivity as an integral part of contemporary mediation advocacy. Participants framed professionalism not only as the avoidance of undue emotional display but as an active relational capacity involving attention to client anxiety, situational awareness and self-regulation. The domain therefore indicates an emerging shift within parts of the profession towards recognising EI as both a technical and ethical dimension of professional conduct.

8.3.3.2 Strategic and Ethical Empathy

Strategic and Ethical Empathy generated the highest domain mean (3.60, SD = 0.95) and a low alpha value of 0.24. The alpha value reflects the heterogeneous composition of the domain, which combines six Likert items with several binary indicators addressing the perceived purpose of EI. The descriptive frequencies show that sixty three percent of respondents viewed EI as serving both strategic and ethical functions, with smaller groups assigning primarily communicative or primarily ethical roles.

The interpretive significance of this pattern lies in the dual orientation practitioners reported during the qualitative stages. Empathy was described as a means of facilitating constructive communication and reducing hostility, while also operating as a marker of ethical commitment to fairness and procedural integrity. Rather than viewing these functions as contradictory, respondents depicted them as mutually reinforcing dimensions of mediation advocacy. These findings align with socio-legal analyses of affective labour, which conceptualise professional empathy as a form of situated emotional reasoning rather than simple sentiment.[505, 506] The descriptive results therefore support the conclusion that legal practitioners navigate empathy as a situational judgement, balancing authenticity, persuasion and ethical restraint within mediation-advocacy settings.

8.3.3.3 Gendered Emotional Expectations

This domain consisted solely of binary indicators and therefore does not produce a composite mean or reliability coefficient. The proportions, although interpreted with caution due to the small underlying counts, are nonetheless informative. Approximately forty two percent of participants agreed that EI is perceived in parts of the profession as soft or unprofessional, and seventeen and a half percent reported that gendered expectations constrain the open use of emotional engagement.

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[505] Hochschild (n 237)

[506] Chalen Westaby and Andrea Subryan, 'Emotional Labour in the Legal Profession' *Emotional Labour in Criminal Justice and Criminology* (Routledge 2020) 20.

These results align with feminist legal scholarship on the uneven legitimation of emotional expression across gendered professional cultures, while remaining limited to the descriptive patterns observed within this respondent group. The qualitative data illustrate how some female practitioners reported navigating heightened expectations of empathy, while some male respondents noted concern that emotional expressiveness might be viewed as incompatible with traditional markers of legal credibility. Although descriptive, the domain highlights persistent cultural scripts that shape how emotional competence is enacted and evaluated in legal work.

8.3.3.4 Training and Professional Development

Training and Professional Development yielded the lowest domain mean (2.82, SD = 0.83) and a negative alpha value (−0.64). The negative alpha is not interpreted substantively, as the domain contains only two Likert items alongside five binary indicators relating to training exposure. The descriptive frequencies indicate a substantial gap in institutional provision: more than half of respondents (54%) reported no formal training in EI, while fewer than five percent encountered such content during undergraduate or vocational study. 17.5% reported exposure through continuing professional development, and 14% described self-directed learning as their only engagement.

These patterns corroborate the qualitative findings that emotional competence is typically learned informally through experience, mentoring or reflective practice rather than through structured training. The results therefore point to a structural disjunction between practitioner recognition of EI as a professional asset and the limited institutional mechanisms available to support its development.

8.3.3.5 Affective Legitimacy within Institutional Culture

The fifth domain was composed entirely of binary items and therefore excluded from internal consistency testing. The frequencies should again be interpreted cautiously, yet they reveal meaningful tendencies. Half of respondents (50.9%) identified cultural scepticism as a barrier to emotionally intelligent practice, while forty percent cited time and billing pressures as limiting opportunities for reflective engagement. A further twenty eight percent referred to the lack of formal guidance on emotional conduct.

These results complement the qualitative evidence that institutional cultures continue to frame emotional reasoning as secondary to procedural, adversarial or productivity imperatives. While earlier domains capture personal endorsement of EI, this domain highlights the organisational constraints that shape its practical expression. The descriptive pattern supports the conclusion that although practitioners value EI, institutional conditions often require them to work against prevailing norms when engaging empathetically or reflectively with clients.

The survey findings therefore do not establish gendered emotional labour as a general feature of legal practice, but provide triangulated support for the qualitative patterns identified in Chapter 7.

8.3.4 Discussion and Defence of the Analysis

The five-domain model provides a coherent descriptive framework aligned with the inductive themes developed in Chapters 6 and 7. Because related points are signposted elsewhere, this section sets out the central rationale in full. The interpretive purpose of the analysis was therefore to examine convergence and divergence across thematic constructs rather than to test latent structural dimensions. The variability of the alpha coefficients should be understood in this light. Cronbach's alpha assumes unidimensionality, continuous measurement and high inter-item covariance, assumptions that are rarely met in socio-legal instruments that combine attitudinal items with indicators of structural exposure. As Tavakol and Dennick note, alpha values must always be interpreted in relation to scale purpose, item composition and conceptual range rather than as universal indicators of quality.[507] DeVellis further emphasises that scales with fewer than four items and scales containing heterogeneous item types are unlikely to yield stable alpha coefficients.[508]

These methodological principles explain the pattern observed in Domains 2 and 4, where the mixture of Likert and binary variables produced low or negative alpha values. Such results do not imply unreliability; they reflect the structural

[507] Mohsen Tavakol and Reg Dennick, 'Making sense of Cronbach's alpha' (2011) 53(1) *International Journal of Medical Education* 53.
[508] Robert F DeVellis, *Scale Development: Theory and Applications* (4th edn, Sage 2016).

heterogeneity of the domains and the methodological decision to capture both evaluative attitudes and institutional experiences.

Low or negative internal consistency coefficients in this context should therefore be understood as a function of deliberate conceptual heterogeneity rather than as evidence of measurement failure. The domains were constructed to capture distinct but interrelated facets of emotionally intelligent mediation advocacy, including ethical reasoning, institutional exposure and professional judgement. Internal consistency statistics are reported descriptively and interpreted in light of this formative, socio-legal design.

Within socio-legal research, this mixed-format approach is appropriate because it enables the analysis to examine how EI is perceived, enacted and institutionally supported without reducing these dimensions to a single latent construct. The analysis did not employ exploratory or confirmatory factor analysis. Although factor analysis can be used to examine underlying structure, it requires (at minimum) larger item sets, continuous measurement assumptions and sample sizes that exceed those available in this study. More importantly, factor analysis would have been epistemically inconsistent with the study's inductive framing, which conceptualised EI as a multi-layered socio-professional construct rather than a psychometric trait. The purpose of the quantitative strand was confirmatory in the sense described in Chapter 2: to test the resonance of qualitatively derived themes within a wider respondent group, not to impose a latent-variable structure on phenomena that participants themselves described as context-dependent and relational.

Taken together, the descriptive, correlational and reliability findings provide a coherent triangulated picture. EI is strongly endorsed at the interpersonal and practice-oriented levels (Domains 1 and 2), remains structurally underdeveloped within legal education and professional development (Domain 4), and is shaped by cultural and institutional constraints that influence its legitimacy (Domains 3 and 5). This three-tier pattern reflects a broader tension within the profession between the ethical aspirations attached to emotionally intelligent practice and the organisational logics that continue to prioritise rational detachment, productivity and adversarial competence. The findings therefore reinforce the argument advanced throughout the thesis: EI occupies an increasingly significant but still contested place within legal professionalism, valued by practitioners yet only partially supported by existing institutional structures.

8.3.4.1 Limitations

This analytical approach has several limitations. The domains are interpretive rather than psychometric, meaning that the results describe patterns of perception rather than underlying latent traits. The mixed item formats limit the applicability of certain reliability and validity metrics. The modest sample size restricts the use of more complex statistical modelling and caution must be exercised when interpreting percentages derived from small absolute numbers. Finally, the descriptive nature of the analysis means that the quantitative data cannot be generalised beyond the respondent group. These limitations, however, are consistent with the study's qualitative–interpretive orientation and its objective of examining convergence rather than predictive generalisation.

8.3.5 Correlational Analysis

Spearman's rank-order correlations were computed to explore the associations between demographic characteristics, EI indicators and institutional perceptions. Spearman's ρ was selected because the data were ordinal, non-parametric and not normally distributed. Correlation coefficients are therefore presented as descriptive indicators of associative strength rather than as inferential statistical tests. This approach is consistent with the exploratory and triangulation-oriented purpose of the quantitative phase and reflects the limited statistical power associated with the sample size.[509]

P values were not calculated for the correlation matrices. Given the modest sample size ($N \approx 50$–57) and the ordinal structure of the data, formal significance testing risked producing unstable estimates and statistical artefacts that would overstate the evidential weight of small differences. More importantly, the purpose of the correlational analysis was epistemic triangulation rather than population inference: the correlations are used to examine coherence and alignment with the qualitative findings, not to test hypotheses or estimate generalisable effects. For these reasons, the correlations are interpreted descriptively and contextually, with emphasis on relative patterning rather than statistical significance. Accordingly, all correlational

[509] Alan Bryman, *Social Research Methods* (5th edn, Oxford University Press 2016).

patterns are interpreted with methodological caution. As methodological literature cautions, significance testing in small, underpowered samples can produce misleading results and should be interpreted with considerable caution.[510,511,512,513,514,515,516,517] For this reason, the correlations are interpreted cautiously and in conjunction with the qualitative findings rather than as stand-alone evidence of causal or population-level relationships. Possible confounders, including the overlap between professional role and mediation-advocacy experience, are acknowledged in interpreting the patterns below.

Correlation coefficients were interpreted using conventional descriptive thresholds, with values between 0.10 and 0.29 considered weak, 0.30 to 0.49 moderate and 0.50 or above strong.[518] The results are presented across three tables covering demographic associations, intercorrelations among EI constructs and associations with training and institutional perceptions.

8.3.5.1 Demographic Correlations

The first set of correlations examined the associations between professional characteristics (professional role, years of post-qualification experience and frequency of mediation representation) and the EI indicators. Professional role and years of practice were coded as ordinal categories and mediation experience represented the frequency with which respondents acted as legal representatives (mediation advocates) in mediation processes in the preceding five years.

Table 8.1. Spearman Correlations between Demographic Variables and EI Indicators

[510] Jacob Cohen, 'The Earth Is Round (p < .05)' (1994) 49 *American Psychologist* 997.
[511] Douglas G Altman and J Martin Bland, 'Statistics Notes: Absence of Evidence Is Not Evidence of Absence' (1995) 311 *BMJ* 485.
[512] Andy Field, *Discovering Statistics Using SPSS* (5th edn, Sage 2018).
[513] Sidney Siegel and N John Castellan Jr, *Nonparametric Statistics for the Behavioral Sciences* (2nd edn, McGraw Hill 1988).
[514] David C Howell, *Statistical Methods for Psychology* (8th edn, Cengage 2013).
[515] Rex B Kline, *Principles and Practice of Structural Equation Modeling* (4th edn, Guilford Press 2015).
[516] Scott E Maxwell, David A Cole and Melissa A Mitchell, 'Bias in Cross-Sectional Analyses of Longitudinal Mediation' (2011) 69 *Psychological Methods* 178.
[517] Douglas G Bonett and Thomas A Wright, 'Sample Size Requirements for Pearson, Kendall, and Spearman Correlations' (2000) 55 *Psychometrika* 23.
[518] Jacob Cohen, *Statistical Power Analysis for the Behavioral Sciences* (2nd edn, Lawrence Erlbaum 1988).

Variable	Role	Years Practice	Mediation-advocacy experience
EI Critical	.16	–.15	**.41**
Strategic Awareness	.18	–.00	**.63**
Ethical Boundary	.16	–.24	**.40**
Read Cues	.26	**.30**	**.66**
Self-Reflection	.07	.04	**.54**
EI Outcome Impact	.10	–.28	**.41**
Reframe Narratives	**.33**	**.30**	**.43**
Support Client Regulation	–.10	.08	**.53**

Note: Values are Spearman's ρ. Moderate and strong correlations (ρ ≥ 0.30) are highlighted in bold.

Taken descriptively, these results indicate that EI competencies vary more by experiential exposure than by professional category or seniority. Role-based correlations were generally weak, suggesting that EI is not strongly patterned by occupational group but is instead shaped by situational learning. The weak and sometimes negative associations with years of practice, such as the correlation with EI Outcome Impact (ρ = –.28), should be interpreted cautiously. They may reflect subtle differences in professional socialisation rather than generational effects, and such interpretations cannot be confirmed without further evidence.

Mediation-advocacy experience produced consistently strong correlations across EI indicators, particularly Strategic Awareness (ρ = .63), Reading Cues (ρ = .66) and Self Reflection (ρ = .54). These descriptive associations support the qualitative observation that emotional competence develops primarily through reflective engagement in mediated contexts. However, these associations should be read as indicating the value of situated practice opportunities, not as evidence that repetition alone produces emotional competence absent reflective learning. This pattern is consistent with models of experiential learning in which practitioners deepen affective and ethical judgement through iterative cycles of action, observation and reflection.[519]

Although these relationships are conceptually meaningful, they must be read alongside potential confounders. For instance, some professional roles are more likely to be exposed to mediation work, potentially inflating the effect sizes.

8.3.5.2 EI Construct Intercorrelations

The second set of correlations explored the relationships among the EI indicators themselves. The results display a coherent pattern of positive associations across variables, suggesting that EI functions as an integrated cluster of reflective, ethical and relational capacities.

Table 8.2. Intercorrelations among Emotional Intelligence Variables

Variable	EI Critical	Strategic Awareness	Ethical Boundary	Read Cues	Self-Reflection	EI Outcome Impact
EI Critical	**1**	**.66**	**.67**	**.43**	**.47**	**.63**
Strategic Awareness	**.66**	**1**	**.40**	**.60**	**.54**	**.60**
Ethical Boundary	**.67**	**.40**	**1**	**.31**	**.62**	**.51**
Read Cues	**.43**	**.60**	**.31**	**1**	**.58**	**.47**
Self-Reflection	**.47**	**.54**	**.62**	**.58**	**1**	**.61**
EI Outcome Impact	**.63**	**.60**	**.51**	**.47**	**.61**	**1**

Note. Values are Spearman's ρ. Bold values indicate moderate to strong correlations (ρ ≥ 0.30).

These descriptive intercorrelations support the theoretical model developed in Chapter 7. The strongest associations occur between ethical discernment, strategic use of emotion and reflexive awareness, indicating that these capacities operate

[519] David Kolb, *Experiential Learning: Experience as the Source of Learning and Development* (Prentice Hall 1984).

together as a relational and ethically disciplined professional orientation. This pattern aligns with qualitative accounts in which lawyers described EI as a dynamic interplay of cognitive understanding, self-regulation, ethical boundary-setting and strategic interpersonal awareness.

8.3.5.3 Training & Institutional Correlations

Table 8.3. Correlations with Training and Institutional Perception Variables

Variable	EI Integrate CPD	EI Underemphasised
Ethical Boundary	**.50**	**.32**
EI Critical	**.40**	**.31**
Self-Reflection	**.35**	**.24**
Support Client Regulation	**.29**	**.52**
EI Outcome Impact	**.32**	**.40**
Strategic Awareness	**.24**	**.37**

Note. Values are Spearman's ρ. Bold values indicate moderate to strong correlations (ρ ≥ 0.30).

These descriptive correlations indicate that practitioners who assign greater ethical significance to EI are also more likely to advocate for its integration into professional training. Similarly, those who view EI as underemphasised within legal education tend to score higher on reflective and relational EI measures. This pattern mirrors qualitative findings in which participants highlighted the gap between the ethical importance of EI and the limited institutional structures supporting its development.

8.3.5.4 Integrated Interpretation

These descriptive correlations reinforce the central argument of this chapter that emotionally intelligent mediation advocacy is relational, experiential and ethically situated. The consistent associations with mediation-advocacy experience illustrate that emotional competence develops through repeated exposure to affectively complex environments rather than through role status or seniority. Strong intercorrelations among the EI indicators confirm that cognitive, ethical and reflective elements of EI function as a cohesive professional construct. The associations with training variables highlight a recognised deficit in formal instruction, suggesting that practitioners who are most attuned to emotional dynamics are also most aware of the structural limitations within the profession.

These findings are interpreted cautiously, mindful of the small sample size, the absence of inferential testing and the potential presence of confounding variables. They nevertheless provide a meaningful descriptive complement to the qualitative phases and contribute to a triangulated account of EI as a multidimensional feature of contemporary legal professionalism.

8.3.6 Group Differences (Kruskal–Wallis)

8.3.6.1 Analytical Rationale

To examine whether EI varied systematically across practitioner groups, Kruskal–Wallis tests were conducted for two independent variables: professional role and years of post-qualification experience (PQE). The Kruskal–Wallis procedure is appropriate for ordinal and non-normally distributed data and generates an H statistic that approximates a chi-square distribution with k-1 degrees of freedom. Results are therefore reported as χ^2(df), p, together with non-parametric effect sizes (η^2) to indicate the practical magnitude of differences.[520] The effect size statistic reported is η^2(H), derived from the Kruskal–Wallis H statistic, rather than epsilon-squared (ε^2). This measure was selected for consistency with common reporting practices in applied non-parametric analyses and provides an estimate of the proportion of variance in the ranked outcome attributable to group membership. While different conventions exist for interpreting non-parametric effect sizes, η^2(H) offers a transparent indication of practical magnitude when used descriptively and in conjunction with substantive interpretation.

Interpretive descriptors such as “small”, “moderate” and “large” are used in a heuristic sense to aid substantive interpretation rather than as rigid thresholds. Following guidance from Cohen[521] and subsequent refinements for non-parametric contexts discussed by Tomczak and Tomczak[522], effect sizes of approximately 0.01 may be considered small, around 0.06 moderate, and 0.14 or above large. These

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[520] Tom W Field, “Effect Size Measures for the Kruskal–Wallis Test” (2013) *Journal of Modern Applied Statistical Methods*.
[521] Cohen (n 519)
[522] Maciej Tomczak and Ewa Tomczak-Łukasiewicz, ‘The Need to Report Effect Size Estimates Revisited: An Overview of Some Recommended Measures of Effect Size’ (2014) 1 Trends in Sport Sciences 19.

benchmarks are applied cautiously and are used here to contextualise the relative magnitude of observed group differences rather than to imply precise quantitative boundaries. Given the presence of significant differences across professional role categories, pairwise post-hoc Mann–Whitney U tests with Bonferroni corrections were conducted.[523] With 10 pairwise comparisons, the corrected threshold for significance was $p < 0.005$.

Finally, because mediation-advocacy experience differs across professional roles, the potential confounding influence of role and mediation-advocacy exposure is acknowledged in interpreting the results.

8.3.6.2 Differences by Role

The Kruskal–Wallis tests for professional role revealed statistically significant differences across all EI indicators. Effect sizes ranged from moderate to large, indicating meaningful differences in the distribution of EI capacities across occupational categories.

Table 8.4. Kruskal–Wallis Tests by Professional Role (N = 57 and k = 5)

Variable	**χ^2**	**p-value**	**η^2**	**Interpretation**
Years of Practice	11.76	.001	.15	Moderate
Mediation-advocacy experience	15.44	< .001	.22	Moderate
EI Critical Awareness	27.39	< .001	.45	Large
Strategic Awareness	27.27	< .001	.45	Large
Ethical Boundary Recognition	24.47	< .001	.39	Large

Post-hoc Mann–Whitney tests (Bonferroni-corrected) indicated that the most pronounced contrasts were between barristers and in-house lawyers, and between solicitors and public-sector legal advisers. Practitioners in advisory or facilitative roles tended to score higher on reflective and ethical dimensions of EI, while those in adversarial environments generally scored lower.

This pattern aligns with the qualitative findings in Chapters 6 and 7, which noted that organisational context shapes the perceived legitimacy and practical deployment of EI. Facilitative and policy-oriented roles appear to create conditions that support

[523] Siegel and Castellan (n 516)

reflective, relational and ethically aware emotional practice, whereas adversarial settings maintain stronger norms of emotional restraint.

8.3.6.3 Differences by Experience

The Kruskal–Wallis tests for PQE revealed significant differences across all EI indicators except mediation-advocacy experience.

Table 8.5. Kruskal–Wallis Tests by Years of PQE (df = 3, n = 57)

Variable	χ^2	p-value	η^2	Interpretation
Years of Practice (validation)	29.00	< .001	.49	Large
Mediation-advocacy experience	0.64	.422	.00	None
EI Critical Awareness	19.81	< .001	.32	Moderate
Strategic Awareness	23.07	< .001	.38	Large
Ethical Boundary Recognition	14.29	< .001	.21	Moderate

Note: A negative effect size was produced for the mediation-advocacy experience variable (η^2 = –0.04). Since η^2 cannot be interpreted meaningfully when negative in the context of non-parametric tests, the value was truncated to 0.00 following established methodological conventions. The negative value simply reflects that the observed H statistic was smaller than the degrees-of-freedom correction term and therefore provides no evidence of group differences.

These findings suggest a tendency for EI to be more strongly endorsed among practitioners with greater professional maturity, although the pattern is neither linear nor uniform across all indicators. The non-significant result for mediation-advocacy experience suggests that frequency of participation alone does not predict EI development. In other words, exposure ('how often') is not equivalent to learning ('how it is processed'). What appears more consequential is reflective engagement: the extent to which practitioners actively interpret emotional dynamics, evaluate their own responses, and adapt their strategies over time (for example through debriefing, supervision, feedback, or deliberate reflective practice). This distinction is important for the theoretical framing developed later in the thesis, which treats EI as a form of relational professional judgement cultivated through reflexive practice rather than accumulated attendance.

This interpretation is consistent with experiential learning theory[524], which proposes that emotional and ethical understanding develops through iterative cycles of action, reflection and adaptation rather than through seniority alone.

8.3.6.4 Integrated Discussion

The Kruskal–Wallis analyses demonstrate that EI in legal practice is structured by both institutional setting and professional experience. The large effect sizes across occupational groups suggest that the development and expression of EI appears to be shaped by the demands, cultures and normative expectations of particular roles. Practitioners situated in environments that emphasise collaboration, public engagement or policy work tended to report higher levels of reflective and ethical EI than those in adversarial practice. This reflects the qualitative accounts in Chapter 6, where practitioners described navigating affective demands differently depending on organisational context.

Differences based on years of PQE further suggest that EI is refined through reflective encounters with clients and disputes over time. The moderate to large effect sizes for EI Critical Awareness and Strategic Awareness align with qualitative accounts that emphasise experience-based learning over hierarchical seniority alone. This pattern reinforces the conceptual analysis in Chapter 7 which framed EI as a form of relational professional judgment cultivated through practice.

The interpretation of these results is qualified by the potential confounding between professional role and mediation-advocacy exposure, since some roles provide more opportunities for acting as mediation advocates within mediation processes. This structural overlap may amplify role-based differences in mediation-advocacy-related emotional skills. Nonetheless, the combination of role-based and experience-based variation supports the thesis argument that EI is an ethically grounded, socially embedded and institutionally mediated dimension of contemporary legal professionalism.

8.4 Integrated Thematic Interpretation

The purpose of this section is to clarify how the quantitative findings relate to the qualitative insights developed in Chapters 6 and 7. Specifically, the survey results are

[524] Kolb (n 520)

examined in order to identify where the quantitative evidence confirms the qualitative patterns previously identified, where it refines those interpretations by revealing variation across the wider professional field, and where it challenges or complicates the earlier findings. This triangulated analysis enables the study to move beyond isolated qualitative narratives by assessing how widely the identified patterns of emotionally intelligent mediation advocacy are distributed across the profession. Rather than reiterating earlier interpretive accounts, the analysis therefore addresses four distinct questions:

1. Which qualitative themes are confirmed at scale?
2. Which themes are complicated or qualified?
3. What patterns emerge only through quantitative aggregation?
4. What institutional differences are statistically patterned across roles and experience?

Each subsection below therefore isolates what the survey uniquely contributes, rather than restating earlier interpretive accounts. This structure ensures that the survey functions as an analytic extension of the qualitative phases rather than a narrative repetition of them.

This framing also reflects socio-legal analyses of affective and emotional labour in professional settings. Research has shown that legal practitioners are routinely required to manage their own emotions and those of others in order to maintain authority, neutrality and procedural legitimacy, even where such labour is rendered invisible within formal accounts of legal competence. EI, from this perspective, operates as a form of affective labour that supports institutional functioning and public trust, while remaining unevenly recognised and supported within professional cultures. The triangulated findings presented below are therefore read as evidence of how emotional labour is distributed, normalised or resisted across mediation advocacy roles, rather than as indicators of individual disposition or emotional aptitude.

8.4.1 Relational Professionalism

The survey strongly confirms the central qualitative finding that relational professionalism functions as a core component of mediation advocacy. The high domain mean ($M = 3.54$) and consistent endorsement across roles demonstrate that emotional awareness, self-regulation and reflective judgement are not isolated narratives but widely distributed professional orientations. Correlational analysis further reinforces this pattern, with moderate to strong associations between self-reflection, cue recognition and perceived outcome impact. The survey therefore consolidates the qualitative claim that relational professionalism operates as an integrated and practice-relevant dimension of mediation advocacy rather than as an optional interpersonal attribute.

These patterns indicate that relational professionalism is not confined to isolated interview accounts but is widely distributed across the surveyed cohort. This corresponds with the moderate-to-strong quantitative associations between self-reflection, cue recognition and perceived impact on mediation outcomes. Taken together, the findings suggest that relational professionalism is treated as an applied form of judgement that integrates emotional understanding with strategic and ethical considerations.

8.4.2 Strategic and Ethical Empathy

The correlations reported in Section 8.3 indicated a close relationship between strategic awareness, ethical boundary recognition and reflexivity. The survey responses clarify how practitioners conceptualise the relationship between strategic awareness and ethical boundary recognition. Practitioners repeatedly rejected the notion that empathy could be separated into purely strategic or purely ethical categories. Instead, they described empathy as purposeful, deliberate and grounded in authenticity. As one respondent wrote, *"empathy only works if it is real; parties can feel when it is forced"*. Another explained that emotional engagement assists both ethical conduct and negotiation: *"you cannot persuade someone you have not understood"*.

A small number of respondents described moments of discomfort when navigating the boundary between empathic understanding and inappropriate influence. Yet these practitioners reported managing this tension through reflexive self-assessment rather than by avoiding emotional engagement. This supports the interpretation that empathy in legal mediation is conceptualised as a disciplined professional stance. It also aligns with socio-legal scholarship on affective labour, which argues that professional empathy functions as situated emotional reasoning rather than unregulated sentiment.[525]

8.4.3 Gendered Emotional Expectations

Gendered emotional expectations, while prominent in interview narratives, appear more uneven when examined quantitatively. Although 42% of respondents reported that EI is perceived as "soft" or unprofessional, only 17.5% indicated that gendered expectations directly constrain emotional engagement. This suggests that gendered dynamics are present but not uniformly experienced across the surveyed cohort. The survey complicates the qualitative emphasis by demonstrating uneven distribution across the professional field. Several female interview participants described being implicitly expected to absorb or manage emotional tension during mediation sessions in which they were acting as advocates, reflecting longstanding feminist critiques that women are routinely positioned as carriers of emotional labour within legal institutions. One practitioner noted, "I am always the one expected to calm the room down", even when her role did not formally require it.

Male interviewees reported a different constraint: some explained that overtly empathic conduct can still be viewed as unprofessional within more traditional legal environments. These accounts illustrate what Thornton[526] identifies as law's "hyper-rationalist" culture, which continues to privilege emotional detachment as a marker of competence. Similarly, the patterns described in the qualitative phases echo Mossman's[527] analysis of the gendered dichotomy between reason and emotion in legal professionalism.

A number of participants also highlighted generational differences, suggesting that younger practitioners may be more willing to acknowledge and integrate emotional awareness into their practice. While this indicates gradual cultural change, the triangulated findings demonstrate that EI remains filtered through gendered professional expectations that shape opportunities to perform and legitimise affective competence.

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[525] Hochschild (n 237)
[526] Thornton (n 490)
[527] Mossman MJ, *The First Women Lawyers: A Comparative Study of Gender, Law and the Legal Professions* (Hart Publishing 2006).

8.4.4 Training and Professional Development

The quantitative results demonstrated a significant gap in formal training provision, with more than half of respondents reporting no structured instruction in EI. The qualitative comments illustrate the consequences of this deficit. Many practitioners explained that they had developed emotional competencies informally, often in response to difficult or unexpected moments in mediation advocacy. One noted that *"you learn it the hard way, when a mediation goes off the rails"*. Another described turning to literature in psychology and negotiation because *"the legal training simply does not cover this in any depth"*.

Respondents repeatedly emphasised that legal education remains predominantly doctrinal and adversarial. One practitioner commented that *"law school teaches you to argue, but mediation requires you to listen"*. These reflections mirror concerns raised in Chapter 6 regarding the narrow conception of competence embedded in traditional legal training. Despite these limitations, there was near-unanimous support for integrating EI into continuing professional development and mediation advocacy courses. Practitioners considered emotional awareness to be a component of ethical competence rather than an optional interpersonal skill.

8.4.5 Affective Legitimacy and Public Trust

Domain 5 highlighted structural obstacles that constrain emotionally intelligent practice, including time pressures, cultural scepticism and a lack of formal guidance. The qualitative comments demonstrate how these constraints intersect with practitioners' efforts to maintain fairness and legitimacy in mediation. Several practitioners described organisational cultures in which emotional work is tacitly expected but rarely acknowledged. One participant observed that *"we are meant to manage the emotions but no one asks afterwards how that actually went"*.

Respondents emphasised that EI contributes directly to public trust in environmental and planning processes. Practitioners described using emotionally attuned communication to validate community concerns, address anxieties about environmental impact and rebuild confidence in decision-making frameworks. These reflections align with scholarship in administrative justice, which identifies dignity, recognition and procedural fairness as central to public trust in regulatory systems.[528, 529] According to the respondents, EI enables practitioners to recognise these dimensions and incorporate them into mediation advocacy practice.

Overall, the findings suggest that while practitioners value and enact EI as a component of fairness and legitimacy, institutional structures have yet to adapt sufficiently to support the emotional labour involved. This confirms the argument developed in Chapter 7 that EI carries public significance as well as interpersonal value.

8.4.6 Patterns Emerging Only at Scale

Certain structural patterns become visible only through quantitative aggregation and were not directly observable within the interview phases. First, mediation-advocacy experience shows consistently strong correlations across EI indicators, particularly strategic awareness ($\rho = .63$), cue recognition ($\rho = .66$) and self-reflection ($\rho = .54$). This indicates that emotionally intelligent practice is shaped more by situated exposure than by professional category or seniority alone.

Second, the intercorrelation matrix reveals a cohesive EI cluster linking ethical boundary awareness, strategic emotional deployment and reflective judgement. These strong positive associations suggest that EI operates as an integrated professional orientation rather than as a collection of discrete interpersonal skills.

These scale-level patterns extend beyond narrative resonance and provide structural insight into how emotionally intelligent mediation advocacy coheres across the wider professional field.

8.4.7 Cross-Phase Triangulation Summary

Table 8.6: Cross-Phase Triangulation of EI Domains

Domain	Qualitative Findings (Chs 6–7)	Survey Findings (Ch 8)	Triangulation Interpretation
Relational Professionalism	Strongly evident in practitioner narratives as reflexive judgement,	High mean scores and consistent endorsement across roles; strong correlations with	Convergence: Both strands strongly support relational professionalism as a core dimension of

[528] Richard Kirkham and Brian Thompson, 'Administrative Justice and the Importance of Procedural Fairness' (2019) Public Law 412.
[529] Tyler TR, *Why People Obey the Law* (2nd edn, Princeton University Press 2006).

	emotional regulation, and client-centred professionalism.	mediation-advocacy experience.	mediation advocacy.
Strategic and Ethical Empathy	Described as ethically complex and situational, involving careful boundary work in persuasive contexts.	Majority of respondents identify empathy as serving both strategic and ethical purposes; high domain mean with heterogeneous item responses.	Convergence with nuance: Survey data supports dual ethical–strategic framing while reflecting conceptual heterogeneity identified qualitatively.
Gendered Emotional Expectations	Gendered norms and emotional double standards were salient in interviews, particularly among female practitioners.	Gender-related constraints acknowledged, but at lower prevalence and with weaker differentiation across respondents.	Divergence: Gendered dynamics are more pronounced in qualitative accounts than in survey responses.
Training and Professional Development	EI largely learned informally through experience, mentoring, and reflection.	Very low levels of formal EI training reported; majority indicate no structured institutional provision.	Convergence: Both strands highlight a significant gap between perceived importance and institutional support.
Affective Legitimacy within Institutional Culture	Institutional scepticism, time pressure, and adversarial norms constrain emotionally intelligent practice.	High proportions report cultural scepticism and structural barriers to EI enactment.	Expansion: Survey data foregrounds the prevalence of institutional constraints across a wider practitioner cohort.

This triangulation summary highlights how the quantitative findings do not function as independent validation but as complementary evidence that confirms, qualifies or extends the qualitative analysis. Patterns of convergence reinforce the centrality of relational and ethical judgement in mediation advocacy, while areas of divergence and expansion illuminate how EI is differentially perceived, articulated and constrained across professional contexts. This synthesis provides a bridge between the empirical analysis presented in this chapter and the broader theoretical discussion developed in Chapter 9. It should be noted that the survey findings reported in this chapter capture practitioners' self-reported perceptions and accounts of practice rather than direct observation of behaviour in mediation settings. As with all self-report data, these responses may not fully reflect how EI is enacted moment-to-moment in live mediation interactions, particularly under conditions of pressure, conflict or institutional constraint.

8.4.8 Institutional Differentiation and Statistical Patterning

The survey phase also identifies statistically patterned institutional differentiation that could not be fully captured in qualitative accounts. Kruskal–Wallis analyses demonstrate significant variation across professional roles, with facilitative and policy-oriented roles tending to report higher levels of reflective and ethical EI than those situated in adversarial contexts. Effect sizes in several instances were moderate to large, indicating meaningful structural differentiation rather than incidental variation.

Additionally, the survey foregrounds institutional constraints at scale: 50.88% of respondents identified cultural scepticism as a barrier, and 40.35% cited time pressures as limiting emotionally attuned practice. These patterns demonstrate that emotionally intelligent mediation advocacy is relationally endorsed but institutionally unevenly supported.

The distinctive contribution of the survey phase therefore lies not in validating the qualitative findings, but in clarifying their distribution, intensity and institutional conditioning across the professional field.

8.5 Chapter Summary

The triangulation survey confirmed the central patterns identified in the qualitative phases and provided quantitative support for the five-domain framework developed in Chapter 7. Across the sample, practitioners endorsed EI as an important dimension of legal professionalism, particularly within the relational and ethical demands of planning and environmental mediation advocacy. The key findings are summarised below.

First, relational professionalism emerged as a consistently strong domain. Participants affirmed the importance of emotional awareness, self-regulation and reflective judgement in client representation, a pattern reflected in the moderate internal consistency of this domain. Both the numerical trends and the qualitative comments indicated that emotional steadiness and the ability to interpret affective cues are perceived as essential components of effective mediation advocacy.

Second, strategic and ethical empathy were closely interrelated. Although internal consistency was low due to the mixture of Likert and binary items, the strong intercorrelations among the underlying variables demonstrated that practitioners treat empathy as both an ethical stance and a practical tool. Respondents described managing empathy reflexively, supporting the conclusion that it is not experienced as a threat to impartiality but as a disciplined form of professional judgement.

Third, gendered expectations continued to influence emotional roles, but in uneven and evolving ways. A substantial minority of respondents reported that EI is still perceived as 'soft' or unprofessional within some legal environments. Practitioners also noted gradual cultural change and increasing recognition of emotional awareness as a marker of maturity. These findings suggest an ongoing tension between traditional ideals of rational detachment and emerging expectations of relational competence within the profession.

Fourth, limited formal training remains a significant structural gap. More than half of the sample had received no formal instruction in EI, and only small minorities encountered it in undergraduate, vocational or CPD settings. Despite this, support for integrating EI into professional education was strong. The results emphasise a mismatch between practitioners' recognition of emotional competence as a core aspect of practice and the absence of institutionalised training provision.

Fifth, institutional and cultural barriers continue to constrain emotionally informed practice. Time pressures, scepticism and the absence of formal guidance were frequently cited as obstacles. Nonetheless, practitioners described how emotionally attuned interventions in mediation advocacy enhanced trust, improved communication and supported perceptions of procedural fairness, particularly in disputes involving community engagement and environmental impact.

These findings provide structured quantitative consolidation of the thesis's qualitative claims. EI is widely regarded as integral to effective and ethical mediation advocacy, yet its development and legitimacy remain uneven across institutional settings. Emotional competence emerges primarily through experiential practice rather than formal training, and its expression is shaped by cultural and organisational constraints.

Limitations should be noted. The modest sample size restricts generalisability, several domains contained few items, and the inclusion of binary variables limited the use of conventional reliability and factor-analytic techniques. These methodological constraints are considered in Chapter 9, which synthesises the mixed methods findings and explores their implications for professional ethics and the evolving nature of legal professionalism. The findings presented in this chapter should also be understood in light of the domain-specific context in which the research is situated. Planning and environmental mediation operates within a distinctive professional culture characterised by policy-oriented practice, public participation, regulatory complexity and ongoing engagement with community interests. These features may place greater normative emphasis on relational, communicative and emotionally attuned forms of professional judgement than is typical in other areas of legal practice, such as commercial litigation or criminal advocacy. Accordingly, while the conceptual insights developed here have broader socio-legal relevance, caution is warranted in assuming direct transferability of the observed patterns to legal fields shaped by different institutional logics and emotional norms.

These Chapter 8 findings provide the final empirical platform for the thesis by demonstrating that emotionally intelligent mediation advocacy operates as a relational and institutionally situated form of professional judgement, supported at the level of practitioner practice yet unevenly embedded within legal training and organisational culture. Chapter 9 therefore moves beyond empirical reporting to develop the integrated theoretical implications of these findings. Drawing together the qualitative and survey strands, the discussion refines the thesis's central argument that EI functions as a form of relational legal judgement within mediation advocacy and explores the implications of this framework for legal professionalism, ethics and institutional design.

While Chapters 6 and 7 established how institutional fragility and emotionally intelligent judgement are experienced and enacted within specific mediation contexts, Chapter 8 extends that analysis by assessing the broader distribution of those patterns across the professional field. The survey clarifies the distribution, intensity and institutional conditioning of previously identified qualitative patterns. In doing so, this chapter strengthens the thesis's empirical architecture by moving from interpretive depth to field-wide pattern recognition. The result is not statistical confirmation, but structural consolidation of the thesis's central claims regarding bounded professional discretion, legitimacy pressures, and the institutional conditioning of emotionally intelligent advocacy.

Chapter 9: Discussion

9.1 Introduction

This chapter consolidates the thesis's central claim, It demonstrates what becomes analytically visible when procedural instability, adversarial professionalism, and emotionally intelligent advocacy are examined as an integrated system. The chapter has three aims. First, it integrates the qualitative and quantitative findings to examine points of convergence and divergence. Second, it revisits the theoretical frameworks developed earlier in light of the empirical evidence. Third, it explores the implications for legal professionalism, professional development, and Alternative Dispute Resolution (ADR) design. The preceding empirical chapters identified patterned professional practices and institutional constraints.

This chapter synthesises those empirical findings with the conceptual framework developed in Chapters 4 and 5, where Emotional Intelligence (EI) was theorised as a form of relational legal judgement embedded within mediation advocacy. By integrating the empirical evidence with this conceptual framework, the chapter formalises those patterns. It develops a coherent account of governance architecture and professional authority.

This discussion chapter advances four core analytical moves:

- First, it integrates the qualitative and quantitative findings to clarify how relational legal judgement is enacted, negotiated, and constrained across different professional roles and institutional settings.
- Second, it demonstrates how this judgement is enacted through relational professionalism, strategic empathy, and emotional labour within constrained institutional settings.
- Third, it shows how emotionally intelligent mediation advocacy contributes to affective legitimacy and perceptions of procedural justice in public law disputes.
- Fourth, it re-evaluates dominant models of legal professionalism by examining how mediation advocacy recalibrates the balance between adversarial authority, relational engagement, and ethical responsibility within public law dispute resolution.

9.1.1 Original Contribution of the Thesis

This chapter consolidates the thesis's contribution by demonstrating how the integrated empirical findings reshape existing understandings of mediation advocacy in public law planning disputes. Rather than restating the central claim, this section clarifies what becomes theoretically and institutionally visible once qualitative and quantitative findings are analysed together.

Four analytically distinct contributions emerge from this integration:

First, the findings demonstrate that emotionally intelligent mediation advocacy operates as a form of relational legal judgement structured by professional role, institutional culture and regulatory context, rather than as an individualised interpersonal skill.

Second, the research establishes emotional labour as a central yet institutionally under-recognised dimension of legal professionalism in public law mediation, revealing how affective work is both necessary and unevenly distributed across professional hierarchies.

Third, the thesis develops the concept of affective legitimacy to explain how emotionally attuned advocacy shapes perceptions of procedural fairness, recognition and authority within disputes marked by participatory vulnerability and institutional fragility.

Fourth, the study formalises the ethical ambivalence of emotionally intelligent advocacy through the Three-Stage Ethical Risk Model, demonstrating how affective authority requires continuous calibration to avoid strategic overreach, manipulation or role distortion.

9.2 Integrated Analysis of Qualitative and Survey Findings

This section integrates the interview and survey findings to examine how EI functions across professional contexts in environmental and planning mediation. Rather than re-describing results, the section synthesises the empirical findings with the conceptual framework developed earlier in the thesis, drawing theoretical insight from the alignment and divergence across methods in order to clarify how relational legal judgement operates in mediation advocacy.

9.2.1 Overview: What Integration Reveals

Integrated analysis clarifies how emotional reasoning varies across professional roles and institutional settings. The quantitative findings extend this interpretation by showing how these capacities vary systematically across professional roles and institutional settings, revealing patterns that were not visible through interviews alone. These quantitative patterns reinforce the interpretation that emotionally intelligent practice is institutionally patterned rather than individually possessed.

The mixed methods findings indicate that relational legal judgement in mediation advocacy requires calibrated attention to affective cues, ethical boundary recognition, and strategic selection of responses that balance client interests with procedural integrity.

9.2.2 Relational Professionalism

This section conceptualises relational professionalism as an ongoing role orientation that shapes how lawyers consistently conduct themselves across mediation advocacy, rather than as a situational tactic or an internal emotional burden. Integrated analysis shows that relational professionalism functions as a structural mediator between institutional constraint and affective legitimacy, rather than merely as a dimension of emotionally intelligent practice.

Relational professionalism operates as the interpretive mechanism through which advocates navigate pre-existing institutional fragilities rather than as a response to them. Practitioners highlighted the challenges of building rapport without overidentifying with clients and the need to interpret emotional cues without manipulation. As one practitioner noted, balancing empathy with professional boundaries requires careful judgement: clients must feel heard, but emotional engagement must remain aligned with legal and ethical responsibilities. Such reflections underscore the role of EI as a form of ethical reasoning, particularly in moments where professional detachment and client care appear to conflict.

Relational professionalism therefore emerges as a mode of ethical judgement shaped by professional culture and regulatory context. It supports constructive communication, advances client interests and upholds procedural integrity, particularly in emotionally charged disputes. Relational professionalism differs from strategic empathy in that it centres on the ongoing conduct of the professional role;

not on specific tactical uses of emotional insight. It involves continuous ethical calibration within institutional constraints, whereas strategic empathy tends to manifest more acutely in negotiation strategy. The following section explores the emotional labour that practitioners must undertake to sustain such work in the face of structural and cultural pressures.

9.2.3 Strategic and Ethical Empathy

Integration across phases clarifies that empathy reconfigures the architecture of professional authority by embedding affective interpretation within adversarial reasoning. Here, the focus is empathy as situational judgement within negotiation. The findings show that empathy in mediation advocacy functions both as a strategic tool and as an ethical commitment. Practitioners described empathy as a disciplined form of interpretive reasoning that enables them to understand emotional dynamics while upholding fairness, authenticity and professional responsibility.

Chapter 7 highlighted that empathy allows practitioners to grasp the emotional logic underlying conflict positions. This insight supports more effective narrative framing, enhances communication and facilitates principled negotiation. At the same time, the chapter drew attention to moments of ethical discomfort. Practitioners reflected on the tension between empathic engagement and the potential for manipulation or over-identification. One participant remarked, "You are always walking a line between empathy and advocacy. You want the client to feel heard, but you cannot let their emotions override the broader legal and ethical frame." This kind of ethical calibration emerged as a key professional judgement, not a soft skill.

In emotionally charged contexts, empathy operates as calibrated ethical judgement rather than expressive alignment, requiring advocates to validate affect while maintaining procedural and legal boundaries. The quantitative analysis corroborates this interpretation, indicating that empathy forms part of a broader constellation of ethical and strategic reasoning rather than a discrete interpersonal skill.

Practitioners also described how empathy shaped their responses to the implicit aspects of negotiation. Drawing on what is described in the literature as the shadow negotiation, they used emotional cues to anticipate resistance, adjust tone and reframe proposals in ways that protected client interests without escalating tension. This interpretive use of empathy reinforces its status as a core component of strategic judgement. Mediation advocates use empathy not just to support clients, but to read and influence the subtle cues that drive settlement dynamics.

9.2.4 Emotional Labour and Professional Identity

Emotional labour refers to the internal work of regulating one's own affect and managing others' emotions in high-pressure professional settings. The findings show that this labour is central to mediation advocacy yet institutionally invisible, leaving practitioners to absorb ethical and emotional strain without formal recognition. Emotional labour is unevenly distributed across professional hierarchies, reinforcing its structural character and its entanglement with authority and recognition within legal practice.

Overall, the findings reposition emotional labour as both a functional necessity and a structural blind spot within legal professionalism. It is essential yet institutionally invisible, deeply embedded yet marginalised by dominant conceptions of competence. Rather than distinguishing it again from EI at a definitional level, the integrated findings show how affective regulation, ethical calibration and institutional constraint intersect in practice to shape the durability of professional authority.

9.2.5 Gendered Emotional Norms

This section examines how gendered norms shape expectations about emotional work and the perceived legitimacy of emotionally intelligent practice. The integrated findings make clear that EI is interpreted and practiced within gendered expectations that persist in legal culture. Interview participants indicated that women were more frequently expected to manage the emotional tone of mediation, even when this was not part of their formal role. These accounts reflect critiques from feminist scholarship and Chapter 7, particularly the work of Thornton, which has examined how legal professionalism continues to prize rationality and objectivity while sidelining emotional competence as feminine or auxiliary [530].

A female planning barrister recalled being asked to keep the room calm before a multi-party mediation because she was perceived as good with people. Her more senior male colleague was tasked with leading on legal argument. When tensions

[530] Thornton (n 490)

escalated during the session, both clients and professionals looked to her to restore composure, despite no formal discussion of such responsibilities. By contrast, a male solicitor shared that he had been advised early in his career to avoid showing emotional involvement, as it might be interpreted as weakness. These contrasting experiences show how professional expectations around emotional labour are shaped by gender and reinforced by institutional norms.

Male participants also described how expectations of emotional detachment limited their ability to engage relationally. Some felt that showing empathy or emotional sensitivity risked being perceived as unprofessional or as inconsistent with a masculine ideal of composure. These reflections align with the theoretical work of West and Zimmerman, who have argued that professional behaviour is continually evaluated through the lens of gender performance[531].

The survey data support these qualitative findings. Survey data indicate persistent perceptions of EI as soft or gender-coded, reinforcing the qualitative findings regarding the cultural marginalisation of emotional labour.

Nevertheless, gendered norms; intersecting with dimensions of age, seniority and institutional authority; continue to influence which practitioners are expected to perform emotional labour, how that labour is evaluated and what kinds of EI are considered legitimate. These patterns are particularly salient in planning and environmental law, where client communities often bring intense emotional narratives tied to land, health and identity; making affective responsiveness essential yet structurally undervalued. These gendered expectations further reinforce the institutional patterning of EI identified earlier, demonstrating that emotional labour is not merely distributed by role but stratified by professional hierarchy and gender performance.

The findings underscore that EI cannot be understood solely as an individual trait. Rather, it must be examined in relation to broader professional cultures that continue to shape who is expected to manage emotional dynamics and how this work is valued in the context of mediation advocacy.

[531] Candace West and Don H Zimmerman, 'Doing Gender' (1987) 1(2) *Gender & Society* 125.

9.2.6 Training and Professional Development

This section highlights the gap between the recognised importance of EI and the institutional mechanisms available to support its development. While EI is broadly acknowledged by practitioners as essential for effective mediation, the availability of structured training remains limited. The data reveal a structural gap between the emotional demands of mediation advocacy and the institutional mechanisms available to support its development.

The integrated findings indicate that practitioners most attuned to the ethical dimensions of mediation are also those most aware of institutional deficits in emotional training and supervision. These responses demonstrated that practitioners who scored highly on indicators of critical emotional awareness and ethical boundary recognition were also those most likely to perceive a lack of formal training and to advocate for greater institutional support. This pattern suggests that those most reflective about the ethical and strategic dimensions of EI are also the most attuned to its structural neglect within legal training frameworks.

The combined data indicate a significant misalignment between the professional expectations placed on mediation advocates and the preparation provided through existing training pathways. EI is consistently called upon in emotionally charged and ethically complex settings, yet the educational and professional development systems have not adapted to equip practitioners accordingly. This lag reinforces the argument that EI should be treated as a foundational component of mediation advocacy, requiring deliberate pedagogical attention, curricular integration and institutional support. Without such investment, the burden of developing emotional competence continues to fall unevenly on individual practitioners, reinforcing patterns of inconsistent preparation already identified across the empirical findings.

9.2.7 Affective Legitimacy, Procedural Justice and Public Trust

The integrated findings demonstrate that EI plays a central role in shaping perceptions of fairness, legitimacy and trust within planning and environmental mediation advocacy. The analysis shows that scepticism toward mediation functions as an interpretive condition shaping how affective legitimacy must be produced in practice. Practitioners described these sentiments as critical features of the affective terrain they must navigate during mediation.

In these contexts, emotionally intelligent mediation advocacy becomes a mechanism for conveying recognition, demonstrating attentiveness and fostering a sense of procedural inclusion. Practitioners described the use of empathy, careful listening and emotionally responsive communication as essential tools for showing parties that they are being taken seriously, even while advancing their clients' interests. These forms of affective engagement align with longstanding insights from procedural justice scholarship, which identifies respectful treatment, voice and dignity as foundational to perceptions of institutional legitimacy.

One of the thesis's central conceptual contributions is the development of 'affective legitimacy' as a lens for understanding how emotional engagement fosters procedural trust. Affective legitimacy refers to the extent to which participants experience dispute resolution processes as emotionally fair, respectful and procedurally meaningful, beyond formal legality alone. While procedural justice scholarship has long emphasised voice and dignity, it has paid less sustained attention to how parties experience emotional treatment within dispute resolution. That body of work emphasises that trust in legal and institutional processes depends not only on the outcome but also on how individuals are treated during the process. Core elements such as voice, respectful communication and transparency are essential to the perception of legitimacy. EI supports each of these elements by enabling practitioners to navigate emotional complexity, respond to frustration with empathy and communicate procedural limitations clearly and humanely.

Practitioners described using emotional insight to reframe misunderstandings, clarify emotionally charged narratives and build confidence in the process. Rather than dismissing emotional intensity as irrational or disruptive, emotionally intelligent advocates used it as a source of information that could enhance procedural clarity and improve the quality of interaction between parties.

While emotionally attuned advocacy contributes to perceptions of fairness, its consistent expression remains structurally constrained, generating tension between legitimacy expectations and institutional design. Across the findings, EI functions as a practical mechanism through which mediation advocates can help rebuild public trust in planning and environmental governance. It enables practitioners to validate the emotional dimensions of harm, respond to perceptions of injustice and offer clear, honest communication about both opportunities and constraints. Through these means, EI supports a form of procedural justice that extends beyond technical accuracy and into the realm of perceived fairness and respect.

This misalignment exposes a systemic tension between relational expectations and institutional design, reinforcing the contingent nature of affective legitimacy in public law mediation. This disconnect creates vulnerability both for practitioners and for the legitimacy of mediation processes that depend on emotional insight to function effectively.

Conceptually, affective legitimacy operates at a meso-level, linking micro-level professional conduct to macro-level institutional trust. It captures how emotionally attuned advocacy shapes perceptions of fairness independent of substantive outcome. It does not substitute for structural reform or distributive justice; rather, it explains how legal authority is emotionally experienced and stabilised under conditions of institutional fragility.

In constitutional terms, this finding carries significant implications. Where planning and environmental disputes expose tensions between regulatory discretion, public participation and judicial oversight, emotionally intelligent mediation advocacy can strengthen constitutional legitimacy by translating abstract procedural guarantees into lived experiences of recognition and fairness. When parties perceive that they have been heard, respected and treated with emotional attentiveness, the authority of public law decision-making is not merely procedurally valid but experientially stabilised. In this sense, emotionally calibrated mediation advocacy operates as a constitutional intermediary: it does not replace formal accountability mechanisms such as judicial review, but it enhances their perceived legitimacy by embedding them within relationally responsive practice.

The analysis now turns to theoretical reappraisal. The following section revisits the conceptual frameworks introduced earlier in the thesis in light of the empirical analysis, clarifying how the study's findings confirm, extend and challenge existing understandings of EI, legal professionalism and justice in public law mediation.

9.3 Theoretical Reappraisal

This section revisits the theoretical frameworks introduced earlier in the thesis in light of the integrated empirical findings. Rather than reasserting the central argument, the purpose here is to clarify how the findings confirm, extend and recalibrate existing accounts of legal professionalism, EI and procedural justice in public law mediation.

The integrated empirical analysis demonstrates that emotional reasoning operates as an embedded dimension of mediation advocacy within specific professional and regulatory environments. This challenges accounts that treat EI as an individualised psychological capacity detached from professional role, organisational culture and regulatory structure. The findings show that emotionally informed judgement is embedded within specific professional hierarchies and dispute contexts, and that its expression varies systematically across roles and institutional environments.

The research also extends socio-legal understandings of emotional labour. While existing scholarship has documented the presence of affective work in professional settings, the findings here demonstrate how such labour is both normalised and unevenly recognised within public law mediation advocacy. Emotional work is shown to be structurally necessary to the functioning of mediation processes, yet culturally marginal within dominant narratives of legal competence. This tension clarifies why emotional labour remains ethically demanding and institutionally under-supported.

In addition, the development of affective legitimacy refines procedural justice theory by identifying the experiential dimension through which fairness is emotionally perceived in participatory dispute settings. The findings suggest that perceptions of voice, dignity and respect are mediated not only through formal procedural guarantees but also through the quality of emotionally calibrated professional engagement.

Finally, the formalisation of structured ethical risk contributes to governance-oriented analyses of professional authority. The evidence indicates that emotionally informed advocacy requires ongoing ethical calibration, particularly in contexts of power asymmetry and institutional fragility. This reframes EI not as inherently virtuous, but as a professional capacity whose legitimacy depends on reflective boundary management and institutional support.

Collectively, these theoretical refinements synthesise the empirical findings with the conceptual framework introduced earlier in the thesis, particularly the concept of relational legal judgement developed in Section 1.1.1. This reframes professionalism as shaped by professional environment rather than reducible to individual disposition.

While this thesis focuses on mediation advocacy within UK planning and environmental disputes, similar tensions between emotional intelligence, professional judgement, and institutional constraint can be observed in other jurisdictions. In Australia, for example, mediation is more formally embedded within planning and environmental decision-making processes, with structured facilitation and greater institutional support for negotiated outcomes. However, scholarship in that context similarly identifies concerns regarding power imbalances, procedural fairness, and the potential for negotiated processes to obscure broader public interest considerations.

In the United States, mediation and negotiation are more firmly integrated within legal practice, particularly in environmental and administrative disputes, where lawyers are often expected to combine strategic advocacy with interpersonal competence. Despite this greater normalisation, debates persist regarding the ethical boundaries of persuasive advocacy, the risk of emotional influence, and the extent to which negotiated settlements adequately reflect public accountability. Across European contexts, particularly under frameworks influenced by the Aarhus Convention, there is increasing emphasis on participatory governance and procedural justice, yet similar challenges arise in ensuring that emotionally responsive processes do not displace transparency or legal scrutiny.

These comparative perspectives suggest that the dynamics identified in this thesis are not unique to the UK context, but reflect broader structural tensions inherent in the integration of mediation within public law systems. They reinforce the central argument that emotionally intelligent mediation advocacy must be understood as both enabling and constrained, operating within institutional frameworks that shape its legitimacy, risks, and professional boundaries.

These comparative insights further clarify the scope and contribution of the present study. While mediation is more institutionally embedded in jurisdictions such as Australia and more culturally normalised within adversarial practice in the United States, the persistence of similar ethical tensions across these contexts reinforces the central claim of this thesis: that emotionally intelligent mediation advocacy operates within structurally conditioned limits rather than as a universally stabilising solution. The UK context examined here brings these constraints into sharper relief due to the combination of adversarial professional culture, procedural discretion, and institutional fragility in public law planning disputes. However, the recurrence of concerns regarding power asymmetry, ethical boundary management, and the potential for affective influence across jurisdictions suggests that the Relational Legitimacy Architecture Model captures a broader governance dynamic rather than a purely context-specific phenomenon. In this sense, the thesis contributes not only an empirically grounded account of UK mediation advocacy, but also a theoretically transferable framework for understanding how emotional intelligence interacts with professional authority and institutional legitimacy across public law dispute resolution systems.

9.3.1 Scope Conditions and Boundary Limitations of the Argument

First, the analysis is grounded in UK public law planning and environmental disputes. The framework is bounded by the institutional configuration examined in this study. The structural integration of emotional reasoning identified here reflects this configuration. The thesis does not claim that EI operates identically across all areas of legal practice or across all mediation environments.

These scope conditions also clarify the limits of emotionally intelligent mediation advocacy as a mechanism for improving dispute resolution outcomes. While relational legal judgement can enhance communication, recognition and procedural fairness, it cannot by itself resolve structural inequalities embedded in planning and environmental disputes. Power asymmetries between institutional actors, developers and community participants may constrain the extent to which emotionally attuned advocacy can produce substantively balanced outcomes. In addition, mediation advocacy remains embedded within statutory planning frameworks that ultimately determine the legal parameters of decision-making. EI may assist practitioners in navigating these constraints and communicating them transparently, but it cannot override statutory obligations, redistribute institutional power, or substitute for formal mechanisms of public law accountability.

Second, the theory should not be treated as universally transferable across jurisdictions. Legal culture, professional training structures, regulatory frameworks and mediation institutionalisation vary significantly between systems. In jurisdictions where mediation is more formally embedded or less adversarially framed, the structuring of emotional reasoning differs in form and intensity. The framework offered here is theoretically transferable but empirically situated. Its transferability lies at the level of governance architecture rather than doctrinal content; it is the patterned relationship between structural constraint, relational judgement, ethical risk, and experiential legitimacy that may travel across public law mediation settings, not the specific institutional features of UK planning law.

Third, the salience of emotionally intelligent mediation advocacy identified in this study is closely tied to disputes involving public participation, environmental harm and identity-based conflict. In purely private commercial mediation, highly standardised bargaining contexts, or legally technical disputes with limited participatory vulnerability, emotional reasoning operates differently and may play a more limited role.

Finally, this thesis does not claim that EI is a necessary condition for mediation legitimacy. Rather, the findings demonstrate that emotionally attuned advocacy functions as a significant and often stabilising influence on perceptions of fairness and procedural justice under conditions of procedural instability and regulatory uncertainty. EI enhances legitimacy; it does not substitute for structural reform, distributive justice or enforceable procedural safeguards.

These scope conditions clarify that the thesis advances a contextually bounded socio-legal theory of emotionally intelligent mediation advocacy rather than a universal theory of legal professionalism. The significance of this bounded intervention lies in clarifying how emotionally informed professional judgement operates within these specific institutional conditions. In public law mediation contexts characterised by participatory vulnerability and regulatory discretion, prevailing models of legal professionalism do not fully capture how professional authority is stabilised in practice.

9.3.2 The Relational Legitimacy Architecture Model

This thesis now formalises its central theoretical contribution in the form of the Relational Legitimacy Architecture Model (RLAM). The model consolidates the study's integrated findings by specifying the structural relationship between institutional constraint, relational legal judgement, ethical risk calibration, and affective legitimacy within public law mediation advocacy.

The RLAM is primarily explanatory rather than prescriptive. Its analytical purpose is to map how legitimacy is produced, stabilised, and destabilised when emotionally informed professional judgement operates under conditions of regulatory fragility and participatory vulnerability. While the model carries normative implications for professional training and institutional reform, it does not offer a general theory of legal rationality. Instead, it formalises the patterned interaction identified in this study within UK public law planning mediation.

The model specifies four analytically distinct yet dynamically interacting structural elements that together constitute a governance architecture rather than a behavioural typology:

Structural Constraint
Institutional fragility, adversarial professional culture, regulatory discretion, and participatory vulnerability form the structural conditions within which mediation advocacy is enacted. These constraints shape the permissible range of emotional expression, professional discretion, and relational engagement.

Relational Legal Judgement
Within these constraints, practitioners exercise relational legal judgement, understood in the sense developed in Section 1.1.1 of the thesis. This judgement involves the interpretation of affective cues, the regulation of emotional dynamics and the calibration of professional boundaries within institutionally constrained mediation settings.

Ethical Risk Calibration
Emotionally intelligent advocacy generates structured ethical risks. As formalised in the Three-Stage Ethical Risk Model, advocacy may shift from empathic engagement to strategic influence and, under strain, toward emotional instrumentalism. Ethical

judgement therefore operates as a mediating governance layer between relational practice and institutional legitimacy.

Affective Legitimacy

When relational legal judgement is ethically calibrated within existing structural conditions, mediation advocacy contributes to affective legitimacy: the experiential dimension of procedural justice through which fairness is emotionally perceived and institutional authority stabilised. Affective legitimacy does not substitute for formal legality or distributive justice; rather, it explains how authority is experienced, interpreted, and sustained within participatory dispute resolution settings marked by institutional fragility and regulatory discretion.

The Relational Legitimacy Architecture Model (RLAM) reconceptualises mediation advocacy as a recursive legitimacy system in which professional authority is continuously stabilised or destabilised through relational and ethical calibration. Structural constraint shapes the permissible scope of relational judgement; relational judgement generates demands for ethical risk calibration; ethical calibration conditions the production of affective legitimacy; and perceived legitimacy feeds back into institutional confidence, reinforcing or destabilising the structural conditions within which advocacy is enacted. Legitimacy, in this account, is neither static nor procedurally self-sustaining. It is relationally produced within institutional constraint.

The RLAM therefore advances a governance-structural account of legitimacy production rather than a behavioural account of practitioner competence. It does not explain authority through personality traits, individual virtue, or the acquisition of interpersonal skills in isolation. Instead, it specifies how institutional design, professional role orientation, affective interpretation, and ethical boundary management interact to produce or undermine legitimacy in public law mediation systems. The analytical focus thus shifts from the psychology of the individual practitioner to the architecture of professional judgement embedded within regulatory structure.

Within this architecture, emotionally intelligent mediation advocacy is neither a personal disposition nor a discretionary enhancement to advocacy technique. It is a structurally embedded mode of professional reasoning that mediates between institutional design and experiential legitimacy. EI operates here as governance infrastructure: a mechanism through which regulatory authority is interpreted, ethically calibrated, and relationally stabilised in contexts where public trust is contingent and procedurally negotiated.

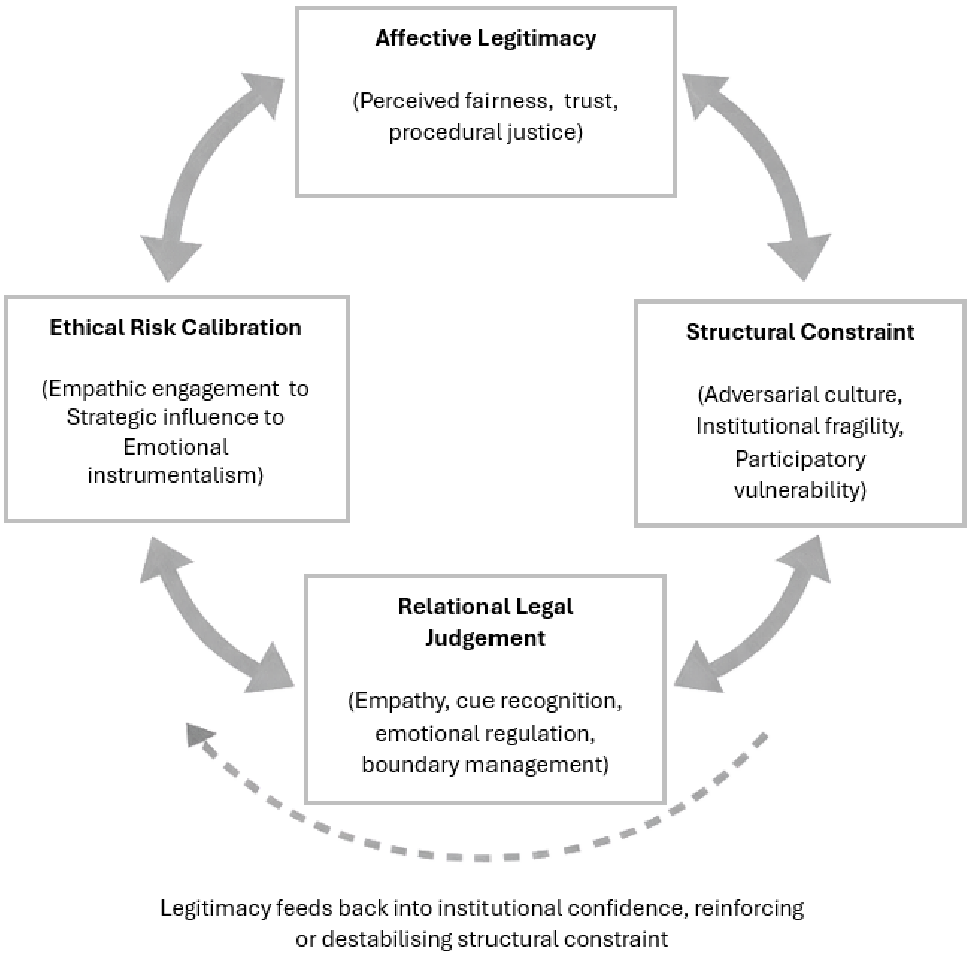

Figure 4 below visually represents this architecture.

9.4 Implications for Legal and Mediation Advocacy Practice

This section considers how the integrated empirical findings reshape understandings of legal professionalism and mediation advocacy practice. It examines the practical, ethical and institutional consequences of treating EI as a core dimension of professional competence rather than a peripheral skill.

9.4.1 Reframing Legal Professionalism

The findings require a reframing of legal professionalism through the lens of mediation advocacy. The evidence indicates that professional credibility in mediation advocacy increasingly depends on practitioners' capacity to interpret affective dynamics, exercise disciplined emotional calibration, and sustain ethically responsive communication[532]. The empirical chapters demonstrated that emotional insight functions not as ancillary interpersonal skill but as a structuring component of mediation advocacy judgement. This reinforces the analysis developed earlier that emotional labour is institutionally structured rather than individually chosen.

The data also underscore that EI does not equate to unregulated expression or sentimentality. It requires the disciplined ability to perceive emotion, evaluate its legal and relational implications, and respond in ways that promote clarity, justice, and constructive dialogue. This conception aligns with Nussbaum's framing of emotions as forms of intelligent perception and ethical reasoning. Practitioners described how emotional discernment enabled them to identify when to encourage compromise, when to support clients through disappointment, and when to challenge emotionally manipulative tactics from opposing parties[533].

This reframing of professionalism challenges older ideals premised on detachment, rational control, and emotional suppression. Instead, it positions EI as a form of relational and ethical expertise, consistent with the care-based ethics articulated by Tronto[534]. Legal professionalism in this domain involves both doctrinal knowledge and the capacity to navigate affective complexity in a context of role ambiguity and stakeholder inequality. It is not merely about interpersonal skill but about sustaining ethical practice in procedurally fragile environments.

Lawyers are expected to manage interpersonal dynamics, support emotionally distressed clients, and broker difficult compromises while facing institutional incentives that reward adversarial performance, efficiency, and control. These pressures highlight that EI, though normatively crucial, is structurally under-supported.

The implication is that reframing professionalism to include EI cannot rest on individual capacity alone. It requires changes to how professional ethics, institutional design, and mediation advocacy are understood and resourced. As Westaby and

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532 Hochschild (n 237)
533 Nussbaum MC, *Upheavals of Thought: The Intelligence of Emotions* (Cambridge University Press 2001)
534 Tronto JC, *Moral Boundaries: A Political Argument for an Ethic of Care* (Routledge 1993)

Subryan have argued, emotional labour in legal practice is shaped by systemic conditions, not just personality or empathy[535]. In the context of public law mediation examined in this study, emotional insight functions as a professional obligation that requires institutional recognition and support. Recognising this obligation is a precondition for the integrity and legitimacy of mediation advocacy in the public domain.

Doctrinally, this repositioning implies that mediation advocacy cannot be assessed solely through adversarial competence or outcome efficiency. Professional responsibility in public law mediation must be evaluated through its relational and legitimacy-producing effects.

9.4.2 Ethical Implications: EI as Risk and Responsibility

The integrated findings confirm the Three-Stage Ethical Risk Model developed in Chapter 5, demonstrating how emotionally intelligent mediation advocacy may move from ethically grounded empathy to strategically calibrated influence and, under institutional strain, toward partiality or instrumentalisation. It functions both as a capacity that can support fairness and clarity and as a practice that carries the risk of undue influence. While EI enhances relational sensitivity and facilitates empathetic engagement, it also introduces ethical tensions when deployed to shape, steer, or manage affective dynamics. As discussed in Chapter 7, emotionally skilled advocacy can blur the line between empathy and manipulation, particularly in high-stakes planning and environmental disputes.

This thesis engages four major socio-legal critiques of EI: mv anagerial self-discipline, responsibilisation, gendered emotional labour, and the risk of strategic empathy becoming manipulation.

This section examines each critique in turn and situates emotionally intelligent mediation advocacy within conditions of institutional constraint rather than individual moral voluntarism. Practitioners in this study acknowledged that EI could be used not only to build trust but also to subtly guide perceptions and decision-making. Several interviewees described scenarios where empathy was applied strategically, not just to connect but to shift the emotional climate or influence

[535] Westaby and Subryan (n 507)

mediator interpretations. This form of affective influence, while often subtle, carries ethical implications when it alters the fairness or neutrality of the process. One participant described this as "covert control," where emotional attunement is used not to support but to manage participants, raising questions about authenticity and fairness.

A further critique, advanced in socio-legal and organisational scholarship, frames EI as a form of neoliberal self-discipline, shifting responsibility for structural dysfunction onto individual practitioners. From this perspective, the institutionalisation of emotional competence risks responsibilising lawyers for managing systemic fragility without addressing underlying procedural inequities. The findings of this thesis complicate that critique. While emotionally intelligent advocacy can be co-opted into managerial performance cultures, the empirical evidence indicates that practitioners experience EI not as compliance but as ethical calibration within constrained environments. Emotional competence operates under structural limitation; it does not replace the need for institutional reform.

The findings challenge the assumption that EI is inherently ethical or benign. Without critical reflection, it can be used to pacify dissent, suppress discomfort, or create emotional compliance rather than foster genuine understanding. These risks are especially pronounced in contexts of structural vulnerability, where emotional cues may be misread or manipulated to reinforce existing power asymmetries. Empathy, in such moments, becomes a form of affective persuasion that may unintentionally distort rather than clarify the moral terrain of the dispute.

Nevertheless, the study shows that most practitioners actively engage in reflective strategies to navigate these risks. Interviewees frequently described evaluating their own emotional responses, pausing to consider whether an empathic gesture was ethically appropriate, and distinguishing between support and influence. This self-monitoring demonstrates that EI, when responsibly applied, functions as a form of ethical reasoning. Rather than acting impulsively, practitioners described deliberate choices about how and when to engage emotionally, guided by a commitment to fairness, dignity, and clarity.

Survey data from Chapter 8 reinforce this theme. While some respondents reported occasional uncertainty about ethical boundaries, the majority indicated that emotional insight was deployed to enhance, not undermine, procedural justice. However, the findings also reveal a lack of institutional guidance. Professional codes often remain silent on affective conduct, leaving lawyers to rely on personal judgement in ethically ambiguous situations. This absence of normative clarity increases the risk of inconsistency and places the burden of ethical discernment on individual practitioners.

These findings support the view that EI should be conceptualised not only as a relational or strategic tool but as an ethical competence. It requires more than intuitive empathy; it demands self-awareness, critical judgement, and alignment with the values of procedural fairness. Integrating EI into ethical frameworks would provide practitioners with clearer guidance and reduce the reliance on informal self-regulation. Such integration would also acknowledge the reality that emotions are central to legal practice, especially in mediation, where affective dynamics shape not only interactions but also perceptions of legitimacy and justice.

Conceptualising EI as both professional resource and ethical responsibility clarifies that while emotional attunement can enhance trust and communication, it also carries risks of overreach if insufficiently bounded. Embedding emotional competence within ethical norms ensures that its use remains transparent, accountable, and in service of principled advocacy. The ethical risks of emotionally intelligent practice are structurally uneven, intensifying where institutional guidance, time and oversight are limited.

The findings indicate that such risks are heightened where guidance is limited, workloads constrain reflection, and significant power asymmetries exist between parties. In these conditions, emotionally intelligent practices may be deployed under pressure, with reduced scope for reflexive calibration or ethical support. The potential misuse of EI in such settings should therefore be understood as structurally situated rather than as evidence of individual bad faith. Ethical vulnerability arises not from individual deficiency, but from institutional conditions that demand emotional labour without providing adequate guidance or oversight.

A further constitutional tension follows from this analysis. While emotionally intelligent mediation advocacy can enhance perceptions of fairness and legitimacy, it may also contribute to the subtle relocation of accountability from public, reviewable decision-making spaces into negotiated arenas that are less transparent and less formally scrutinised. Where settlement is achieved through affectively calibrated persuasion rather than adjudicated reasoning, the normative visibility of public law standards may be diluted. This does not render mediation constitutionally suspect; however, it underscores that affective legitimacy must operate alongside, not in substitution for, formal mechanisms of legal accountability. The constitutional strength of emotionally intelligent mediation therefore depends on maintaining a clear boundary between relational calibration and the displacement of public law scrutiny.

9.4.3 Institutional and Cultural Reform

This subsection is directed primarily at organisations and institutions that structure mediation advocacy practice, including law firms, chambers, public sector legal teams, mediation providers, and the professional environments in which planning and environmental disputes are managed.

The analysis implies three institutional recalibrations necessary to sustain emotionally intelligent mediation advocacy:

- First, establish structured emotional supervision through regular spaces for reflection, peer learning, and debriefing. This reform directly addresses the empirical finding that emotional labour in mediation advocacy remains largely invisible and unsupported, with the consequence that practitioners are left to absorb ethical and emotional strain individually, increasing the risk of burnout, inconsistency, and ethically unreflective practice.
- Second, introduce collaborative feedback mechanisms between mediators and advocates to promote shared learning and reduce professional isolation. This proposal responds to evidence from Chapters 6 and 8 that practitioners often navigate emotionally complex mediation dynamics in professional isolation, with limited opportunities for reflective learning, resulting in fragmented practice and uneven ethical calibration across cases.
- Third, revise professional standards and training curricula to formally recognise emotional competence as a core ethical and professional skill. This reform is grounded in empirical findings showing that the absence of explicit ethical guidance on affective conduct places disproportionate responsibility

on individual practitioners, creating uncertainty about professional legitimacy and increasing the likelihood of inconsistent or defensive emotional practice.

Recognising EI as central to mediation advocacy is insufficient without corresponding institutional recalibration. While practitioners widely affirmed the importance of emotional insight, they also identified systemic barriers that limit its consistent and ethical application. Cultural scepticism toward emotional engagement and entrenched norms of detachment continue to inhibit the consistent recognition of emotionally intelligent practice.

Survey data, particularly Domain 5 items, confirm that many practitioners perceive a persistent undervaluing of EI within legal settings. Respondents reported that emotionally attuned behaviours are often seen as soft or peripheral and are rarely supported through formal training or institutional frameworks. This cultural ambivalence is compounded by workload pressures, adversarial expectations, and billing structures that reward efficiency over reflection.

To address these limitations, participants called for specific institutional reforms. First, structured EI supervision was repeatedly suggested as a mechanism to support ethical reflection and emotional processing. Practitioners described the need for dedicated spaces to debrief after emotionally complex mediations, reflect on challenges, and share strategies with colleagues. Such forums could take the form of peer-led reflection groups, supervisory check-ins, or integrated ethics consultations following high-stakes mediations.

Second, the data support the creation of mediator–advocate feedback loops. Practitioners noted that collaborative feedback mechanisms between mediators and advocates could enhance mutual understanding of emotional dynamics, improve alignment on fairness and communication strategies, and support continuous development of emotional competence. These feedback processes would also reduce the isolation often reported by lawyers navigating emotional terrain without meaningful input from other professionals in the room.

Third, revisions to professional codes and training curricula are needed to formally recognise EI as a component of ethical and professional competence. Participants reported that existing codes of conduct rarely address affective behaviour, leaving lawyers uncertain about the legitimacy of their emotional judgement in ethically ambiguous situations. Clearer standards would reduce the burden on individual practitioners to self-regulate in isolation and would signal that emotional discernment is a valued and legitimate part of legal professionalism.

Finally, participants emphasised the importance of shifting institutional incentives. Emotional insight must be recognised structurally; through workload models, reward systems, and leadership cultures that acknowledge the emotional labour of mediation advocacy. Without this realignment, EI will remain both essential and marginalised: expected in practice but unsupported in policy.

These recalibrations follow directly from the structural misalignments identified in the empirical analysis. As the evidence shows, EI plays a critical role in maintaining fairness, trust, and legitimacy in planning and environmental disputes. Embedding support structures that cultivate and sustain this capacity is therefore necessary to support ethical and effective mediation advocacy.

Professionally, this requires a shift from viewing emotional competence as discretionary enhancement to recognising it as governance infrastructure within public law mediation systems.

9.4.4 Education and Training Recommendations

This subsection is directed at legal educators and professional training bodies, including universities, vocational providers, CPD organisations, and professional regulators and associations responsible for defining competence and supporting professional development. Against that backdrop, the findings underscore a clear need for reform in both legal education and continuing professional development. EI is central to effective mediation advocacy, yet it remains underrepresented in formal training pathways. As documented in Chapter 8, practitioners often acquire emotional competence through trial and error rather than through structured pedagogical support. This reactive model leaves many lawyers underprepared for the relational and affective demands of planning and environmental mediation, where public trust, emotional volatility, and ethical complexity are commonplace.

To address this gap, the study supports the creation of targeted CPD modules linked explicitly to the five-domain framework developed in this research. These should be designed around the actual tasks that mediation advocates face, such as preparing clients for emotionally charged exchanges, managing caucus dynamics, recognising emotional cues during impasse, and supporting clients through uncertainty or disappointment. Embedding EI training in these specific contexts ensures that learning is both applicable and professionally relevant.

Practitioners recommended a range of practical formats to support emotional learning. These include:

- Role-play exercises that simulate emotionally complex mediation scenarios, enabling participants to practise empathy, framing, and boundary-setting in real time.
- Reflective supervision groups where practitioners can debrief after difficult cases, explore emotional responses, and discuss ethical dilemmas in a structured, supportive setting.
- Simulated caucus work that helps lawyers learn to anticipate emotional shifts, maintain impartiality, and modulate tone in high-pressure or multi-party disputes.

Each of these formats addresses a core mediation-advocacy skill: interpreting emotion, responding ethically under pressure, and fostering procedural legitimacy in emotionally charged settings.

In addition to CPD, reforms in undergraduate and postgraduate legal education are also warranted. Current curricula focus heavily on doctrinal knowledge and adversarial reasoning, with minimal attention to emotional and relational competence. Integrating training in EI, reflective practice, and procedural fairness into foundational legal education would better equip future lawyers for collaborative roles. Courses on mediation, ethics, and client-centred lawyering should incorporate simulations and supervised emotional practice to help students develop the judgement and resilience necessary for complex, real-world advocacy.

These reforms should not be confined to optional modules. EI constitutes a core dimension of professional competence in mediation advocacy. Recognising this within formal education structures would signal a broader commitment to relational professionalism and help align training with the ethical and emotional realities of contemporary legal work.

9.4.5 Mediation Policy and Practice

This subsection is directed at policy makers, regulatory institutions, and system designers responsible for shaping planning and environmental mediation frameworks, including the development of protocols, guidance, and procedural standards that structure public law dispute resolution. In that context, enhancing public trust in planning and environmental dispute resolution is a central justification for strengthening mediation policy. The findings throughout this thesis make clear that emotionally intelligent mediation not only improves the experience of participants but also promotes wider legitimacy by supporting transparency, fairness, and recognition, especially in contexts where communities feel excluded or disempowered.

However, the potential of mediation to rebuild trust is undermined by institutional weakness. As detailed in Chapter 6, legal professionals consistently reported a lack of formal guidance, enforceable frameworks, and consistent procedural expectations. Many described the mediation landscape as characterised by institutional uncertainty, with processes operating voluntarily, inconsistently supported, and often dependent on ad hoc decisions by local authorities. This ambiguity places the burden of interpretation on practitioners and generates confusion for parties unsure of how outcomes will be recognised or upheld.

Addressing this gap requires clear policy development. One priority is the adoption of formal mediation protocols and codes of practice that explicitly acknowledge EI as a component of professional conduct. Survey responses, particularly from Domain 5, reveal that cultural scepticism, time pressures, and a lack of procedural reinforcement constrain emotionally informed advocacy. In the context examined here, professional standards that define the ethical use of empathy, reflective practice, and emotional awareness would offer greater legitimacy and encourage consistency. By making relational competence an explicit part of policy, such standards could shift emotional work from being treated as discretionary to being recognised as fundamental.

Institutional reform must also address equity concerns. As outlined in Chapter 6, the current mediation framework often intensifies resource disparities. Developers with greater experience and support can navigate informal processes with ease, while community actors with fewer resources face barriers to meaningful participation. Embedding emotionally intelligent practices such as pre-mediation preparation, emotional support for vulnerable participants, and formal recognition of emotional labour can help level the playing field and counteract structural disadvantage.

Overall, policy reform that embeds emotional competence into professional expectations would not only support individual practitioners but also enhance the public credibility of mediation. When parties feel that their emotions are taken seriously and that their experience of the process is grounded in care and respect, perceptions of fairness and legitimacy improve. Structuring these expectations into mediation policy would mark a shift from relying on individual practitioner ethics to building systemic trustworthiness into the practice itself. As a whole, these proposals clarify that emotionally intelligent mediation advocacy depends not only on individual competence but on coordinated institutional, educational, and policy support.

9.5 Methodological Reflections

This section evaluates the methodological choices underpinning the study and reflects on how they shaped the explanatory depth, interpretive validity, and conceptual development of the research. It highlights the strengths and limitations of the sequential mixed methods design and clarifies how triangulation contributed to the study's theory-building aims.

9.5.1 Strengths

The study's sequential mixed methods design was explicitly structured to serve theory-building purposes. It offered significant epistemological and interpretive strengths by allowing concepts to emerge inductively from qualitative data and then be tested for broader relevance through quantitative comparison. Moving from qualitative interviews to survey construction, and then to integrative interpretation, enabled each methodological phase to build on the insights of the previous one. The interview findings directly informed the construction of the survey instrument. Thematic patterns; such as strategic empathy, ethical boundary recognition, and institutional constraint; were translated into measurable domains, ensuring that the quantitative phase was rooted in participant meaning and grounded theory rather than abstract psychometrics.

A further strength lies in the operationalisation of complex qualitative constructs into measurable indicators. The five-domain framework translated dimensions such as ethical empathy, cue recognition, and affective legitimacy into structured survey items while retaining conceptual coherence. This approach allowed for systematic comparison across roles, settings, and experience levels, and supported explanatory connections between EI and professional practice.

Triangulation was employed as an interpretive device to enhance explanatory depth rather than as a tool of statistical verification. The aim was to identify areas of resonance, elaboration, and divergence between data types. Where convergence occurred, it reinforced the credibility of the qualitative themes. Where dissonance emerged, particularly regarding role-based variation or ethical tensions, it opened up space for further conceptual reflection. This reflects an interpretive, theory-building orientation in which triangulation supports the expansion and clarification of meaning rather than the pursuit of empirical verification. Reliability statistics for the five-domain instrument demonstrated acceptable internal coherence across composite scales, supporting interpretive confidence while remaining consistent with the exploratory and context-sensitive orientation of the design.

9.5.2 Limitations

The study also presents several methodological limitations that must be considered when interpreting the findings. The non-probability sampling used in the survey limits generalisability. While the survey data provide strong analytical insight into patterns and associations, they cannot be treated as representative of the broader legal population. This constraint is typical of mixed methods designs with exploratory aims but should nonetheless temper any claims about prevalence.

A more specific limitation concerns the question of causality. Differences observed across occupational roles may reflect not only distinct professional cultures but also varying levels of exposure to mediation. For example, planning solicitors may demonstrate higher EI indicators because they engage more frequently in emotionally complex disputes. The design did not isolate professional role from experience, limiting the ability to determine causal relationships between structural position and emotional competence.

Additionally, the use of mixed item formats in the survey constrained the application of conventional psychometric techniques. While appropriate for capturing structural variables, binary indicators restricted internal consistency analysis and precluded more advanced factor modelling.

9.5.3 Reflections on Researcher Positionality

The interpretive orientation of the research required sustained attention to reflexivity. Interviews often involved emotional content, including narratives of professional vulnerability, ethical tension, and affective labour. The researcher had to maintain empathetic engagement while avoiding projection or over-identification. Reflexive journaling after interviews and regular memo-writing during coding helped identify moments where researcher interpretation might have been shaped by personal response.

This attention to positionality also informed thematic development. Emotional cues in the interviews were interpreted not only through content but through tone, hesitation, and emphasis. The iterative process of coding, returning to transcripts, and cross-referencing themes with theoretical literature helped ensure that analytic choices remained grounded in participant meaning. This process also made visible the researcher's influence in shaping the representation of EI as a situated, relational practice.

9.5.4 Value of Mixed-Methods in Socio-Legal EI Research

The mixed methods approach offered unique value for socio-legal research on EI and professional practice. While prior studies often adopt either ethnographic or psychological methods, this project integrated depth and breadth by combining lived experience with patterned comparison. The result is a more robust and multi-layered account of how EI operates within legal mediation contexts.

Importantly, the study treated triangulation as an interpretive and generative device rather than a means of verification. The survey was not designed to confirm the qualitative findings through statistical generalisation. Instead, it was used to explore whether and how the qualitative insights resonated across a broader population and to illuminate new dimensions not visible through interviews alone. In this sense, the triangulation served theory-building purposes by expanding the conceptual framework and identifying areas for future inquiry.

9.6 Contribution to Knowledge

This section synthesises the study's integrated findings in order to clarify their cumulative significance for mediation advocacy within UK public law planning disputes.

The primary contribution lies in demonstrating that emotionally informed judgement operates as a role-structured and organisationally conditioned dimension of professional practice in mediation advocacy. The findings show that emotional reasoning is shaped by role expectations, organisational cultures and regulatory context, and that its expression varies systematically across professional positions and dispute settings.

Substantively, the research refines the understanding of empathy and emotional discernment within advocacy. Emotional reasoning emerges not as expressive responsiveness, but as disciplined ethical calibration through which practitioners interpret affective dynamics, manage client relationships and navigate procedural tension without displacing legal accountability.

Empirically, the study provides systematic evidence of role-based variation and institutional constraint in the enactment of EI. It identifies how cultural scepticism, uneven training provision and limited formal guidance shape the conditions under which emotionally intelligent advocacy can be exercised consistently and ethically.

Theoretically, the thesis advances a socio-legal account of professional authority that integrates relational judgement, emotional labour, affective legitimacy and calibrated ethical risk within a coherent explanatory framework. The formalisation of the Three-Stage Ethical Risk Model and the Relational Legitimacy Architecture Model clarifies how emotionally informed advocacy interacts with institutional constraint and public trust in participatory dispute contexts.

Methodologically, the study demonstrates the value of a sequential mixed methods design for examining emotionally embedded professional practice. By translating qualitative insights into a structured survey framework and using triangulation as a theory-building device, the research offers a replicable model for socio-legal investigation of professional judgement.

As a whole, these contributions establish a contextually bounded yet analytically transferable socio-legal framework for understanding emotionally informed mediation advocacy in public law settings.

9.7 Chapter Summary

This chapter synthesised the empirical and theoretical analysis, demonstrating how the concept of relational legal judgement developed earlier in the thesis shapes professional authority, legitimacy and reform possibilities within public law mediation advocacy. It traced the patterned variations, ethical tensions, and institutional constraints that shape emotionally responsive advocacy across roles and settings. Chapter 10 consolidates these implications and advances the thesis's normative and institutional reform agenda.

Chapter 10: Conclusion

10.1 Introduction

This thesis has demonstrated that mediation advocacy in UK planning and environmental public law disputes operates through emotionally informed professional judgement. This judgement is structured by institutional constraint. The preceding chapters have developed this claim across conceptual, empirical and constitutional dimensions. This concluding chapter consolidates those strands and clarifies their implications for legal professionalism and public law governance.

The thesis makes four interrelated contributions to socio-legal scholarship and mediation practice. Conceptually, it develops the framework of relational legal judgement to explain how Emotional Intelligence (EI) operates as a structurally embedded dimension of mediation advocacy. Empirically, it provides the first mixed methods evidence base examining emotionally intelligent mediation advocacy in UK planning and environmental disputes. Methodologically, it demonstrates how sequential mixed methods design and meta-inference can be used to study emotionally embedded professional judgement in legal contexts. Normatively, it identifies implications for mediation advocacy practice, legal education, professional standards and institutional design within public law dispute resolution.

10.2 Summary of Key Findings

This section returns directly to the research questions set out in Chapter 1 and synthesises the key findings generated across the four empirical phases of the study. The summary focuses only on the findings that directly address the research questions and that underpin the thesis's final analytical claims.

10.2.1 Findings from ADR Context and Legal Culture (Phases 1–2)

The first two empirical phases reveal a professional environment in which Alternative Dispute Resolution (ADR) occupies an ambivalent and often uncertain position within planning and environmental dispute resolution. Practitioners supported ADR in principle but doubted its reliability and suitability for public law disputes. Adversarial legal culture, institutional expectations and perceived power asymmetries continue to shape ADR adoption and limit confidence in mediation. These findings, developed in detail in Chapter 6, directly address Research Question

1 by explaining why ADR remains unevenly embedded within planning and environmental dispute resolution.

10.2.2 Findings on EI in Mediation Advocacy (Phase 3)

Overall, Phase 3 shows that emotionally informed advocacy shapes how practitioners interpret conflict, manage boundaries and sustain legitimacy within mediation processes. Practitioners emphasised empathy, emotional regulation and ethical boundary-work, while also noting the institutional and cultural constraints that shape how EI can be expressed in practice. This analysis draws on Chapter 7 and responds directly to Research Question 2 by demonstrating how EI is enacted in mediation advocacy practice under institutional constraint.

10.2.3 Findings from EI Triangulation Survey (Phase 4)

EI differed systematically across professional roles, with facilitative and advisory practitioners demonstrating higher relational–ethical EI than those in adversarial roles. These patterns align with the qualitative finding that organisational context shapes how emotionally attuned advocacy is perceived and enacted. The survey therefore confirms the qualitative findings that EI is unevenly distributed across roles, develops through reflective practice rather than mediation frequency, and is shaped by institutional culture. As demonstrated in Chapter 8, these quantitative patterns extend Research Question 2 and inform Research Question 3 by evidencing how role identity and organisational context shape emotionally intelligent practice.

10.2.4 Integrated Mixed-Methods Insights

This integrated analysis brings together the institutional findings of Chapter 6, the qualitative EI analysis in Chapter 7, and the quantitative triangulation in Chapter 8 to generate the study's central meta-inference. Both qualitative and quantitative strands consistently support this conclusion. Across both strands, organisational context and role identity consistently shaped whether and how EI could be enacted.

Important divergences also emerged, and these contribute substantively to the meta-inference. First, while interviewees frequently associated EI development with accumulated experience as a mediation advocate, the quantitative findings showed no significant association between frequency of mediation representation and EI scores. This divergence suggests that repeated exposure to mediation alone does not produce emotional competence. Instead, the development of emotional judgement appears to depend on reflective engagement with emotionally complex disputes, a pattern strongly echoed in practitioners' qualitative accounts of learning through self-reflection, supervisory dialogue and negotiated ethical boundary-work. The divergence thus enriches the analysis by indicating that EI is cultivated through depth of engagement rather than volume of encounters.

Second, while the qualitative interviews portrayed EI as both valued and culturally marginal within legal practice, the survey data indicated a comparatively strong endorsement of EI across respondents. This divergence appears to reflect a distinction between practitioners' publicly articulated professional norms and their privately held beliefs. The interview data illuminated the cultural pressures, stereotypes and role expectations that discourage the visible use of emotionally attuned advocacy, including perceptions of EI as "soft," gendered assumptions about emotional display, and organisational scepticism toward relational work. In contrast, the survey context enabled respondents to express their normative commitments without the constraints of institutional culture, revealing broad support for EI as a legitimate component of mediation advocacy. These findings illustrate the gap between the espoused legitimacy of EI, meaning what practitioners say they value, and its enacted legitimacy, which remains shaped and limited by the cultural and organisational norms of legal institutions.

Taken together, these findings demonstrate three core points:

- First, ADR in planning and environmental disputes operates within structurally unstable and culturally contested conditions.
- Second, emotionally informed advocacy practices shape how mediation is conducted, how authority is exercised and how fairness is experienced.
- Third, the expression of emotionally intelligent practice is shaped and constrained by professional role, organisational context, and institutional norms.

The thesis establishes that emotionally intelligent mediation advocacy operates as bounded professional discretion: a practice shaped, disciplined and constrained by institutional design rather than produced by disposition alone.

10.3 Theoretical Contributions

The preceding chapters have been primarily descriptive and analytical, identifying patterns in mediation advocacy and theorising their implications. The recommendations that follow in Section 10.6 are explicitly normative and are advanced as design-oriented proposals rather than empirical conclusions.

The theoretical contribution of this thesis is a clear account of emotionally informed professional authority in public law mediation. First, EI operates as relational legal judgement embedded within institutional roles rather than as an abstract individual competency. Second, emotional labour constitutes a structurally necessary but culturally marginalised dimension of mediation advocacy professionalism. Third, emotionally attuned advocacy contributes to affective legitimacy, extending procedural justice theory by explaining how fairness is emotionally experienced in participatory public law disputes. Fourth, the Three-Stage Ethical Risk Model formalises the governance vulnerabilities inherent in affective authority, demonstrating that emotionally intelligent advocacy is both stabilising and ethically contingent.

These clarifications require a reconceptualisation of professional authority in public law mediation. Emotional reasoning is not peripheral to legal judgement but constitutive of how authority is interpreted, exercised and legitimised within participatory governance contexts. These contributions are consolidated in the Relational Legitimacy Architecture Model developed in Chapter 9. The Relational Legitimacy Architecture Model consolidates the thesis's empirical and theoretical claims into a coherent account of emotionally informed professional authority.

10.4 Empirical Contributions

This subsection identifies the original empirical insights generated by the four-phase mixed methods study.

The first empirical contribution is the creation of the first mixed methods empirical evidence base on EI in planning and environmental mediation advocacy in the United Kingdom. No existing socio-legal research has examined EI among lawyers acting specifically as mediation advocates, nor has any study combined national survey data, in-depth qualitative interviews and a triangulation survey to analyse EI in this field. This study therefore provides the first systematic documentation of how practitioners understand, operationalise and negotiate EI within public law disputes characterised by community participation, environmental concerns and institutional complexity.

The second empirical contribution concerns the identification of systematic variations in emotional-intelligence orientations across professional roles, levels of seniority and organisational settings. The triangulation survey demonstrated significant differences in EI domains between barristers, solicitors, in-house lawyers, mediators and public-sector practitioners, particularly in relational professionalism, reflective awareness, strategic emotional judgement and ethical boundary recognition. The qualitative findings reinforce this pattern and show that lawyers' emotional practice is shaped by role identity, organisational culture and normative expectations. This contribution refines socio-legal understandings of how institutional and cultural factors influence the development and expression of emotional competence with implications for legal education and workforce development.

The third empirical contribution is the identification of structural, cultural and professional barriers that inhibit the uptake and effective use of mediation within planning and environmental disputes. Phases 1 and 2 identify structural and cultural barriers that inhibit ADR legitimacy in public law planning disputes. Adversarial professional norms and organisational caution further constrain mediation use. These findings deepen socio-legal understanding of why ADR adoption remains uneven within planning systems. Recognising these structural barriers is essential for designing credible and equitable mediation processes that support meaningful participation.

The fourth empirical contribution concerns the detailed documentation of emotional labour and the largely unseen professional expectations associated with mediation advocacy. Practitioners described absorbing client distress, managing community frustration, containing emotion in uncertain processes and sustaining the appearance of composure and authority. This emotional labour is pervasive yet largely invisible within professional standards. The findings demonstrate that emotional labour is a constitutive part of mediation advocacy, informing client preparation, interpretation of affective cues, emotional boundary-work and ethical decision-making. This empirical account extends socio-legal scholarship by illuminating how emotional labour operates within planning-law practice.

Collectively, the evidence establishes a detailed account of how mediation advocacy is shaped by institutional context, professional role and emotional practice. These findings also engage directly with critical accounts of EI that frame it as managerial self-discipline, responsibilisation, or gendered affective expectation. These critiques are not dismissed but reframed: the analysis shows that emotionally intelligent advocacy is ethically contingent under institutional constraint rather than inherently emancipatory or inherently disciplinary. In doing so, the thesis does not reject these critiques but situates emotionally intelligent advocacy within institutional constraint, demonstrating how its ethical character depends on governance context rather than individual disposition alone. At the same time, the findings make clear that EI, while widely endorsed in principle, remains culturally marginal and unevenly enacted in practice due to adversarial norms, organisational constraints and gendered assumptions within legal institutions.

10.5 Methodological Contributions

This section outlines the methodological advances the study makes to socio-legal mixed methods research and to the empirical study of EI in legal practice.

The first methodological contribution is the demonstration of meta-inference as an analytical strategy for socio-legal research on emotion and professionalism. The sequential structure allowed each phase to refine, test and re-interpret insights from the preceding phases. As shown in Chapter 9, analysing points of convergence and divergence across qualitative and quantitative strands enabled a deeper interpretive synthesis that revealed the normative, relational and institutional dimensions of mediation advocacy. The study therefore illustrates how structured meta-inference can generate theoretically robust conclusions that extend beyond what single-method studies can achieve.

The second methodological contribution is the use of sequential integration to build conceptual depth and empirical clarity. The national survey provided an initial mapping of practitioner attitudes; the interviews in Phases 2 and 3 generated rich qualitative insight into the relational, ethical and institutional dynamics of EI; and the triangulation survey tested the wider coherence of these themes. This sequential integration shows how complex socio-legal constructs can be examined both contextually and systematically.

The third methodological contribution is the development of a context-sensitive operationalisation of EI for legal and public law settings. The triangulation survey moved beyond generic psychological EI instruments by constructing domains directly grounded in the qualitative findings; such as relational professionalism, ethical boundary-work and strategic emotional judgement. This produced a professionally meaningful measurement model, enabling the identification of role-based and institutional variations that standard EI tools would not capture.

This operationalisation differs from dominant psychological models of EI, which typically conceptualise EI as an individual capacity measured through generic self-report or performance instruments. While such models enable cross-context comparability, they abstract emotional competence from the institutional, ethical and role-specific conditions within which legal judgement is exercised. By contrast, the framework developed in this study treats EI as a situated professional capacity, operationalised through domains derived inductively from practitioners' accounts of mediation advocacy in public law contexts. This approach enables EI to be analysed as a relational and normative dimension of legal practice, rather than as a transferable individual trait. From a socio-legal perspective, this contributes by demonstrating how emotional and ethical aspects of professional judgement can be empirically captured in ways that remain sensitive to institutional context, role differentiation and public law obligation.

Collectively, these methodological contributions show how a mixed methods design can capture emotional and ethical dimensions of professional judgement while remaining sensitive to institutional context. While the emotional-intelligence domains developed in this study are context-specific, the methodological approach; inductive domain construction grounded in qualitative data followed by quantitative testing and meta-inference; is transferable to other public law and dispute-resolution contexts. The recommendations advanced in this chapter are normative extrapolations from empirical and theoretical findings. They do not suggest that EI alone can remedy structural inequities within planning governance, nor that training reform substitutes for institutional design. Rather, they identify areas where professional development may align more coherently with the relational demands already present in mediation advocacy.

10.6 Implications for Practice, Policy, and Professional Training

This section sets out implications that follow from the study's findings for mediation advocacy practice, legal education and professional standards, and institutional and policy design in planning and environmental dispute resolution. The focus is on areas where the evidence in Chapters 6–8, which examine ADR legitimacy (Chapter 6), emotionally intelligent mediation advocacy practice (Chapter 7), and institutional and role-based variation in EI (Chapter 8), identifies structural gaps from which normative recommendations are cautiously derived. The implications below distinguish between empirical findings and normatively derived design recommendations, ensuring that descriptive analysis remains analytically distinct from prescriptive reform proposals. Where recommendations are made, they are informed by the empirical data rather than strictly deduced from it.

10.6.1 Implications for Mediation Advocacy Practice

This subsection sets out implications for mediation advocacy practice that are grounded directly in the empirical findings, alongside normative recommendations informed by those findings. The findings in Chapters 6–8 indicate that EI is treated and experienced by practitioners as a core component of mediation advocacy rather than an optional interpersonal enhancement. On that empirical basis, the following implications are evidence-led; where the discussion uses 'should', it is framed as a normative recommendation for improving practice. A practical recommendation flowing from this evidence is that advocates treat relational client preparation as an explicit and routine element of mediation advocacy. Advocates should engage with clients not only in relation to substantive objectives but also by addressing their emotional expectations and concerns. Such preparation enhances clients' ability to participate constructively and contributes to clearer communication during mediation.

Empirically, the findings indicate that managing emotionally charged interactions (through empathy, emotional regulation and ethical boundary management) underpins trust, clarity and stability within mediation. A corresponding recommendation is that these capacities be treated as core advocacy techniques rather than informal interpersonal skills. Integrating these capacities into routine advocacy techniques supports better navigation of conflict dynamics and more effective engagement with mediators and opposing parties.

Empirically, practitioners reported significant emotional labour that is rarely acknowledged within organisational settings. A normative recommendation, informed by this evidence, is that organisations provide structured opportunities for reflective practice, peer discussion and mentoring to support boundary management and reduce the individual burden of sustained emotional regulation.

Overall, the empirical findings indicate that EI functions as a core dimension of mediation advocacy competence.

10.6.2 Implications for Legal Training and Professional Standards

The implications discussed in this subsection are informed by the empirical findings on professional development and are framed as normative recommendations addressing identified gaps in legal training and professional standards. The findings indicate that EI currently develops informally within legal practice. The implications below therefore distinguish between what the evidence suggests is currently missing in professional formation, and the normative steps that training providers and professional bodies could take in response. Strengthening professional preparation therefore requires more explicit integration of emotional, relational and ethical competencies into legal training.

Empirically, respondents described emotional and relational competence as learned informally rather than taught explicitly. A resulting recommendation is the inclusion of emotional-intelligence content in both legal education and continuing professional development. Training should address the interpretive, regulatory and ethical dimensions of emotional practice that arise in planning and environmental mediation, including the management of emotionally charged interactions, the recognition of affective cues and the navigation of ethical dilemmas during caucus discussions.

Empirically, the study indicates that EI develops through cycles of experience, reflection and adaptation. A corresponding recommendation is to embed reflective practice more firmly within professional learning environments. Structured opportunities for guided debriefing, self-assessment and peer feedback should form part of professional development frameworks. These practices would reinforce the legitimacy of reflective judgement as an essential dimension of legal professionalism.

Empirically, practitioners described emotional labour and ethical complexity as under-recognised within supervision structures. A normative recommendation is therefore to develop supervisory and mentoring models that address these emotional and ethical dimensions directly. Emotional labour is an under-recognised aspect of mediation advocacy, and practitioners would benefit from supervisory models that address the emotional and ethical complexities of their work. Such models would strengthen practitioner resilience, support ethical decision-making and promote a culture in which emotional competence is understood as a substantive element of professional expertise.

If the findings of this thesis are accepted, legal training and professional standards cannot remain structured around doctrinal mastery alone. Emotional and reflective competence must be treated as a core dimension of public law professionalism rather than as informal or optional enhancement.

10.6.3 Implications for Institutional and Procedural Reform

This subsection distinguishes between institutional barriers identified empirically in the study and normative recommendations for procedural reform that respond to those barriers. The findings highlight the need for institutional and procedural reforms that would improve the legitimacy and effectiveness of mediation in planning and environmental disputes. In what follows, the empirical implications relate to barriers and conditions documented by participants; the recommendations describe institutional responses that could address these barriers.

Three key implications follow. One implication concerns the design and integration of mediation within planning processes. Procedural uncertainty continues to shape practitioner confidence in mediation. Empirically, practitioners reported uncertainty about procedural expectations, enforceability and the relationship between mediation and statutory duties. A policy-facing recommendation is therefore clearer procedural guidance, stronger institutional support and more coherent integration of mediation within planning workflows.

A second implication relates to participation and procedural fairness. Community participants frequently face emotional and informational barriers that constrain their ability to engage meaningfully. While emotionally attuned advocacy can help address these barriers, institutional procedures must also support effective participation. Preparatory support for community stakeholders, clearer explanations of the scope of mediation and attention to emotionally safe participation environments would strengthen perceptions of fairness and legitimacy.

A third implication concerns the structural power asymmetries characteristic of many planning and environmental disputes. Unequal access to legal advice, technical information and financial resources affects both process and outcome. Reforms that enhance transparency, provide accessible support for under-resourced participants and introduce clearer procedural safeguards would help rebalance mediation environments and reinforce its credibility as a public law process.

These reforms would create institutional conditions that support more consistent use of mediation and enable emotionally intelligent advocacy to operate more effectively.

10.6.4 Implications for Mediation Policy

The policy implications set out below separate issues raised empirically by participants from policy recommendations informed by those findings. The study also offers several implications for the development of mediation policy in planning and environmental contexts. For clarity, the recommendations below are directed at three levels: policy frameworks (government and sector guidance on planning/environmental mediation), professional guidance (standards and training expectations for mediators and advocates), and institutional practice (how public authorities and organisations implement and support mediation in day-to-day procedures). The points below separate the empirical issues raised by participants from the normative policy proposals that would address them.

At the level of policy frameworks, practitioners reported uncertainty about when mediation is appropriate and how it relates to statutory obligations. A resulting policy recommendation is clearer expectations and more consistent institutional endorsement, including guidance on appropriate use and legal status. Such guidance, setting out appropriate use and legal status and providing direction for both public authorities and private parties, would support more confident engagement.

At the level of institutional practice, participants expressed concern that uneven preparation, limited transparency and power imbalances undermined confidence in mediated outcomes. A corresponding institutional recommendation is to prioritise the integrity and legitimacy of mediation processes through clearer preparation requirements, transparency standards and participant support. Institutional procedures that require minimum preparation standards, support transparent information-sharing, and provide tailored participant support would help ensure that mediation is perceived as fair and trustworthy.

At the level of professional guidance, practitioners described uncertainty and misalignment regarding the respective roles of mediators and advocates. A further professional recommendation is to improve the interface between mediators and lawyers through clearer role articulation and, where appropriate, joint preparatory discussions. Recognising the emotional and relational complexity of planning disputes within professional guidance would further contribute to effective professional interaction.

Overall, the implications for mediation policy emphasise the need for clarity, fairness and collaboration. Strengthening the procedural and institutional foundations of mediation would enhance its credibility and effectiveness as a mechanism for resolving public law environmental disputes. These implications are offered as design conditions rather than prescriptive reforms: the thesis does not claim that mediation is a universal remedy, but that legitimacy gains depend on how participation, power asymmetry, and professional boundaries are institutionally supported.

Together, these implications highlight that strengthening mediation within planning and environmental disputes requires coordinated development across professional practice, legal training and institutional policy. At the level of legal practice, mediation advocacy must recognise emotionally informed relational judgement as a core component of professional competence rather than an informal interpersonal attribute. At the level of professional education and training, legal curricula and continuing professional development programmes should incorporate structured learning on emotional competence, reflective judgement and ethical boundary management in mediation contexts. At the level of policy and institutional design, clearer procedural frameworks, guidance on mediation use, and safeguards addressing participation and power asymmetry are necessary to ensure that mediation operates as a legitimate component of public law dispute resolution. Viewed together, these reforms would enable emotionally intelligent mediation advocacy to function within institutional structures that support both relational fairness and constitutional accountability.

10.7 Limitations

This section outlines the methodological and analytical limitations that shape the interpretation of the study's findings. These constraints do not undermine the internal coherence of the analysis, the integrity of the mixed methods design, or the validity of the study's central conceptual claims, but instead indicate the boundaries within which the findings should be understood.

10.7.1 Methodological Limitations

The methodological limitations of this study define the scope of its explanatory reach but do not undermine its analytical coherence. As a purposive, mixed methods socio-legal inquiry, the study prioritises conceptual depth, institutional patterning and triangulated interpretation over statistical generalisability.

A key limitation is the reliance on non-probability sampling across all four empirical phases. The surveys and interview cohorts were shaped by voluntary participation and professional networks, which, although appropriate for accessing specialised practitioner groups, restrict the wider generalisability of the findings.

A further limitation relates to the operationalisation of EI in the triangulation survey. The domain structure was intentionally grounded in qualitative analysis and tailored to the legal and public law context. While this generated a context-sensitive framework, it does not map directly onto established psychological EI models and therefore limits comparability with external measures. Additional statistical validation would strengthen this approach.

The interview samples, although diverse, inevitably provide selective coverage of professional experience. Senior practitioners and those with substantial mediation exposure are prominent in the dataset, which offers depth but may underrepresent the perspectives of early-career lawyers or those less familiar with mediation.

Self-selection bias may also have influenced the survey findings. Practitioners with an existing interest in mediation or EI may have been more inclined to participate, meaning the results reflect the orientations of engaged respondents rather than the profession as a whole.

Considered collectively, these limitations indicate that the study offers a detailed and analytically coherent account of EI in mediation advocacy that remains situated within defined sampling, operational and contextual boundaries. A further limitation relates to researcher positionality. My interpretations were necessarily shaped by my professional familiarity with legal processes and dispute-resolution environments. While reflexive memos, supervisory dialogue and transparent analytic procedures were used to mitigate bias, it remains important to acknowledge that the analysis reflects an interpretive stance shaped by this positional embedding. This reflexive awareness clarifies the interpretive standpoint through which EI and mediation advocacy were analysed.

10.7.2 Limitations of Integration

The mixed methods integration strengthened the development of meta-inferences, yet its scope is subject to certain boundaries. The convergence of qualitative and quantitative strands reflects the experiences of the study population, not a statistically representative sample of all legal practitioners. Generalising these findings beyond the participating groups should therefore be undertaken with caution.

The conclusions are also shaped by the distinctive institutional and procedural features of the UK planning and environmental system. The emotional, regulatory and participatory dynamics that practitioners described may differ in other jurisdictions or areas of legal practice. While the study offers transferable conceptual insights into relational professionalism, emotional labour and affective legitimacy, the empirical patterns identified remain context-specific.

These limitations indicate that the integrated findings should be understood as a situated account of EI within one area of legal practice; however, they do not undermine the transferability of the thesis's conceptual insights regarding emotionally informed professional reasoning, emotional labour and affective legitimacy which may be meaningfully applied and tested in other public law and dispute-resolution contexts.

10.8 Directions for Future Research

Three focused pathways follow directly from the thesis's central meta-inference concerning emotionally informed professional reasoning under institutional constraint.

First, longitudinal research should examine how emotionally informed professional judgement develops over time across different stages of legal careers. The findings indicate that emotional competence is shaped less by mediation frequency than by reflective engagement, institutional context and role expectations. Tracking these dynamics over time would clarify how relational judgement is cultivated, stabilised or constrained within professional trajectories.

Second, comparative and cross-jurisdictional research should examine whether the relational, ethical and affective dynamics identified in UK planning and environmental mediation appear in other public law systems. Differences in regulatory structure, participatory culture and judicial oversight may significantly shape how emotional reasoning operates within mediation advocacy.

Third, observational and institutional research within live mediation settings would deepen understanding of how emotional labour and relational judgement are enacted in practice. Observational methodologies would complement interview-based findings by analysing how emotional cues are interpreted, how boundaries are negotiated and how legitimacy is constructed in real time.

Future research could also extend this analysis to additional legal sectors beyond environmental and planning law in order to examine whether similar institutional and professional dynamics shape ADR engagement. Comparative work across jurisdictions would further clarify how differing judicial approaches to ADR influence professional practice and uptake. Longitudinal studies assessing the sustained impact of EI training on mediation advocacy would also provide valuable insight into the relationship between professional development and dispute-resolution effectiveness.

10.9 Final Concluding Statement

This thesis has examined how mediation advocacy in planning and environmental disputes operates within conditions of institutional fragility, adversarial culture and participatory pressure. Through a four-phase mixed methods design, it has shown that the effectiveness of mediation advocacy depends not only on doctrinal expertise or procedural efficiency, but on how practitioners interpret affective dynamics, manage ethical boundaries and sustain legitimacy in contested public law environments.

The study makes visible forms of professional practice that are frequently normalised yet rarely theorised: relational client preparation, negotiated emotional boundaries, and the disciplined calibration of advocacy under conditions of power asymmetry and regulatory uncertainty. These practices shape how authority is experienced, how participation is structured and how outcomes are received by affected communities.

By documenting and analysing these dynamics, the thesis clarifies how legal professionalism operates in public law mediation. It establishes that affective and legal rationality operate in structural interaction, shaping how legitimacy, participation and authority are enacted within institutionally constrained environments. This thesis offers a bounded, transferable framework for analysing emotional and ethical reasoning in public law governance.

Strengthening public law mediation therefore requires more than procedural refinement. It requires recognition that professional authority in mediation is relationally constructed and affectively mediated. Public-law mediation cannot rely solely on rationalist neutrality or doctrinal expertise to secure legitimacy. It depends on how legal actors interpret emotional dynamics, calibrate ethical boundaries and translate institutional authority into lived experiences of fairness.

This thesis demonstrates that emotionally intelligent mediation advocacy strengthens constitutional legitimacy when embedded within accountable institutional structures, yet it also reveals the risks of displacing public law scrutiny into negotiated spaces if relational calibration operates without structural oversight. The future governance of public law mediation must therefore integrate affective reasoning into legitimacy theory while maintaining robust accountability mechanisms.

EI does not replace legal rationality. Rather, this thesis demonstrates that emotionally intelligent mediation advocacy operates as a form of relational legal judgement through which professional authority, institutional legitimacy and participatory fairness are negotiated within public law dispute resolution. By integrating socio-legal theory, mixed methods empirical evidence and institutional analysis, the study establishes a new framework for understanding emotionally informed professional judgement in mediation advocacy. In doing so, it contributes a conceptually grounded, empirically supported and institutionally situated account of how legal actors exercise authority within emotionally complex governance environments.

Overall, the thesis demonstrates that emotionally intelligent mediation advocacy is not a peripheral interpersonal skill but a structurally embedded dimension of professional legal judgement that shapes how legitimacy, fairness, and trust are experienced within public law dispute resolution.

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APPENDIX A - PHASE 1 QUESTIONNAIRE

Survey of Legal Practitioners on Alternative Dispute Resolution in Environmentally-Related Planning Disputes

This questionnaire was administered to legal practitioners involved in environmental and planning disputes. The survey explored awareness, experience, perceptions, barriers, and attitudes towards Alternative Dispute Resolution (ADR) mechanisms in environmentally-related planning disputes.

Section A: Background Information

A1. Please indicate your age group.

- Under 30
- 30–40
- 41–50
- 51–60
- Over 60

A2. Please indicate:

A. Number of years in legal practice

- Less than 5 years
- 5–10 years
- More than 10 years

B. Number of years dealing with environmental or planning disputes

- Less than 5 years
- 5–10 years
- More than 10 years

C. Number of years using Alternative Dispute Resolution procedures

- Less than 5 years
- 5–10 years

- More than 10 years

Section B: Awareness And Familiarity With ADR

B1. How familiar are you with the following ADR methods?

Response scale:

1 = Extremely familiar
2 = Very familiar
3 = Moderately familiar
4 = Slightly familiar
5 = Not familiar at all

- Arbitration
- Expert Determination
- Mediation
- Negotiation
- Facilitation

B2. Would you be confident explaining the ADR process to a client?

- Yes
- No
- Don't know

B3. Have you received any of the following ADR-related training? (Select all that apply)

- Accreditation as an ADR professional
- External ADR training courses
- In-house ADR training
- ADR training during legal education
- Other (please specify)
- No ADR training

B4. How would you describe your organisation's approach to ADR?

- Policy or practice encouraging consideration of ADR
- No formal policy or practice
- Policy or practice discouraging ADR
- Don't know

Section C: Perceptions And Attitudes Towards ADR

C1. Please indicate your experience of using the following ADR procedures:

- Arbitration
- Expert Determination
- Mediation
- Negotiation
- Facilitation
- Other (please specify)

Participants were asked to indicate whether disputes were:

- Settled
- Not settled
- Partially settled

Across the following dispute values:

- Over £5 million
- Over £1 million
- £250,000–£1,000,000
- £50,000–£250,000
- Under £50,000

C2. Which of the following factors influenced your decision to use ADR? (Select all that apply)

- Contractual requirement
- Court recommendation
- Suggestion by another party
- Nature of the dispute
- Financial value of the dispute
- Dissatisfaction with arbitration
- Dissatisfaction with litigation
- Legal advice
- Other (please specify)

C3. Overall, how satisfied are you with ADR as a dispute resolution process?

Response scale:

1 = Extremely satisfied
2 = Somewhat satisfied
3 = Neither satisfied nor dissatisfied
4 = Somewhat dissatisfied
5 = Extremely dissatisfied

C4. Please explain the reasons for your level of satisfaction.

(Open response)

C5. Please indicate your satisfaction with the following ADR methods:

- Arbitration
- Expert Determination
- Mediation
- Negotiation
- Facilitation
- Other (please specify)

C6. Please indicate your satisfaction with:

- Speed of the process
- Cost of the process
- Outcome of the process

C7. Would you consider using ADR to resolve an environmentally-related planning dispute?

- Yes
- No
- Don't know

C8. Please explain your answer.

(Open response)

C9. Can an environmentally-related planning dispute be resolved without legal advice?

- Yes
- No
- Don't know

C10. Please explain your answer.

(Open response)

C11. To what extent is legal representation necessary in the following ADR processes?

- Arbitration
- Expert Determination
- Mediation
- Negotiation
- Facilitation
- Other (please specify)

Response scale:

1 = Strongly agree
2 = Somewhat agree
3 = Neither agree nor disagree
4 = Somewhat disagree
5 = Strongly disagree

Section D: Experience And Preferences

D1. Has ADR ever been proposed or used in an environmentally-related planning dispute involving your organisation?

- Yes
- No

D2. Please indicate approximately how often the following ADR methods have been proposed or used:

- Arbitration
- Expert Determination
- Mediation
- Negotiation
- Facilitation
- Other (please specify)

Response categories:

- Never
- 1–5 times
- 6–20 times
- More than 20 times

D3. To what extent do you support including ADR clauses in environmental and planning contracts?

- Arbitration clauses

- Expert Determination clauses
- Mediation clauses
- Negotiation clauses
- Facilitation clauses
- Other (please specify)

D4. Please explain your answer.

(Open response)

D5. Has your organisation ever decided not to participate in ADR?

- Yes
- No

D6. If yes, on how many occasions?

(Open response)

D7. Please rate the suitability of the following dispute resolution methods for disputes of varying financial value.

Methods:

- Litigation
- Arbitration
- Expert Determination
- Mediation
- Negotiation
- Facilitation

Response scale:

1 = Very suitable
5 = Very unsuitable

Section E: Barriers And Challenges To ADR Adoption

E1. Please indicate your agreement with the following statements regarding decisions not to use ADR:

- Lack of trained ADR personnel
- Dispute unsuitable for ADR
- Litigation more appropriate
- Firm policy discourages ADR
- Lack of ADR knowledge
- ADR suggests weakness
- Preference for binding procedures
- ADR requires compromise
- Insufficiently experienced neutrals
- ADR causes delay
- Exposure of legal position
- Enforcement concerns
- Limited information gathering
- Open-and-shut case
- Pressure to settle
- Dispute too large
- Dispute too small
- ADR used as a delaying tactic

Response scale:

1 = Strongly agree
5 = Strongly disagree

E2. Please indicate your agreement with a series of statements relating to:

- Settlement outcomes
- Financial implications
- Tactical considerations
- Client participation
- General perceptions of ADR

Response scale:

1 = Strongly agree
5 = Strongly disagree

E3. Do you consider ADR appropriate for all environmentally-related planning disputes?

- Yes
- No
- Don't know

E4. Please explain your answer.

(Open response)

E5. Please indicate your agreement with the following statements:

- ADR is flexible
- ADR is confidential
- ADR is less confrontational than litigation
- ADR is suitable for disputes of any size
- ADR training should be compulsory for lawyers
- Judges should refer more disputes to mediation
- Lawyers make effective ADR practitioners
- ADR may hinder legal development
- ADR is inappropriate where there is a power imbalance

Response scale:

1 = Strongly agree
5 = Strongly disagree

Section F: Future Development And Education

F1. Please indicate your views on:

- Awareness of ADR in environmental disputes
- Complexity of environmental disputes
- ADR effectiveness in complex disputes
- Concerns regarding enforceability
- Adequacy of legal education
- Value of specialist ADR training
- Receptiveness to educational initiatives
- Interest in collaborative ADR initiatives

Response scale:

1 = Strongly agree
5 = Strongly disagree

F2. What educational initiatives or resources would improve awareness and understanding of ADR in environmental and planning law?

(Open response)

F3. Do you have any additional comments or observations regarding ADR in environmental and planning disputes?

(Open response)

F4. Would you be willing to participate in the next stage of this research?

- Yes
- No

F5. If yes, please provide your contact details.

- Name
- Contact information

APPENDIX B - Phase 2 Interview Schedule

Legal Practitioners' Perceptions of Alternative Dispute Resolution in Environmentally-Related Planning Disputes.

The purpose of this interview was to explore legal practitioners' experiences, perceptions, and understanding of Alternative Dispute Resolution (ADR) within environmentally-related planning disputes. The interview adopted a semi-structured format, allowing participants to elaborate on issues they considered important while ensuring consistency across interviews.

Theme 1: Understanding Alternative Dispute Resolution

1. Can you describe your understanding of Alternative Dispute Resolution (ADR) and its various forms, including arbitration, expert determination, mediation, negotiation, and facilitation?
2. In your opinion, what are the principal differences between ADR methods and traditional litigation when resolving environmental or planning disputes?
3. If you have experience using ADR methods, how did that experience compare with your expectations?

Theme 2: Knowledge and Perceptions of ADR in Environmental Disputes

4. What role do you believe ADR should play in resolving environmental disputes?
5. Do you consider ADR methods to be effective in addressing environmental issues when compared with traditional legal processes? Please explain your answer.
6. Which ADR methods do you consider most suitable for environmental or planning disputes and why?
7. What factors influence whether ADR is used in environmental disputes?

Theme 3: Client Support and the Legal System

8. How do you perceive the role of clients during the ADR process?
9. How important is legal advice in encouraging or discouraging the use of ADR?
10. Do you think courts or public authorities should play a greater role in promoting ADR?
11. What barriers within the legal system limit the wider use of ADR?

Theme 4: Training, Awareness and Education

12. Should ADR be taught as part of legal education prior to qualification?
13. Would ADR training within law firms improve the effectiveness and use of ADR processes?
14. How aware do you believe environmental and planning lawyers are of ADR methods?
15. Do law firms generally have adequate ADR policies or procedures in place?

Theme 5: Future Development of ADR

16. How could ADR be improved for environmentally-related planning disputes?
17. Would hybrid approaches combining ADR and traditional legal processes be beneficial?
18. What changes would encourage wider adoption of ADR in environmental and planning disputes?

Follow-Up and Probing Questions

Where appropriate, the following prompts were used to encourage participants to elaborate on their experiences and perspectives:

19. Why do you think ADR remains underused?
20. Why is mediation rarely adopted?
21. Why is arbitration uncommon within environmental law?
22. Can you provide an example from your professional practice?

23. Have you ever participated in a mediation?
24. Have you ever participated in expert determination?
25. Was the outcome successful?
26. Would you use ADR again in future disputes?
27. What was the greatest challenge encountered?
28. How does ADR operate specifically within planning disputes?
29. Do public law disputes create unique barriers to ADR?
30. Does the existence of an expert determination clause influence behaviour even where the clause is never invoked?

Interview Administration Note

The interview schedule was used flexibly. Questions were adapted where necessary to reflect participants' professional backgrounds and experiences. Additional probing questions were employed to clarify responses and explore emerging themes relevant to the research objectives.

APPENDIX C - PHASE 3 INTERVIEW SCHEDULE

<u>Emotional Intelligence in Legal Mediation Practice.</u>

The purpose of this interview was to explore how legal practitioners and mediators understand, experience, and utilise emotional intelligence within mediation and dispute resolution processes. Particular attention was given to the role of emotional awareness, empathy, emotional regulation, ethical considerations, and professional identity within environmentally-related planning disputes and mediation practice more broadly.

Theme A: Understanding and Defining Emotional Intelligence

1. What does the term "emotional intelligence" mean to you within a legal or mediation context?
2. Do you consider emotional awareness or empathy to form part of your professional role during mediation? Please explain your answer.

3. Have you received any formal or informal training in emotional skills, emotional intelligence, conflict psychology, or related areas as part of your legal or mediation practice?

Theme B: Experiences of Using Emotional Intelligence in Practice

4. Can you describe a recent mediation or dispute in which emotional sensitivity played an important role?

5. What emotional skills, if any, do you consciously draw upon during planning or environmental mediations?

6. How do you manage your own emotional responses during high-stakes or emotionally charged disputes?

Theme C: Institutional and Cultural Barriers

7. Do you feel there is sufficient space within the legal profession for practitioners to be emotionally expressive or empathetic during dispute resolution processes?

8. Have you ever felt that emotional sensitivity was perceived as a weakness or as unprofessional conduct within your work?

9. How do organisational pressures, such as time constraints, budget limitations, or role ambiguity, affect your ability to engage emotionally during mediation?

Theme D: Ethical and Strategic Dimensions of Emotional Intelligence

10. Have you ever used empathy or emotional rapport-building as a deliberate negotiation or mediation strategy?

11. Do you believe there are ethical risks associated with becoming overly emotionally involved in mediation?

12. How do you distinguish between ethical emotional engagement and emotional manipulation?

Theme E: Emotional Competence and Professional Identity

13. Has your use of emotional intelligence changed throughout your professional career? If so, how?

14. Do you believe emotional intelligence should be formally incorporated into legal education, ADR training, professional standards, or ethics codes?

15. What advice would you offer to junior lawyers, mediators, or dispute resolution professionals who are navigating emotionally complex public-interest disputes?

Closing Reflection

Participants were invited to raise any additional observations regarding emotional intelligence, mediation practice, professional judgement, empathy, emotional regulation, or dispute resolution that had not been addressed during the interview.

Interview Administration Note

This interview schedule was administered using a semi-structured format. Questions were adapted where necessary to reflect participants' professional backgrounds and experiences. Follow-up prompts and clarifying questions were used to explore emerging themes, examples from practice, and participants' reflections on the role of emotional intelligence within mediation and legal decision-making.

APPENDIX D - Phase 4 Triangulation Survey Questionnaire

Emotional Intelligence, Mediation Advocacy and Relational Legal Judgement.

This questionnaire was administered during the final stage of the research to triangulate findings emerging from the earlier survey and interview phases. The survey explored legal practitioners' perceptions of emotional intelligence, mediation advocacy, professional judgement, ethical boundaries, institutional culture, and professional training within environmentally-related planning disputes.

Section A: Professional Background

D1. What is your current professional role?

- Solicitor
- Barrister
- Legal Advisor in a Public Body
- In-house Lawyer (NGO or Private Sector)

- Other (please specify)

D2. How many years have you practised law in the United Kingdom?

- Less than 5 years
- 5–10 years
- 11–20 years
- More than 20 years

D3. How often have you acted as a legal representative in planning or environmental mediation during the previous five years?

- Never
- 1–2 times
- 3–5 times
- More than 5 times

Section B: Emotional Intelligence And Mediation Advocacy

D4. To what extent do you agree with the following statements?

Response Scale:

1 = Strongly Disagree
2 = Disagree
3 = Neutral
4 = Agree
5 = Strongly Agree

A. Emotional intelligence is critical when representing clients in mediation.

B. Emotional intelligence skills, such as empathy and emotional regulation, affect the outcome of planning and environmental mediation.

C. Emotional intelligence is under-emphasised in legal training for mediation advocacy.

D. Strategic emotional awareness enhances my effectiveness as a mediation advocate.

E. Using empathy in mediation risks compromising my impartiality or professional judgement.

F. There is a clear ethical boundary between empathy and emotional manipulation.

D5. When representing clients in mediation, how frequently do you use the following emotional intelligence skills?

Response Scale:

1 = Never
2 = Rarely
3 = Sometimes
4 = Frequently
5 = Very Frequently

A. Reading unspoken emotional cues from parties.

B. Regulating your own emotional responses.

C. Empathising with the other party (not your client).

D. Reframing emotionally charged narratives.

E. Supporting your client's emotional regulation.

F. Critically reflecting on your own emotional stance.

Section C: Strategic And Ethical Dimensions Of Emotional Intelligence

D6. In mediation, emotional intelligence serves primarily as:

- A communication strategy for negotiation
- An ethical commitment to client care and fairness
- Both strategic and ethical purposes
- Neither
- Not sure

D7. Have you ever used emotional intelligence techniques deliberately to shift the dynamics of a mediation?

- Yes

- No

If yes, please describe the situation and explain how emotional intelligence influenced the mediation process.

(Open response)

D8. In your view, what distinguishes ethical empathy from emotional manipulation in mediation advocacy?

(Open response)

D9. Have you experienced ethical discomfort when using emotional insight during mediation?

- Frequently
- Occasionally
- Rarely
- Never

If applicable, please explain the circumstances and how you addressed the issue.

(Open response)

Section D: Institutional Culture And Training

D10. Did your legal education or professional training include any focus on emotional intelligence or emotional regulation?

- Yes – Undergraduate legal education
- Yes – Vocational or professional training
- Yes – Continuing Professional Development (CPD) or workplace seminars
- No formal training
- Self-directed learning only

D11. Which of the following factors discourage emotionally intelligent practice in your workplace or profession? (Select all that apply.)

- Time or billing pressures

- Cultural scepticism within the profession
- Lack of formal guidance or professional codes
- Gendered expectations surrounding emotion
- Perception that emotional intelligence is “soft” or unprofessional
- Other (please specify)

D12. Do you feel emotionally supported in your current legal work (for example through peers, supervision, mentoring, or reflective practice)?

- Yes, consistently
- Sometimes
- Rarely
- Never

Please explain your answer.

(Open response)

Section E: Future Professional Development

D13. Should emotional intelligence be more explicitly incorporated into:

- Legal education
- Professional ethics training
- Mediation advocacy training
- Continuing Professional Development
- Judicial and tribunal training

Response Scale:

1 = Strongly Disagree
2 = Disagree
3 = Neutral
4 = Agree
5 = Strongly Agree

D14. What reforms, training initiatives, or professional changes would improve the use of emotional intelligence within legal mediation practice?

(Open response)

D15. Do you have any additional comments regarding emotional intelligence, mediation advocacy, professional judgement, or dispute resolution practice?

(Open response)

Analytical Domain	**Survey Items**
Relational Professionalism	D4A, D4D, D4F, D5A, D5B, D5F, D12
Strategic and Ethical Empathy	D4B, D4E, D5C–D5E, D6, D9
Gendered Emotional Expectations	D11D, D11E
Training and Professional Development	D4C, D10, D13
Affective Legitimacy within Institutional Culture	D11A–D11C, D12

Survey Administration Note

This questionnaire was designed as a triangulation instrument to test, refine, and validate themes emerging from the earlier phases of the study. Particular attention was given to the relationship between emotional intelligence, mediation advocacy, ethical judgement, professional identity, and dispute resolution outcomes.

APPENDIX E - Research Ethics Approval Documentation

This appendix provides documentary evidence of the research ethics approvals obtained for each empirical phase of the study. As the sequential mixed-methods design required separate ethics applications at different stages of the research, the corresponding University ethics approval confirmations are reproduced below as evidence that ethical approval was obtained prior to data collection.

E1. Phase 1 Ethics Approval

RE: Outcome of Ethics Application Review   Summarise this email

From: Sara Mohamed <sara.mohamed@strath.ac.uk>
Sent: 28 February 2024 11:04
To: Sneha Bonomally <sneha.bonomally@strath.ac.uk>
Cc: Andrew Agapiou <andrew.agapiou@strath.ac.uk>
Subject: RE: Outcome of Ethics Application Review

Dear Sneha,

I hope this email finds you well. Please see below the details of the outcome of your ethics application:

DEC24/005 "Navigating Environmental Disputes: Lawyers' Insights into ADR Strategies and Experiences".

The Committee decided that the application had been **approved,**

I can confirm that all required signatures are now in place, and you can proceed with surveys/questionnaires and data collection.

Please accept this email as confirmation of the approval of your ethics application.

Best wishes,
Sara

Dr Sara Mohamed
Lecturer
Department of Architecture
University of Strathclyde
Sara.mohamed@strath.ac.uk

E2. Phase 2 Ethics Approval

Re: Research Ethics Application - Environmental Law Mediation Interviews- Following Up on Survey   Summarise this email

From: Grainne McGill <grainne.mcgill@strath.ac.uk>
Sent: 06 June 2024 18:42
To: Sneha Bonomally <sneha.bonomally@strath.ac.uk>
Cc: Sara Mohamed <sara.mohamed@strath.ac.uk>
Subject: Re: Research Ethics Application - Environmental Law Mediation Interviews- Following Up on Survey

Hi Sneha,

The changes made on the word documents had been done in 'track changes' mode, meaning when opened the changes can be seen in red. To accept these, you need to select 'Review' tab, then 'Accept' all changes. I have done this for the application submitted, but you will want to do for any forms to be distributed to participants. Alternatively, you can save as a PDF before sending.

I can confirm that your application has now been approved and signed by the HoD. Please accept this email as confirmation of ethics approval.

I wish you all the best with your research project.

Best wishes,

Gráinne

E3. Phase 3 Ethics Approval

Re: Ethics Application Submission – Emotional Intelligence in Legal Mediation   Summarise this email

From: Kate Wood <kate.wood@strath.ac.uk>
Sent: Tuesday, May 6, 2025 2:27:57 PM
To: Sneha Bonomally <sneha.bonomally@strath.ac.uk>
Cc: Stirling Howieson <s.howieson@strath.ac.uk>; Andrew Agapiou <andrew.agapiou@strath.ac.uk>
Subject: RE: Ethics Application Submission – Emotional Intelligence in Legal Mediation

Good afternoon Sneha,

I am pleased to let you know that your ethics application has been approved and signed by the HoD and you may now proceed with your planned fieldwork.

Please ensure that you adhere to the protocols outlined in your submission and notify us if there are any significant changes to your research project or methodology.

We wish you every success with your research.

Kind regards

Kate

Kate Wood | Departmental Administrator | Architecture | University of Strathclyde
Level 3 (JW301), James Weir Building, 75 Montrose Street, Glasgow G1 1XJ
t: +44 (0)141 548 3023 | kate.wood@strath.ac.uk

Working off campus Wednesday and Thursday

E4. Phase 4 Ethics Approval

Re: Ethics Application Submission   Summarise this email

From: Kate Wood <kate.wood@strath.ac.uk>
Sent: 11 August 2025 10:44
To: Sneha Bonomally <sneha.bonomally@strath.ac.uk>
Cc: Andrew Agapiou <andrew.agapiou@strath.ac.uk>; Stirling Howieson <s.howieson@strath.ac.uk>
Subject: RE: Ethics Application Submission

Good morning Sneha,

I am pleased to let you know that your ethics application has been approved and signed by the HoD and you may now proceed with your planned fieldwork.

Please ensure that you adhere to the protocols outlined in your submission and notify us if there are any significant changes to your research project or methodology.

We wish you every success with your research.

Kind regards

Kate

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Working off campus Wednesday and Thursday