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Issue 12

Mediation Matters!

The quarterly newsletter of the
University of Strathclyde Mediation Clinic

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Mediation Clinic
at University of Strathclyde

Editorial



Patrick Scott

Welcome to the summer issue of *Mediation Matters!*

The Clinic held its fifth online Conference in March, and we include the keynote address and some of the workshops. Michael Jacobs' keynote offered us the visceral image of conflict as a "fire breathing dragon;" mediators help clients deal with this incendiary potential "without reducing their lives to cinder and ash."

Ben Cramer has conducted a very interesting and informative interview with Colin Bourne, a former barrister and trade union officer, who now delivers mediation skills training in UK prisons through Yorkshire Mediation. It has had a very positive impact in the prison and has reduced violence and transformed culture within the prison environment.

In our Research Reflections series, we hear from Eunice Olatunji who shares her experience of researching her LLM dissertation.

We have the usual contributions, *From the Director*, *From the Chair* and *Clinic News*.

In my ponder, I deal with the never to be forgotten cornerstone of mediation - confidentiality. There are so many traps for us as mediators to fall into. In a mediation, a party says something, and a half an hour later you are wondering whether that was in a joint or private session. My advice is to err on the side of caution.

The general theme in this issue is about building your practice, which was also the theme of the Clinic's Conference in March. Pauline McKay has provided some useful tips on how to get started and how to try to connect in the mediation world.

Interestingly, two of our regular contributors reflect on AI and ChatGPT. In a recent court case in South Africa, AI got an advocate reported to the Legal Practice Council for investigation. In preparing written argument, counsel used an online subscription tool called *Legal Genius*, which claimed that it was "exclusively trained on SA legal judgments". Unfortunately, the judge discovered that two of the judgments referred to do not exist. A similar situation arose in England, where two High Court judges were asked to rule after lower court judges raised concerns about "suspected use by lawyers of generative artificial intelligence tools to produce written legal arguments or witness statements which are not then checked," leading to false information being put before the court. In the one instance, the lawyer cited no less than 18 cases that do not exist. So, my advice is to use AI with care!

You will note from our Chairs that the Clinic has again been shortlisted for the Community Care & Social Responsibility Award at the upcoming Scottish Legal Awards.

My thanks again to Adrienne, our assistant editor, for all her hard work in helping to compile this newsletter. I hope that you enjoy this issue and look out for the next one at the end of October, when we can hopefully give you positive feedback on the Scottish Legal Awards.

Patrick Scott
Editor

Global Mediation Clinics Conference 2025 Online

Monday 20th October 2025, 11am UK Time (2 hours)

The International Mediation Clinic Network invites conference proposals from educators, students and practitioners to explore ***'Global Mediation Clinics'***.

Selected papers will be considered for publication within our *Mediation Matters!* Newsletter.

The closing date for proposals is Wednesday 1st October 2025

This conference is free to attend but please sign up

More information is available on our webpage:

<https://www.strath.ac.uk/humanities/lawschool/mediationclinic/internationalmediationclinicnetwork/>

From the Director.....



Charlie Irvine

In April I travelled to Chicago to attend the ABA (American Bar Association) Dispute Resolution Section Spring Conference. This annual gathering of mediators, arbitrators and academics brings together some of our field's most innovative thinkers, including several authors whose work I regularly inflict on students here at Strathclyde. There I encountered not one but two world-changing revolutions, each playing out in ways none of us could either predict or control.

I can't say much about the political revolution. It dominates the news cycle here in the UK and I've no doubt each of us nurses our own opinion on what's unfolding. However, it would be unfair of me not to mention all the serious and concerned people I spoke to. Though less cowed than I had expected, they couldn't conceal their shock at where their country finds itself. Even sceptical legal academics expect some basic principles to endure – the right to a fair trial, courts applying legal not political principles, governments being held to account. Some attendees have already come under direct attack for their research or the work of their clinics. It's an anxious time and I think often of these colleagues.

The other revolution, however, is bigger, and ultimately more consequential and less

predictable. It's AI. The conference was peppered with workshops and seminars attempting to make sense of artificial intelligence and/or make money out of it. Speakers explained how much it was helping them, how the rest of us will be left behind, and even how to reduce the risk of confidentiality breaches. Some see it as the devil's work, others as our salvation.

Whatever your opinion, AI is developing at lightning speed. One prominent mediation academic, Professor John Lande, explained to me how he used ChatGPT to create a dedicated coach for dispute resolution professionals. Now 'retired', John took time to get to know AI, likening it to a child who needs to be trained and corrected. He then fed it the whole of his impressive body of writing, working with it over several weeks (and now several months) to create [RPS Negotiation and Mediation Coach](#). RPS stands for [Real Practice Systems](#), the idea that most experienced mediators' 'real practice' is quite different from the models we learn and teach.

John recently held an online event to demonstrate RPS Coach and its capabilities. Immediately striking was that, when asked about AI use, well over 90% of the lawyers and mediators on the call said they use it daily or weekly. This audience clearly didn't need to be convinced about the significance of this technology.

Even more striking was a live demo of RPS coach. I can't recall the details, except that it seemed pretty insightful in helping mediators prepare for real cases, so I decided to run my own test as I write this. Here's the result.

First, I put in the anonymised details of a typical Simple Procedure case:

I will shortly be mediating a small claim referred by the court. The claimant has installed double glazing for the respondent and has raised an action for payment of his invoice. The respondent agreed to a cost of £3,500 for the work. However, the respondent is now refusing to pay, saying that the claimant's employees were messy and rude, and finished the job late. Worse than that, the respondent informed the claimant that two of the three windows are poorly fitted and allow a draught into the house. The claimant sent his employees to remedy the issue on two occasions, but the respondent says the windows are still draughty; the respondent is now refusing to allow the employees back into her house and refusing to pay for the work, saying she will have to have the windows replaced by another company. In preparing for this case, what should the mediators consider?

Here's the response from RPS coach:

*Thanks very much for describing the case. Here's a tailored guide to help you prepare, grounded in the **Real Practice Systems (RPS) theory** and drawn from the **Mediator Checklists**, with attention to **litigation interest and risk assessment (LIRA)** and **court-connected ADR context**.*

Key Considerations for the Mediator

1. Pre-Mediation Tasks (Preparation and Intake)

From the Mediator Checklist:

- **Clarify Process and Role Expectations**
 - Ensure parties understand what mediation can and cannot achieve.
 - Emphasize confidentiality and voluntary nature (as far as court referral allows).

- **Check for Conflicts or Barriers to Participation**
 - Assess if either party has difficulty participating due to emotional distress, communication challenges, or trust issues (especially the respondent).
- **Gather Basic Case Information**
 - Confirm amount in dispute (£3,500).
 - Understand the factual sequence and evidence related to:
 - The original agreement.
 - Quality concerns.
 - Repair attempts.
 - Communication breakdown.
- **Ask About Intangible Interests**
 - Claimant: professional reputation, fairness, frustration over non-payment.
 - Respondent: trust, comfort and safety in her home, fear of further damage.

2. At the Mediation Table (or in Private Meetings)

Based on Tasks During Mediation Sessions:

- **Build Trust and Manage Emotions**
 - Expect frustration, possibly anger or mistrust.
 - Validate emotions without taking sides.
- **Help Parties Identify and Express Interests**
 - Move beyond legal positions (e.g., "I shouldn't pay") to interests (e.g., "I need to feel safe in my home" or "I need to be paid for work completed").
- **Reality Testing and Decision-Making Support**
 - Support good decision-making by:

- Clarifying the costs and benefits of court continuation.
- Discussing whether future repair by the claimant is feasible (given trust concerns).
- Exploring replacement costs and legal uncertainty.
- **LIRA¹ Elements** to gently explore:
 - **Claimant's risks:** unpaid invoice, legal fees, damage to reputation, possible loss in court.
 - **Respondent's risks:** cost of new installation, litigation stress, uncertain court outcome, possible judgment for full payment.
- **Help Explore Options**
 - Partial payment?
 - Third-party inspection or independent repair?
 - Agreement on reduced price in exchange for waiver of future claims?
 - Joint statement for clarity if reputation is a concern?

3. After the Session

If agreement is reached:

- Support clear, specific written terms.

If not:

- Offer a reflection process or outline next steps.
- Encourage parties to use insights from mediation in future decision-making.

✂ Practical Tip

You might prepare a **neutral problem-summary** to open the session, like:

"This seems to be a dispute about payment for double glazing work, where one side feels the job wasn't done to standard, and the other believes they tried to correct the issues but haven't been paid. We're here to talk about what each person needs now and whether a resolution is possible."

*Would you like a brief **mediation script** for the opening or private sessions? Or a **worksheet** to help parties assess options using LIRA principles?*

This all seems reasonable and not unhelpful. However, we all know that these cases often end without resolution, and I wanted to push the coach on the sort of impasse we can face in the Mediation Clinic. First, I asked for suggestions if the parties are highly entrenched. I won't include them in these thoughts because, again, I found them sensible but not dramatically novel.

I wondered if the coach had missed something, so I asked a supplementary question. The answer reveals the benefits of pushing (i.e. training) AI systems if they don't initially do what we want.

I said: You haven't included one useful strategy - inviting offers, even if they are quite far apart. Sometimes that gets the ball rolling and has the benefit of framing the conversation in terms of the search for a mutually acceptable settlement figure.

Here's the reply:

*Excellent point—and you're absolutely right. **Inviting offers**, even when the parties are far*

¹ Litigation interest and risk assessment

apart, is one of the most effective and underutilized techniques in stuck moments. Let's expand on that and place it within the Real Practice Systems (RPS) framework.

Inviting Offers to Break Deadlock

Strategic Purpose: Shift from blame or entitlement to possibility, choice, and negotiation movement.

This aligns with RPS goals of promoting:

- Good decision-making,
- Conscious strategy development, and
- Respectful process design.

How to Use This Strategy

Here are structured ways to introduce it, especially when parties are entrenched:

Framing the Ask:

"Even if it's not your ideal number, would you be willing to say what you'd accept just to move the conversation forward?"

"What would it take—not necessarily what you think is fair, but what you'd be willing to live with?"

This emphasizes **agency** and **choice**, not surrender.

Reciprocal Framing:

"Would you each be willing to put a number on the table—not as a commitment, but to explore whether there's a gap that's bridgeable?"

This frames the action as a mutual exploration rather than a concession.

Use a Confidential Process if Needed:

If emotions or power dynamics are high, invite each to tell you confidentially what they'd consider—then explore whether a zone of possible agreement exists.

Why This Works

1. **Shifts the focus from past behaviour to future possibilities.**
2. **Normalizes movement:** "Of course you're far apart at first. That's typical."
3. **Creates anchoring dynamics:** Once numbers are on the table, people start responding to numbers, not insults.
4. **Supports informed risk assessment (LIRA):**
 - Each party begins to translate principles or feelings into costs and benefits.

Tip: Let Parties Own Their Numbers

Don't suggest or guess for them. Letting them originate the figure enhances:

- Buy-in,
- Self-determination (good decision-making), and
- Face-saving.

If They Refuse to Make Offers

- Ask **why**. Often the reason opens a path forward.
- Explore **non-monetary** elements that might shift movement (e.g., apology, future repair agreement, clarification of warranty).

Would you like a short **script** for how to invite offers in a respectful, face-saving way? Or perhaps a **role-play scenario** for practicing this strategy with students or colleagues?

I'm sure you get the picture. I've included a lot of detail to show the sort of dialogue we need if we're going to make the most of these tools. The results are not earth-shattering; this is not surprising when you consider they're based on what people have already written. They are, however, systematic, structured and thorough; they can be improved; and sometimes they reveal things we may overlook or have forgotten. They're not so different from the checklists used by some professions such as surgeons and airline pilots.

They're also at a very primitive stage in their evolution. John Lande is a bit of a pioneer, and pioneers love to surge ahead, not worrying if they sometimes get things wrong. Often others come along later and reap the rewards, building on and consolidating the early work. This revolution is going to affect us all, and I hope this wee sample has piqued your imagination.

Charlie Irvine

Director, Mediation Clinic

Dr Charlie Irvine is the Course Leader on the University of Strathclyde's MSc/LLM in Mediation and Conflict Resolution, and Director of Strathclyde Mediation Clinic. He is an experienced mediator specialising in organisational and workplace disputes. Charlie's academic work focuses on mediation in the justice system, and he was awarded his Doctorate for his PhD research into mediation participants and their reasons for settling.

The University of Strathclyde's Fifth Mediation Clinic Conference

Growing mediation, your practice and beyond

Presentations from the Keynote Speaker and workshops

On the 28th of March, the Mediation Clinic held its fifth Conference, which was online.

We were delighted to welcome Michael Jacobs as our Keynote Speaker. Michael's talk was entitled **The Mediation Dilemma: Resolution or Peace?** and Michael shared some interesting thoughts on what we, as mediators, should be trying to achieve. He asked questions about how we approach the work we do as mediators and revisited the notion of purpose, asking whether we have any magical powers to make conflict 'disappear'.

The conference also included six thought-provoking workshops which were presented/facilitated by Professor Jane Bryan, Ewan Malcolm, Rhona Wilson, Dr Roy Poyntz and Gordon McKinlay, Patrick Scott, and Ron Inwood and Marie Young. Unfortunately, copies of the presentations by Professor Jayne Bryan and Rhona Wilson are not available.

However, the Keynote address and four of the workshops are presented on the following pages:

The Mediation Dilemma: Resolution or Peace?

by Michael Jacobs 10

Building your practice by helping to develop our field

by Ewan Malcolm 16

Different Song, Familiar Tune – Learning and Adapting in Mediation

by Dr Roy Poyntz and Gordon McKinlay 20

How Strathclyde Mediation Clinic helped me build my practice

by Patrick Scott 24

Workplace Mediation in ACAS

by Ron Inwood and Marie Young 27

The Mediation Dilemma: Resolution or peace?

by Michael Jacobs



Michael Jacobs

Success is a powerful lure. And mediators are not immune to its tug. We are keen to be useful. We want to provide a service that meets the needs of our clients. To help make their problem go away.

This is an admirable ambition and also one that may be fundamentally flawed. Whilst it might sound like verbal nitpicking, I think there is a real risk in seeing a dispute as a 'problem'. As something that can be solved and sorted and then stored away.

In this talk, I'm going to ask questions about how we approach the work we do as mediators. To revisit the notion of purpose and to ask whether we have any magical powers to make conflict 'disappear'. I will propose that rather than eradicating conflict, our job is to help people find their equilibrium in a conflictual world. To not lose their balance when conflict comes calling.

Conflict isn't a problem, it's a reality. And one that is never going to disappear. Conflict is a function of difference. So, unless the NHS offers everyone a free frontal lobotomy, so that individuality is obliterated, conflict will be an inherent part of our world from now until forever.

On this basis, I think the notion that mediators 'resolve conflict' is a risky proposition, largely because it is rooted in fantasy. It's a bit like saying that one could adjust gravity or alter the speed of light. In an uncertain world, there are indeed some constants - and I would argue that conflict is one of these.

What exactly do we mean when we say that we 'resolve conflict'? I suspect we mean that we can help smooth out a fractious disagreement, so that the parties aren't continually tripping over it. Classically, we do this by asking them to focus on their needs rather than positions. We offer a process other than spending the next few decades trying to convince each other that I am right and you are batshit crazy.

In these circumstances, has the conflict been resolved or only temporarily neutered? Given the opportunity is it likely to wake up and once again threaten to bite us on the ass?

Let me give you an example. I mostly work as a family mediator, helping people in the throes of relational breakdown find a way to move forward with their lives. This involves making arrangements for their children, as well as sorting out financial matters.

A recent case involved both these issues - arrangements around their son, as well as deciding what should happen with the family home. On both sets of issues, the clients were able to make proposals that the other, while not necessarily being wildly enthusiastic, was willing to accept with varying degrees of acquiescence.

And then things came completely unstuck. It was around the topic of future partners. On

the surface, there was a pretty straightforward proposal, namely, to wait a minimum of six months before any new partners would be introduced to their young son. It seemed a fairly innocuous proposal, except that it wasn't.

For the next three-quarters of an hour, there was a knock down, dragged out slanging match. Exactly when did the clock start ticking towards the six months? When and how would the other party be informed about the imminent arrival of the new partner? And did you not realise the statistical evidence of the safeguarding risks that new partners brought with them?

The conversation, if you can apply that relatively civilised word to the exchange that was happening on screen, was disjointed, dispiriting and played out on an endlessly recursive loop.

Fundamentally, it was a case of a wolf in sheep's clothing. It appeared that 'future partners' was an issue open for discussion when, in reality, it was an emotional sinkhole of hurt, pain and recrimination.

No agreement about the timings or process whereby new partners would be introduced was going to quell this conflict. There was too much history, too much betrayal, too much distrust for any proposal to sanitise the situation. This was not a conflict that could be sorted out by agreement.

Instead, this was conflict as a fire-breathing dragon, one that wasn't going to be tamed by any words on a page. The threat that it posed could not be negotiated out of existence. The conflict was an expression of who the parties knew themselves to be. Resolution would have required one or both of them to metamorphose into someone else.

And, as a mediator, there was no point in me trying to banish the beast. This simply wasn't possible. It would also have been enormously disrespectful, somehow insinuating that they shouldn't think, feel or be who they were.

Instead of trying to slay the dragon, I believe my job is to help parties acknowledge its existence. And then, to learn to recognise the signs of when it starts to stir. This couple needed to figure out how to engage with this incendiary topic without it reducing their lives to cinder and ashes.

From my perspective, this isn't something that is going to be resolved. At best, it will become something that each is acutely aware of and learns how to approach with a greater degree of sensitivity and care. The alternative is for it to burn a gaping hole through every aspect of their future relationship.

I sometimes describe being in conflict as a form of 'possession'. That we are consumed by the conflict. In these times, the conflict expands to swallow huge portions of one's life. Which is precisely what happened to me.

In the last year, we've been involved in a dispute with our neighbours. In my experience, neighbour disputes involve a handful of contentious issues: light, noise, loud sex, dog mess, leylandii and parking. I've had to add a new item to the list, that of shared septic tanks. The exact details of the dispute aren't important, the impact of the conflict, however, is shamefully enlightening.

For weeks, I would wake up in the morning with accusatory emails running through my head. I spent hours of my life hatching viciously worded rebuttals to all the spurious claims they made about the septic tank. I cheered every time it rained, hoping that the tank would overflow and sewage would back up into their system.

Eventually I engaged three different companies to come out and give me a quote for a new septic tank - which I duly sent on to our neighbours, fully aware that they had no intention of participating in any purchase. The point wasn't to reach agreement, but to annoy the hell out of them.

We sought legal advice, paying more than £500 to be told there was very little that we could do, short of taking them to court, which offered a very uncertain outcome.

It was a kind of waking nightmare. But a nightmare that felt entirely justified and purposeful. My life was taken up with evil thoughts and machinations. Working from home meant that I could look out my office window and see both the septic tank and the neighbour's house, thus providing a constant unholy and unhealthy distraction. I was well and truly possessed.

Sadly, there is something deeply satisfying about this kind of obsession. It provides an infinite amount of material to dwell on, to chew over, to be consumed by. My life was transformed into conflict, at once infinitely large, filled with imagined slights and recriminations and also pitifully shrunken and diminished.

It was months before I managed to wrench myself free of the gravitational pull of the conflict. Before I could once again see my neighbours as flesh and blood human beings, rather than devils in disguise.

And that is the thing about conflict - it's bloody hard to ignore. It seeps inside of us, inhabiting our lives and our very souls. And once inside, to call it a 'problem' is far too bland, it is much more accurately diagnosed as a 'condition'. As far as I can tell, the only antidote is to accept the reality of difference. To live with the

conflict, rather than disappear beneath the conflict.

Which brings us to peace.

I think it's a mistake to speak of peace as the absence of conflict. Largely because we know full well that's never going to happen. Rather than the absence of discord, we need to see peace as the ability to step into conflict without getting infected. To disagree passionately without losing one's soul in the process. Nor denying the soul of the other. Conflict challenges our right to call ourselves human.

In this sense, mediation is fundamentally a re-humanising process. Parties start out as positional crustaceans, all hard shell and very little vulnerability or openness. The mediator's job is to create enough safety so that parties can remove the armour plating and engage as humane individuals who need something from each other.

The capacity to regain our humanity surely should not be limited to the context of mediation. We live in a world crying out for this kind of knowing. And if that's true, then it seems to me the aim of every mediator should be to make themselves redundant. Parties should leave mediation with a sense of how to do peace for themselves.

I'm not saying that we don't do good work. Only that our work is premised on the deficiencies of those we serve. Mostly they arrive at our door because they haven't the ability to escape the conflictual world in which they are trapped. They want us to provide the key.

It is self-evident that peace can't be imposed. You can take away guns, but you can't mandate the end of hatred and distrust. Only those involved in the conflict can do the

necessary inner and outer work. Mediators cannot be the proxy for peace.

And in our heart of hearts, we know this to be true. It's an oft quoted truism to say that mediators are far and away the least important person in the room. That if the mediator is working harder than the clients, then something is seriously out of balance.

The implication I want to draw from these aphorisms is that if mediation 'solves the problem' but leaves the parties unequipped for future conflict, then we have in some sense abandoned peace. It seems blatantly obvious that parties should leave mediation with a greater capacity to 'digest conflict' than when they arrived. Largely because it will inevitably reappear on the menu in the future. Mediation should help them to make better choices when it does.

I know this sounds idealistic and ridiculously grandiose. But as well as being a mediator, I'm also a trainer - and I regularly help educate people interested in more peaceful engagement.

I do agree that the road to peace is easier to describe than it is to walk. Which is why mediation is an ideal context for learning, since parties are usually desperate to find a way out. Nor do I think that the principles and skills of peace are foreign to any of us, as they underpin our practice as mediators. We don't need to acquire new learning, only shift the belief that we should keep this knowledge to ourselves.

So, in the final part of my talk, I want to make explicit the potential 'lessons' we might offer the people we work with, as a practice towards peace.

Ideally, the place to begin would be by gathering some information about their

current abilities. One of the first questions I think all mediators should be asking parties is "Why are you here?" I don't mean this in the sense of "Tell me what's going on?", but "Why is it you can't sort this out yourselves?" Embarrassingly, I don't think I've ever asked this question with the latter intention. And it's worth reflecting why I've been hesitant to do so.

Partly because I want to hear their story - the what's going on version - so that I can build a relationship with them by empathising and summarising - and they will see me as a wonderfully understanding and compassionate person. Of course, this is all for my benefit, as it generates the rapport and trust that make it possible for me to do my job.

My assumption is that if I ask them why they can't sort this out, I'll simply get a long diatribe about how uncooperative and difficult the other party is. And maybe that's no bad thing. It would at least offer me an opportunity to point out that it's almost impossible to change other people. That the only tool for change we really have access to, is ourselves. And if we want to promote different behaviour in others, then the place to start is by trying something different ourselves.

For me, these differences start with taking on-board some key principles. Not too surprisingly, I think they are also integral to the work we do. Which means we already have an intimate connection and familiarity - so what we are sharing is experience and not theory.

For me, I've identified three key principles that directly impact on the capacity to step into difference, to move towards peace. I think they also provide us with the necessary framework, without which I think no mediator could orient themselves. At least I couldn't.

The first principle can sound contentious, as it's the belief that there are no unreasonable people. That it is impossible for any human being to act unreasonably at any point in time. This can be an idea that's very hard for some people to accept.

This belief is premised on the fact that everyone carries a 'map' inside his or her head – that there are no 'mapless' people wandering about. Our maps provide the guidance upon which we make our choices and decisions. This isn't to say that every map is the same, since clearly there is an enormous range of maps out there.

Accepting this principle propels one towards curiosity, rather than judgement. When people behave in ways that make no sense to you - that don't correspond to your map - then the obvious question to ask them is "What the hell map are you using, because it's bloody different than mine?"

People who describe others as 'unreasonable' actually mean that they haven't the time, energy, empathy or interest to try to understand the other's map. By labelling them unreasonable, understanding becomes unnecessary and irrelevant.

Judgement is always the easier option. It is also a dead-end in both mediation and peace. Mediation and peace-building are premised on the notion that differences aren't to be abandoned; rather they need to be explored and understood.

Which leads seamlessly to the second principle, which was referenced by Stephen Covey, in his book *The Seven Habits of Highly Effective People*. Actually, he stole it from the Quakers, but I'm willing to forgive him.

The principle, so much easier to articulate than to apply, is 'always seek to understand before

being understood'. For me, this notion functions as a conversational compass, orienting participants as to the most useful place to begin.

Mediators intuitively know this to be so. Over and over again, we see parties only shifting their positions when they feel heard and taken seriously. Feeling understood is the precursor to negotiating in good faith.

The alternative to conveying understanding is the attempt to convince. To try to shift the other through argument and persuasion. To talk at, rather than listen to. Only in the thirty or so years I've been mediating, I can't remember this ever working. I now explicitly tell parties that seeking to understand is a much more effective strategy than trying to convince.

The third principle focuses on intention, rather than behaviour. Managing a conversation always begins by managing oneself. Before opening your mouth, check that your intention for the conversation is positive and forward looking. If you can't fulfil this requirement, what emerges is likely to be closer to a rant, rather than a dialogue.

Start by crafting an imagination of how things might be different. If this seems beyond you, then try imagining the consequences of things staying exactly as they are - and then look again. From my perspective, the capacity to imagine difference is essential to both mediation and peace. Without imagination, the future is merely an extension of the past.

Seeking to embody these principles naturally leads to finding ways to express them - and to the core skills for both effective mediation and the possibility of peace.

As a mediation trainer, I have a little mantra, which is if you aren't doing empathy or

curiosity, you probably aren't mediating. Chances are that you will be doing some form of problem-solving instead - on the basis of which you will be trying to solve, sort or fix.

My hope is that I don't have to say much about these skills to an audience of mediators. That you already know why empathy and curiosity matter. What I want to stress is that unlike problem-solving, which depends on knowledge and expertise, empathy and curiosity are based on ignorance and interest. Their purpose is to extend an invitation to 'show up'.

I know that 'showing up' is not a very technical term. We also all know that nothing useful can happen if the parties aren't able to get themselves 'in the room'. Empathy and curiosity are 'invitational skills' in that they encourage people to bring themselves more fully into the process and into the conversation. Their aim isn't to eliminate conflict, but to name it and explore it.

I'm not so naive or idealistic to believe that describing the principles and skills is the same as being able to put them into practice. Having said that, the point I want to make is that they are neither esoteric nor incomprehensible. And as a mediation trainer, I know they are teachable.

And so, we come back to the question I raised earlier, do we believe that the principles and skills should be the sole property of the practitioner? If we see our work as clearing up problems, then there probably isn't the need to propagate these abilities. On the other hand, if our aim is peace, then the only viable option is to disseminate as widely as possible.

I wish I could say that I have a clear and practical way of doing this. Only I don't. What I have is a desire to put peace on our agenda.

I know that doing so would require a significant investment of time and energy. We would need to offer coaching to the parties, with the aim of exploring the principles and offering opportunities for skill practice.

Selling this additional effort to parties only makes sense if we believe that the conflict can't be 'resolved,' only managed more constructively. Conflict as a given. What they are acquiring is a kind of vaccine against future infection.

In the dilemma between resolution and peace, for me the deciding factor is the inevitability of conflict. To see it as a problem to be solved is to misrepresent reality. Rather than treating it as a **problem**, I think we are entitled to treat it as something deeply **problematic** - as something that we struggle with, need to engage with more consciously, to learn to approach more peacefully.

As mediators, we are in a privileged position. We spend our working lives in the realm of conflict. To mediate effectively requires that we develop the capacity not to be swallowed up by conflict. That we might offer this learning to those we work with seems to me to be a no-brainer. At least if we are actually interested in peace.

Michael Jacobs has been involved with mediation for the past 30 years. He originally qualified as a family mediator but has had the opportunity to mediate across a wide variety of contexts, including conflicts between doctors and patients, parents and teachers, disputes in the workplace and in the community.

Michael has been a mediation trainer for about 20 years. He currently trains both family and workplace practitioners for two national organisations and says that there is

something deeply satisfying about helping people engage with a mediation mindset.

Back in 2006, Michael won the John Haynes award for his article on Mediating Hearts &

Minds. Michael lives in the wilds of Herefordshire and is currently trying to improve his two-handed backhand.

Building your practice by helping to develop our field by Ewan Malcolm



Ewan Malcolm

This workshop will cover a little bit of my journey towards what I've called the artisan, possibly professional, role as a mediator. There are some principles of developing expertise that I think are useful to have in mind and, as I've gone along, I've been generously gifted some tips and hints on building your own mediation practice, which I'm more than willing to share with you. I think that it would be helpful to reflect on the benefits that can be gained from contributing to the development of our field as you build your practice.

I've seen the practice of mediation as a craft, something that you need to work at, that you need to develop and that you need to move towards mastery in. Why I use the word artisan in the blurb for this is that an artisan, according to the dictionary, is a worker who practices a trade or handicraft, and a skilled person who produces something in limited quantities, often using traditional methods. For me, mediation even though in my lifetime it has been seen as a new profession, is an ancient art. It's been the practice of consensus building going back thousands of years, possibly as long as human history, where someone independent assists others to resolve

their conflicts and disputes, while remaining outside the dispute and not taking a necessarily judgemental role in that. So, I think it's really important to stick at your craft and I've been very fortunate that I began in Scotland. I lived in Scotland, in fact in Edinburgh for 50 years, and started training there. I then moved down to London where I'm sitting just now and have lived for the last 15 years, but as an interlude I lived in New York City for three years. In all three places, in those different jurisdictions, I've been able to ply my trade as a mediator and, as I said at the start, I've been tremendously fortunate to be gifted wisdom and support by mentors in all three places.

I acquired certain credentials along the way. I first trained as a commercial mediator in 1995, closely followed by an accreditation and training in Scotland as a family mediator. I then volunteered as a community and neighbour mediator in 1999. I went on to do disability rights and special education needs, followed by a Master's in conflict resolution in England in 2009. I then went to the United States of America 15 years ago and qualified in the system in New York. I've been involved in the accreditation of family mediation in England and Wales.

The definition of a profession, I think, is important. When you consider yourself to be a member of a profession, there's this element of identity. Secondly, that you have undertaken a standard of education and training that prepares you for that membership. I think that we are at an early stage in the development of our field because there isn't essentially a standard of education.

We haven't yet got a formal established route to a professional qualification. However, there are advantages to that. I'm not saying that's a bad thing. I'm just saying that is a thing, and that there is a body of knowledge, skills and approaches, such as empathy, holding space, empowerment and modelling. I think that those kinds of skills need to be honed and worked on. There's also a code of conduct, so what do we actually mean by impartiality or being unbiased, and where are the boundaries around being separate for instance?

Sometimes in trying a kind of ethical approach, people talk about human connection and where they were themselves in the discussion. I think that clarity on that is part of professionalism. This results in the agreement of standards across the field, which is still developing. I think those are important conversations to be had. And then, finally, many of the traditional professions have an aspect of providing the public good or contributing to the common cause. It's important to be a peacemaker as much as a mediator for some folk.

I did an assessment for a conference for Scottish Mediation a while back, and I surveyed the different means of assessing competence that I have gone through in the three different jurisdictions that I've worked in. From the standard foundation in some jurisdictions – the 40-hour training course which apocryphally started with a course back in the 1970s which was booked for six days at a hotel. But the Saturday was double booked for a wedding, so they had to cram the whole course into 40 hours over five days. Whether that story is true or not, I don't know but it does feel as if the 40 hours that's often taught, particularly in North America, is somewhat artificial. Is that enough or not? When I first started talking to European colleagues about

sufficiency of training, those in Germany and France looked somewhat askance at 40 hours when they expected an absolute minimum of three years academic study before anybody could even start seeing clients in a mediation.

The point is that there are lots of different ways of assessing competence. The three bits that seem to be common to me are reading, continuing professional development and structured reflection; sharing the body of knowledge that has been developed and reading in a purposeful and reflective way, which is what academic study is great at. When you have to write an essay about what you've read, you have to engage with the idea and think about it. So, it's not just reading for the purpose of being informed. Secondly, that you have to do some element of continuing professional development, some ongoing training which would focus on both your knowledge and your skills and that, lastly, and I think this is really important, that it involves some sort of structured reflection with another person. The counselling or therapy world calls it supervision. It's something that requires you to think carefully about your casework and your behaviour in that case work, so that you can build on those reflections. Steve Jobs said it well when he said the only way to do great work is to love what you do. Sometimes people who do these sorts of talks like I'm doing just now or facilitate workshops like I'm trying to do, call themselves mediation anoraks. They're a bit geeky about mediation and I think that's another way of saying I absolutely love what I'm doing. It's really important, but I think that does motivate you to do some really important things to develop your expertise and of course you need to do that in a deliberate and practiced way with clear goals.

Back in 2002 I was thinking about transitioning from the law into mediation and I came across this book called *Mediation Career Guide* by Forrest S Mostin, known as Woody, who I'm delighted to say, I met when I was at Scottish Mediation. Woody has become a mentor and a friend. His book, which he wrote back in 1999, has been a guide to my involvement in mediation through mindful and strategic engagement. So, some sort of action plan for development is fundamental and it may be that I'm preaching to the choir here, that you all have wonderfully thought through approaches to your mediation career; but if you haven't, then write it down and then write it down again.

I did an action plan back in 2002 and it was a three-year plan that I would move into mediation full-time from my legal practice, and that I would do a whole lot of things including engaging in the development of our field. I then did not do what you should do with these plans – put it on my wall and check it every week and every month, and make sure that I had measurable outcomes. I did, however, find it at the bottom of my filing basket as I was clearing my office two years and nine months later in order to move into full-time mediation, and in particular, to work full-time for Scottish Mediation. So, my slightly shambolic story is that writing it down makes a difference. I am absolutely convinced that because I had that action plan, it sat in my brain and I acted on it, and it guided those three years. And, for what it's worth, every three years since then I've been doing something similar, and it has been extremely valuable to me. I pass that on as a tip for others. So, deliberate goal setting is the first bit.

The second bit is to be absolutely open to feedback, and feedback in any setting. Sometimes it can be hard to hear real truths

but it's important to surround yourself with people who will not only build you up but also tell you the truth. I think that's extremely important. In fact, one of the great ideas that Woody has for development of careers is that you set up your own what he calls a board of directors. They are a kind of advisory board – people who are both close to you and supportive, but also might be further away and you admire. Particularly with the ability to connect across the world and bring people together on Zoom, it's such a useful thing to have a small advisory group that you might just convene once a year even to check that plan and to give you a different perspective on the way that you're going to go forward in your development of your career.

And then at the core of any development needs to be an analysis of what you need to learn and while most professions are now moving to what I would call an output-based professional development standard, rather than an input-based one, the difference is that with input you have to do so many hours to get your CPD and you can do it in many different ways. Essentially if you turn up and warm the seat for a certain number of hours, that's okay. It's fine but it's only as good as the quality of the sessions you attend and your attention during those sessions. An output-based learning approach is much more purposeful. It's much clearer about what you need in order to develop your skills. Those who have chosen, for instance, to do a Master's degree, will be very clear that they want to get a deeper understanding of the underlying theoretical principles of this field. But it might be that you've also got needs to look at specific areas of skill or development for use in an area, and it's good to plan for that.

Of course, being a continuous learner is part of this and learning from others is absolutely key. The resources that we have on the internet are amazing. Alone we can do a little but together we can do a lot and that's why I think it is really important to participate and get involved, not just in volunteering for things like the Mediation Clinic, and I am a huge proponent of the work that the Clinic has done, but also in the equally hard work of developing the infrastructure that will support quality in our fields. So, there are plenty of spaces in the different emerging associations and support groups for mediators that could do well from your perspective because you will contribute to that. And as you contribute, undoubtedly you will learn more. And what I would also propose is when you do learn something, share it with someone else. One of my favourite sayings is 'teach once learn twice' and I've found that that has been a great consolidator for how I have developed my skills and moved through the phases of apprentice into novice into mastery and then back to apprentice again. Here is the slightly controversial and difficult one, but if you can live mediatively - embrace the notions that we offer to others. Of course, we are all human but if we apply consensus building even just to the development of our own field, then I think it will be a better field for it because we will be living our values. We will be congruent with the things that we are selling to others.

And lastly, a self-reflective journal is probably the biggest thing I've ever done in my mediation career. When I was working in New York, I ran the in-court mediation service in the civil courts in Manhattan and in Brooklyn. One year I did a hundred mediations in the court and every one of them I journaled in my private notebook as I was going home on the

subway, and I learned so much from that and I continue that practice.

I am going to say a little bit more about the notion of operating mediatively in our field. I've mentioned my Master's dissertation which is out there on the internet. I basically studied how a group of mediators managed a big difference between them about an important issue in their field. It was actually the Civil Mediation Council that had a big issue about how they were going to develop an element of professionalism, and my conclusion was that mediators are just human and they bring all the kind of elements of personal interest and competitive bargaining and all that challenging stuff into the arguments that they have with each other. And, of course, there's an element of shame that comes into that. Can you imagine a big fight between mediators? I think we should give ourselves firstly a break, but then secondly a pause because those people who got into that fight and used various different approaches, often quite adversarial approaches, were simply defaulting and retreating into the sort of defensive mode that we know from brain science is quite normal. If they could have paused and used some of the approaches those same mediators would encourage participants to use, they would probably have been able to come up with better outcomes. Sometimes we can't mediate our own stuff. In those contentious settings it would be useful to ask: 'can we bring someone else who's impartial in to help us have a more productive discussion?'

When I took this dissertation learning off to New York State and encountered those same sorts of disputes and professional dialogues, I was sufficiently distant and not engaged in that setting that they allowed me to do a little bit of mediation work. So, some cross-jurisdictional work is helpful and allowed

people to build consensus amongst bigger groups who were really committed to developing the professional standards that are important, but actually held quite distinctly different views and perhaps even some theoretical and philosophical differences.

In concluding, I hope that this has offered some food for thought and perhaps sparked some ideas for you to see the way.

Ewan Malcolm has been Chief Executive of Relate in [London North West, Hertfordshire, Mid Thames & Buckinghamshire](#) since 2013. His organisation changed its name to [The Relationships Service](#) on 1st June 2025.

From 1989 to 2002 he was a partner in a Scottish law firm. In 2002 he established Scottish Mediation in Edinburgh and was its director until 2009 when he moved to London. He graduated from the University of London Master's programme in

Conflict Resolution and Mediation, with distinction, in 2011.

From 2010 to 2013 he lived in New York City where he ran the Manhattan Civil Court mediation service for the NY Peace Institute.

Ewan first trained as a commercial mediator in 1995, then as a family mediator the following year with CALM and as a community mediator in 1999 with SACRO. He has also worked as an SEN/ASL mediator north and south of the border. Ewan has served as Chair of the College of Mediators and was on the Board of the Family Mediation Council.

Ewan's achievements as a practitioner were recognised when he was named Mediator of the Year at the Law Awards of Scotland 2008 and he received the 2018 National Mediation Unsung Hero Award.

Different song, familiar tune – Learning and adapting in mediation

by Roy Poyntz and Gordon McKinlay



Roy Poyntz



Gordon McKinlay

There is a familiarity yet strangeness in practising mediation in different situations and contexts. As such, the process may best be understood both in the context of the field of practice and the personal style of the mediator. At the recent Mediation Clinic Conference we, as two education mediators, sought to reflect on the ways in which our approach in our 'home' field informs practice when undertaking simple procedure mediation for the Strathclyde Mediation Clinic.

Many children require additional support so they can access and make the most of education as they grow up. For the vast majority this will be in school with specific resources allocated to ensure equity and inclusion. Sometimes, however, things can go wrong, and a dispute ensues between the family, school and potentially the local education authority. In this case there is the possibility of recourse to legal means of resolution. Legislation across the UK also recognises that informal ways of engaging with the conflict may be more appropriate in preserving and repairing the relationship to

ensure the needs of the child remain at the centre of discussions. As such, parents and carers have a right of access to mediation at no cost to themselves, the service should be independent of the school and local governing body, and there should be no sanction for not engaging.

When considering this field of mediation practice our starting point led us to ask ourselves questions about how we might organise and describe the context.¹ Given the range of parties involved we thought it may be helpful to view this through the construct of a conversational triad.² In this framework, a discussion involving three or more individuals takes place reflecting differing perspectives, roles and responsibilities around supporting the needs of the child. Those involved will include the child's parents or carers, school staff, local authority managers (who will often hold the purse strings) alongside the mediator. It's also not uncommon for others to take part as well, such as educational psychologists, health professionals and child advocates. This format allows for diverse perspectives and can be beneficial for sharing experiences, gathering feedback and facilitating the often complex conversations with the involvement of the impartial mediators. In seeking to resolve a dispute this broad approach can help to de-escalate the conflict, facilitate constructive dialogue between parties and help to rebuild trust.

¹ Raiffa, H. (1982) *The Art and Science of Negotiation: How to Resolve Conflicts and Get the Best Out of Bargaining*. Cambridge, Mass: Belknap

² Simmel, G. (1950) *The Sociology of Georg Simmel*. New York: Free Press.

Our second consideration is that of the mediator's personal theory of practice. It is recognised that mediators don't always do what they say they do.³ We are, however, aware that our practice is both situational and dispositional in nature. It can, therefore, be extremely helpful for us to take time to reflect on our individual approach to the process and how this changes as we move from one context to another. For example, educational mediation, in our view, should be relational in nature. The family and school will have to work together for many years and need to be able to find a way of communicating with each other when things go wrong the next time. The way that the mediator creates a safe space for a conversation to happen is key to helping the parties involved say what they need to say, to listen carefully to the other, and to be able to understand the different views and perspectives that are brought to the table.

Given these key aspects outlined above, how might our practice differ when the song is transposed to mediation within the Strathclyde Mediation Clinic? In considering this we have sought to highlight some of the differences and similarities in order to encourage reflection on our professional practice. For example, we may take a simplistic view that one relates to relationships and the other to problem solving.⁴ However, we don't think this is either accurate or helpful. In reality, the style flexibility of the mediator which emanates from our personal theory of practice will transcend the context in which it is applied.

During the workshop we highlighted a number of differences and similarities in process

between our 'home' field of practice and the Mediation Clinic. Whilst these may at the outset appear significant, in the context of conversational triads and our personal theory of practice, we may be able to recognise the importance of the role of the individual practitioner and less the mechanics. The following examples may be helpful as illustrations.

Firstly, pre-mediation or intake is a significant part of any mediation process. Within our educational work we typically spend a period of time with each of the parties prior to bringing them together for a joint session. This provides an opportunity to build trust with the parties, describe what will happen and to hear the story from that person's perspective. It can also often include a degree of conflict coaching to allow the individual time to sort out their own thinking and identify what is really important and what can be left to the side.

Secondly, within the Clinic we don't often see individuals returning to mediation on numerous occasions through the simple procedure process. This isn't the case in educational mediation where a longer-term relationship is often built with head teachers and council representatives. This is an area that mediators need to be mindful of when they are working with an individual for the twentieth time! It can be very easy to lose a sense of omni-partiality when you have seen the same party repeatedly over a period of time.

Another area worth highlighting is that the model of mediation practice used in the clinic usually means that mediators work together. There is significant value in this approach given

³ Charkoudian, L. Ritis, C. Buck, R and Wilson, C. (2009) 'Mediation by Any Other Name Would Smell As Sweet—Or Would It? The Struggle to Define Mediation and Its Various Approaches'. *Conflict Resolution Quarterly*. 26. Pp 293-316.

⁴ Wall, J. and Kressel, K. (2012) 'Research on Mediator Style: A Summary and Some Research Suggestions', *Negotiation and Conflict Management Research*, 5(4), pp. 403–421. doi:10.1111/j.1750-4716.2012.00117.x.

that it can be a means of developing the skills of those who are new to the practice as well as encouraging ongoing reflective practice. This is rarely the case in educational settings. As such those practitioners need to find alternative approaches such as peer supervision and practice groups in order to provide both accountability and learning opportunities.

Finally, it is worth highlighting the use of private sessions or caucuses. Within the Clinic we notice that the use of a private session is often required when it comes down to finding a mutually agreeable financial settlement. In our practice within education, we rarely use this approach. This is mainly because of the need to rebuild trust, repair broken relationships and ensure the individuals involved are able to communicate better in the future. Whereas within simple procedure, parties will often never see each other again once a settlement has been reached.

In conclusion, as mediators, the way we practice may vary to some degree from one context to another. However, in each field the principles remain the same and the richness that diversity brings can be of huge value when shared across disciplines. Learning how to sing that familiar tune requires personal reflective practice to be at the heart of our ongoing professional learning and development.

The recording of this workshop is available here:

<https://youtu.be/H6AABaQvTuQ?si=sEMKABZ3mFG-LZxC>

Gordon McKinlay is a husband, father and grandfather who started his career teaching science and computing in schools in the west of Scotland. He later worked in local government, where he undertook a number of leadership roles including significant experience as a head of service with particular responsibility for educational inclusion. He became a mediator through the University of Strathclyde MSc programme and now seeks to use mediative and negotiation skills in leadership development, coaching and conflict engagement. His mediation practice includes significant focus on additional support needs (ASN) in education as well as employment relationships, faith communities and others. He is also a member of the Strathclyde Mediation Clinic and an associate tutor with the university's Into Headship programme for aspiring head teachers.

Roy Poyntz was accredited as a civil/commercial mediator in 2006 and initially practised in this field supplementing his experience in the community mediation sector. Looking to deepen his understanding, he completed an MSc in mediation at the University of Strathclyde in 2012 before completing a PhD at the University of Sheffield in 2018 researching mediator practice as social interaction. Nowadays, his practice is largely focused on the field of Special Education Needs (SEN) mediation. He has completed 1300 mediations.

Roy is an accredited university teacher and teaches on the Negotiation course at Strathclyde. He is a member of the University of Strathclyde Mediation Clinic and regularly acts as a facilitator for Peer Support Sessions.

How Strathclyde Mediation Clinic helped me build my practice by Patrick Scott



Patrick Scott

In many countries, mediators do not require accreditation to be able to practice. However, most mediation bodies have accreditation requirements and most of the requirements comprise the following:

- Training
- Experience
- CPD
- PI insurance

Standard training consists of not less than 40 hours of tuition and role-play, usually split 50/50.

Mediation accreditation in Scotland:

The Practice Standards for admission of mediators to the Scottish Mediation Register prescribe the following:

- Adequate training, consisting of not less than 40 hours of tuition and role play.
- Sufficient experience: the mediator should have conducted two mediations in the past 12 months and have spent not less than six hours conducting mediations.
- Continuing Professional Development (CPD): the mediator should have accumulated 36 CPD points of continuing development and support within 24 months.

- The mediator should maintain a portfolio.
- The mediator should subscribe to a Code of Conduct.
- The mediator should have a system for addressing concerns.
- The mediator should have appropriate professional indemnity insurance.
- The mediator should subscribe to a verification process.

Mediation accreditation in England:

The College of Mediators, which began as a family mediation organisation and now includes all areas of practice, has the following accreditation requirements:

- A recognised foundation mediation training course.
- A minimum of fifteen hours' mediation practice per year.
- At least four hours of supervision/PPC (professional practice consultancy) per year.
- At least ten hours of CPD per year.

Accreditation in India:

- There is a professional association of mediators in India called Mediators India.
- It is not necessary to be accredited to practise as a mediator in India. However, accreditation is necessary for empanelment with court and tribunal mediation panels. With growing awareness of mediation, there will be a preference for certified accredited mediators.
- In India, court-annexed mediation centres conduct two training courses: a basic training course that is 40 hours in duration and an advanced training course that is 20

hours in duration. Accreditation of mediators takes place after completion of the basic training course, 20 hours of mediation (including co-mediation) and completion of the advanced training course.

- There is no requirement that mediators must undertake continuous professional education or development courses. In the court mediation system, the mediation centres arrange for refresher courses and mediators are encouraged to attend the same.

Mediator accreditation in New Zealand:

Maintain accreditation - CPD requirements over the three years:

- mediated at least 75 hours; or
- attended workshops, courses or e-learning relating to mediation of at least 25 hours; or
- attended workshops, courses or e-lectures relating to mediation for at least 12.5 hours and taught mediation for at least 12.5 hours.

National Mediator Accreditation System – Australia:

- A mediator must have conducted at least 25 hours of mediation, co-mediation or conciliation within the two-year cycle.
- A mediator must undertake CPD of at least 25 hours.
- A mediator must be covered by relevant professional indemnity insurance or have statutory immunity.

Accreditation in California:

- While there are no state-wide requirements for qualifications of mediators in court-connected mediation programmes (each court has its own requirements), the Supreme Court of

California provides model standards for mediator qualifications which include 40 hours of basic mediation training followed by at least two mediations of at least two hours in length that are co-mediated with or observed by a mentor mediator.

My difficulty in starting my mediation practice:

When I moved from South Africa to Scotland in 2017, I wanted to start a mediation practice. At that stage, I had practised as an advocate in South Africa for 30 years and I had undergone mediation training in South Africa, consisting of a 40-hour training course, involving both tuition and role play. However, I had no mediation experience and no CPD points. So, I could not apply to join the Scottish Mediation register. How could I get mediation experience when I was not accredited to practise as a mediator?

A more general problem for mediators

Earlier this year, and in the Gauteng Division of the High Court in South Africa, the judge president gave a directive requiring mediation as a pre-requisite to being allocated a court date. This directive was prompted by 2000 new cases being enrolled for hearing per week and trial dates being allocated in 2031. The judge president directed that all trial dates that had been allocated from 2027 onwards would be withdrawn, and that parties would have to participate in mediation and present a report from a mediator certifying the outcome of the mediation before a date could be allocated. The mediation protocol stipulated that mediators conducting these mediations had to have conducted at least 5 previous mediations. This created the difficulty alluded to above. There were not sufficient qualified mediators to undertake the work, and

mediators with insufficient experience would struggle to obtain the necessary experience.

The above situation prevailed at the time of this presentation to the Conference, but the protocol was later amended to remove the requirement of mediators having to have conducted at least 5 mediations. This was probably due to the lack of qualified mediators. A system of co-mediation has also been introduced, to enable less experienced mediators to gain the necessary experience under the guidance of a lead mediator.

There have been court challenges to this protocol, but so far they have been unsuccessful.

Master's Course in Mediation and Conflict Resolution – University of Strathclyde:

This Master's course offers the following:

- practical skills and a thorough academic foundation – the only course of its kind in the UK
- real-world experience through an innovative Mediation Clinic
- a rich blend of students from a range of professional backgrounds including law, psychology, social work, education and management

Mediation Clinic – How it Operates:

The University operates a Mediation Clinic, providing mediation services to parties who have pending small claims in the Simple

Procedure courts in Scotland. The mediators are graduates from the Master's course, current students and some others. A system of co-mediation is followed with mediations being conducted with a lead mediator, an assistant mediator and an observer. The idea is for skills to be passed on and for mediators to progress from observing to becoming assistant mediators and then, finally, lead mediators. The mediations are conducted pro bono for the parties, and the scheme is funded by the Scottish government.

The benefit of the Clinic:

The benefit for mediators is that they are able to gain the necessary experience and reach a point where they can apply for accreditation. It was through my involvement with the Clinic that I was able to register with Scottish Mediation and start my own mediation practice.

Patrick Scott completed the LLM in Mediation and Conflict Resolution course at the University of Strathclyde in 2018 and was awarded an LLM in Mediation and Conflict Resolution with Distinction. He is currently an Accredited Mediator with Scottish Mediation, serves on the Scottish Legal Complaints Commission (SLCC) Panel of Mediators and volunteers as a lead mediator with Strathclyde Mediation Clinic. He is also on the Board of Trustees of Scottish Mediation.

Workplace Mediation in ACAS by Ron Inwood and Marie Young



Ron Inwood



Marie Young

Ron Inwood and Marie Young are both ACAS mediators. Their workshop provided a glimpse into the world of Workplace Mediation at ACAS.

ACAS provides conciliation and mediation services as workplace dispute resolution tools. The conciliation and mediation processes have many similarities, including:

- The parties' positions and interests are explored.
- The parties are helped to make informed decisions.
- Any outcomes are mutually agreed.

Within ACAS, the conciliation service is free, and any settlement is legally binding, while mediation is a chargeable service and is not legally binding (but may be considered to be 'morally binding') on the parties.

ACAS mediators follow a five-stage process, the 'ACAS path', which is a facilitative model of mediation:

- Individual meetings (1)
- Joint meeting
 - Hearing from the parties (2)
 - Exploring the issues (3)

- Working through an agenda to identify possible solutions (4)
- Closure and follow-up (5)

ACAS mediators do hundreds of mediations each year, and their success rates are very high.

The ACAS mediation process is voluntary, impartial and confidential. Mediation provides a safe space for the parties to talk through their differences and find their own solutions. Any information is only given to the employing organisation if the parties agree to that.

Ron outlined some workplace disputes which had continued for many years. Helping the parties to find a resolution can relieve the enormous burden they have been carrying, and can provide a template for how the parties will behave in the future. For the mediators, there can be a buzz of excitement when the parties reach an agreement as a result of applying the mediator's experience and knowledge within the mediation process.

While the agreed solutions are not legally binding, the parties often consider the outcomes to be morally binding. The agreements tend to stick because the parties have worked so hard to achieve them.

The most common cause of conflict in ACAS cases is poor management. This does not necessarily mean that the manager is poor. It may be that an organisation's culture, systems and processes are poor. A manager's workplace instructions may be unclear, leaving employees unsure about their roles, responsibilities or daily duties. On top of this, the conflict can be exacerbated by poor working practices, cultural issues and power imbalances.

In relation to recently qualified mediators, Marie described the nervousness of being a new mediator. She also emphasised the importance of having a supportive mentor and gaining operational experience to hone her skills.

Both Ron and Marie are committed to structured reflective practice after every mediation. Through this process they question what went well and what did not go so well. Through this reflection, they are able to learn from each mediation, so they can plan what changes they will make in their future mediations.

Ron Inwood is a Senior Business Advisor. Having qualified as a mediator before he joined ACAS, Ron taught on ACAS's Certificate

in Workplace Mediation and was a mediator, specialising in group mediation. Ron is now retired.

Marie Young works as an individual conciliator where, through early conciliation, she helps parties to resolve workplace disputes so they do not progress to Employment Tribunals. Marie is also an ACAS mediator and the ACAS Mediation Coordinator for Scotland.

Marie is an alumnus of the University of Strathclyde, having graduated in 2005 with a First Class Honours in English Literature. Marie joined Acas in 2010 as a Helpline Adviser, moving into Conciliation and Mediation circa 2013.

Mediation Skills Training in UK Prisons

Colin Bourne is interviewed by Ben Cramer

Mediator Colin Bourne, a former barrister and trade union officer, now delivers mediation skills training in UK prisons through Yorkshire Mediation. In this interview, he speaks with Ben Cramer about what inspired the programme, how it works, and why listening - really listening - can reduce violence and transform culture on the inside.



Colin Bourne



Ben Cramer

Thank you, Colin, for agreeing to speak with me about the prison mediation skills training you provide with Yorkshire Mediation. Would you like to say something about your background?

I've had previous careers in graphic design, trade union organisation and in law. I was called to the bar in 1997. I wanted to train as a mediator because that approach had significant advantages over using an adversarial frame. My experience with advisors from the Advisory, Conciliation and Arbitration Service (ACAS) while a trade union officer had impressed me with their skill and patience in helping to resolve some serious disputes. I was accredited as a mediator by CEDR in 2000 and practised as a barrister and a mediator. Eventually I got to the point where I decided to give up the bar and devote myself to mediation, which I found to be a more cost-effective, constructive and collaborative way to deal with disputes.

I'm curious to know more about the mediation skills programme that you co-designed and now deliver in prisons with Yorkshire Mediation. Could you say something about the purpose of the training? Who is it for?

Initially, a prison contacted Yorkshire Mediation and asked us to offer something that would help improve the culture and conditions in the prison and reduce violence. Since then, the initial course has been revised and improved, largely from what we have learned from the prisoners themselves. Word is spreading about the training we have provided, which has helped to reduce incidents of violence, and other prisons contacted us asking us to work with them. With the help of a number of volunteers from Yorkshire Mediation Services, we have now run the course four times in the first prison that I visited, and delivered it in three other prisons, with two more pending. When prisoners move on to other prisons, we are asked to come back to top up their pool of trained mediators, so they obviously see a real value in it.

I learned early on to expect that conditions inside the prisons would be difficult, which is why they've asked for our help. The participants are carefully selected and are usually screened by the prison's psychology service as being appropriate candidates to acquire these skills and use them

constructively once they are trained. The participants, officers and prisoners, are motivated to improve the prison environment for themselves and for the other prisoners, and almost all of them have completed other voluntary activities like listening training. There's a well-established programme called 'trained listeners' which is a bit like the Samaritans. Prisoners who come into the training having completed that programme, already have listening skills and an understanding of how listening can positively shift relationships and culture inside the prison.

I've heard of only one case so far where somebody we trained used it as a means of gaining wider access to the prison for their own purposes. They were quickly found out and sacked.

From my perspective as a trainer, I'm not sure we have any specific goals other than to deliver the requested training.

And what outcomes have you seen?

At the end of the course, the governor usually comes down and hands out certificates to all the participants, both officers and prisoners. For the January 2024 cohort, she gave feedback praising those who volunteered to undergo the training and appreciating the contribution they make to the prison environment. The feedback that we got was that, while in the past there could have been between fifteen and twenty violent incidents a day, since we started doing the training they had had a period during the previous year when there were three weeks without a single act of violence. So, it's had a significant effect.

How is the training structured?

We deliver a three-day course. We don't suggest that it's enough to qualify them as a fully-fledged mediator. Rather, we're giving

them an opportunity to learn basic skills which we think would be useful for them in improving the prison environment.

How did you design the programme?

Some training materials were already there for other training, but I didn't think that they were adequate for prisons and I wanted to refresh and renew them.

What was it about the initial training materials that you didn't like? What was missing, and what did you add?

Visually, it wasn't that compelling. My original career was as a graphic designer, so visual coherence has always been something that has been important to me. But it was also that the course had been put together by someone who wasn't a trained mediator. There were some elements that had been included that were quite good, but there was a bit of a problem with some of the ethical aspects. The previous trainer wasn't as well versed in mediation ethics. When I delivered the training, it was from the point of view of a professional mediator.

You were bringing your expertise and experience in the practice of mediation, and your graphic design eye, to the training. I'm curious about your contribution in terms of mediation ethics. What did you add?

It was mainly about what you can share in a mediation. How you have to be careful about those standard rules for mediators, how you have to be very careful that you've got each party's consent to reveal something. And you have to be on your guard all the time. For example, you can't just casually say "that's not what the other person thinks". For me, as a mediator, I wouldn't say that, even without revealing any detail. I just wouldn't say that without getting the consent of the other party. We impress upon the mediators the

importance of confidentiality so we need to safeguard the information disclosed to us by the parties in dispute.

There were also some role play exercises that I thought I could improve on. I've got quite a wide range now of role play exercises that we can use. And each time we've run the course we've learned something from the prisoners. There have been a couple of occasions where they've said to us "that would never happen in a prison". So, we rewrite the role play exercise to make it more realistic from their point of view. There's little value in a role play exercise which the participants don't believe they will ever face. We wanted to make sure that we're working with exercises that represent the kind of problem that they would actually have to deal with.

What do you notice about how the participants learn during the course?

Some of the participants are in prison for crimes of violence, some of them are in there for things like financial fraud. They are all serving long sentences. There are things that they would come across, either in their life outside prison, or things that they've dealt with while they've been in prison, that inform their approach to the acquiring of mediation skills. And we've learned from that.

What have you learned from delivering this training?

I've derived a lot of benefit. For example, even though as a trained mediator I've always understood that you shouldn't make assumptions, it doesn't mean that, on occasions, I have not!

In one prison that I hadn't been to before, I got into conversation with one of the men who had studied for and obtained a teaching qualification while he was inside. He now teaches a whole range of courses to other

prisoners, for example Health and Safety, or English, or Mathematics. He told me about the range of courses that he devised and delivered, and I asked whether that would stand him in good stead for when he was released. He said he didn't think so, and I asked him why not. He said "I don't think anyone's going to give a teaching job to a murderer." I knew instantly that, had I known that about him initially, my approach to him would have been very different. The conversation I'd had was with a normal human being who's done a lot of work trying to help other people. If I had known he was a convicted murderer, that would have been a barrier that I would have had to overcome to be able to connect with him at a human level. That conversation revealed to me the kind of assumptions I might have made about him if I'd known about his offence from the outset. I don't know why the crime happened, what it was that led up to it, and I didn't want to know. But I would have had to work hard to get over my understanding of him as a murderer, if I hadn't encountered him as a teacher first.

Can you say more about how you co-create the training material with the prisoners?

Sometimes it's from their feedback. I've discovered that mediators in prisons tend not to deal with incidents that are related to gang membership. Where gangs are involved, you're not mediating between two people, you're mediating between two organisations. There is substantial pressure on individuals who are members of a gang to do what the gang expects of them. Mediating between gang members is off limits really.

The other way I adapt material is from observing what happens. I notice how the participants use the role play or listening exercises, and whether they are effective as

opportunities for learning and skill acquisition. I note in real time if there are changes that would make the exercises more effective. I also work with two co-trainers, for example Nancy Radford, who make their own observations. Nancy is a far more experienced trainer than I am, and she's made some very helpful suggestions about conflict resolution and diffusing conflict.

What do you think are the 'active ingredients' in reducing violent incidents? How does that work?

I think the most significant thing, from talking to the prisoners, is that for the people who seek their help, it may be the first time, perhaps in their life, that they've ever felt listened to. That's why the trained active listeners are also so effective because they're sitting down with someone for maybe an hour or more, just listening to their story and trying to empathise with them. The trained mediators get the sense that it's simply the feeling of being heard that is so important. If they feel heard, they are then more easily persuaded that they should listen to the person with whom they are in dispute. For a lot of prisoners, their background experience means that their first reaction to a conflict is violence. They get angry and they lash out. I know for at least some of them, violence got them what they wanted because they instilled fear into other people.

Through mediating, we've discovered that the people who are involved in a conflict are usually on the receiving end of threats or other kinds of coercion. When someone wants the help of a mediator, the other person may need to be persuaded that mediation is something that's worth trying.

Mediation defuses the situation because they feel less inclined to lash out when somebody's

actually heard what they've said and has offered a degree of empathy.

Another significant component of the course is about problem solving.

I'm curious how you teach listening and empathy during the course?

We do exercises in active listening skills. When they're talking to each other they will quite often make assumptions about what the other person is saying or what the other person means. We get them to listen more carefully. Rather than listening to *what they want to think the other person has said*, we ask them to listen to *the words the person is actually saying*. A phrase I've used more than once in these training courses is "what you think you heard is not what I think I said". There's often uncertainty on the part of both people. One person is saying something which might not be as clear as they intended it to be. The other person is hearing something where they might make an assumption that they know what the other person means. We emphasise the value of asking clarifying questions, rather than jumping to an assumed understanding. We help participants to ask questions to dig deeper into what the other person has said. Don't make assumptions! Drill down into what the other person is saying to make sure you understand! If necessary, repeat to them what they have just said to you. If you have misunderstood, they will tell you.

And what do you address in the problem-solving component?

I hate this phrase, but we get participants to 'think outside the tramlines' they normally operate in. When we're problem solving, we can make assumptions both about people's motivations and about potential solutions. We teach participants to suspend judgements and assumptions, and to hear both people give an

account of the problem. If you jump in with a solution from the outside, two things arise: firstly, they might not agree with the solution and they might have valid reasons for thinking that it won't work that you don't yet understand; and secondly, if they're keen to get to a resolution, they might just go along with your solution because you're the mediator even though they're actually not satisfied.

In my experience as a mediator, that's the kind of thing that happens quite frequently. People think they know the answer, because they make assumptions about what the other person is motivated by and therefore what the solutions should be.

I teach that it's important not to lead parties into a resolution. Because a solution that comes from the parties themselves is much more likely to be enduring than a solution that comes from someone else, even a trained mediator. If the parties just go along with the mediator's solution, they may end up with a feeling of resentment. What we try to instill into course participants is an understanding that their job is to help the parties generate their own resolution.

[And how do the groups respond to that? Is it easy for the trainees to grasp and put into action?](#)

On the whole, yes. There are one or two people who are resistant to that way of doing things but, for the most part, they've applied to go on this course and so they want to acquire these skills. In my experience they listen attentively, and they learn quickly. We've had two or three people on our courses who've shown apparent ability from fairly early on. I don't know if that's because of their prior experience or if they're learning a new way of trying to deal with conflict. Often

conflicts in a prison environment are not like the kind of problems they would encounter outside although, of course, some are.

I do remember that at the end of the very first course we ran, somebody said he was coming to the end of his prison term, and he wanted to know where he could get further training so he could use these skills in his community on his release. That gave me such a lift. I could see that this man was acquiring skills that he thought would be useful on the outside and he wanted to know more about it so that he could put them into effect. I would like to think that this means he is much less likely to reoffend once released.

[You said earlier that mediating between gangs is off limits, because of external forces acting on the two individuals concerned. I wonder if there's more you could say about that in terms of the difficulties of mediation and potential ways around that problem.](#)

It reminds me of a time earlier in my career when I was a full-time trade union officer. When you're negotiating with an employer, you have to persuade them that the process is worthwhile and will produce benefits for them. Since negotiation involves both sides shifting from their original position, following talks I would have to report back to my members. Since they weren't present in the talks, they hadn't been through the same process I had in terms of understanding why it made sense to shift positions. There were plenty of times when it was harder for me to negotiate with my members than with the employer. Learning from those experiences is definitely something I draw upon in my role as mediator.

[So how do you handle situations like that, where the members are not there during the negotiation?](#)

I think it's simply being aware that there are others that you'll need to carry with you through the process. It was not safe to assume that I'd be able to persuade the members to accept something I recommended. I can't carry the analogy too far, because being a trade union negotiator is very different to being a mediator.

Something else I found very helpful for my mediation practice was, as a barrister, I was required to represent both employees and employers. That helped me to work out how the other party was likely to present their case and to prepare my case accordingly.

What's next for you, in terms of the evolution of your work with prison mediation skills training?

Interestingly, we will be going back to a prison where we delivered training at the beginning of the year. We're going back specifically to review what's happened and evaluate how helpful the participants and prison management have found the course. I presume that will inform us whether or not they want the training to be delivered in future. But it certainly will inform me as to whether what we did had the desired effect or if there are things that we could do that might be more effective.

I'd like to expand what we're offering and perhaps to train their mediators to train others, although that is something best delivered by those who have greater expertise in training trainers than I have. I would love to deliver this training in other prisons, and I've written to the Prisons' Minister, Lord Timpson. He's been known for a long time as a prison reformer, so I wanted to let him know what we were doing and talk to him about it.

Brilliant. Well, thank you Colin. Any final thoughts you'd like to share with readers?

I'd like to re-iterate the power of asking questions to help people feel heard and to help generate insight and understanding. There's an affinity here between mediation and reflective practice. One of the reasons why I value reflective practice is that it's even more focused on asking powerful questions rather than suggesting solutions.

And I'll add that this work continues to surprise and move me. The people we train often have extraordinary insights, resilience, and a real desire to improve not just their own lives but the lives of those around them. It's a reminder that people are more than the worst thing they've done. If we want safer, more humane prisons, and ultimately safer communities, then we need to invest in approaches like this. Mediation skills give people a chance to be heard and to hear others, often for the first time. That has ripple effects that can be profound. I'd encourage anyone working in or around the justice system to consider how these kinds of programmes can be supported and expanded. Less reoffending will lead to a reduction in the prison population, something the government is keen to achieve.

Ben Cramer graduated, with distinction, from the University of Strathclyde with an MSc in Mediation and Conflict Resolution in 2018 and has been cultivating a mediation practice since then, co-mediating with the University of Strathclyde Mediation Clinic, Edinburgh Sheriff Court Mediation Service, Restorative Solutions and Scottish Mediation.

Research Reflections

Eunice Olatunji reflects on her LLM dissertation



Eunice Olatunji

In this series of articles, Adrienne Watson has asked some of our former students to reflect on their Master's dissertations. Our students have shared the lessons they learnt, the impacts of their research and their advice for future students.

In this issue, Eunice Olatunji reflects on her LLM dissertation, *Evaluation of Mandatory Mediation in Lagos, Nigeria: Balancing Effectiveness and Mediation Principles*, which she submitted in 2023.

How would you summarise your dissertation's key aims and outcomes?

My dissertation examined the emerging practice of mandatory mediation in Lagos State, Nigeria, particularly within the Lagos Multi-Door Courthouse (LMDC). The key aim was to critically assess whether mandatory mediation mechanisms strike a fair balance between efficiency in dispute resolution and the core mediation principle of voluntariness.

Drawing on legislative frameworks, statistical data and comparative insights, I argued that, while mandatory referral mechanisms improve access to justice and reduce court congestion, they risk undermining party autonomy. My findings supported a hybrid model that

includes an opt-out option to preserve the voluntariness of the process.

What particularly interested you about the area you were researching?

I was drawn to the complex tension between improving judicial efficiency and preserving core mediation values like autonomy and voluntariness. It fascinated me how a well-intentioned policy like mandatory mediation could both enhance and potentially compromise access to justice, depending on how it is implemented. This raised important legal and ethical questions that I felt were worth exploring in greater depth.

Which research methods did you use – why did you choose these methods?

I used doctrinal legal analysis and socio-legal methods. The doctrinal method allowed for a close examination of Nigerian statutory provisions, rules and case law. To complement this, I adopted a socio-legal lens by integrating statistics from the LMDC and engaging with policy papers and empirical studies from comparative jurisdictions. This mixed approach helped contextualise the Lagos experience within broader debates on access to justice, party autonomy, and procedural fairness.

Did you develop any new skills during the dissertation. If so, what were they?

Yes, I significantly improved my ability to critically engage with diverse academic perspectives, especially those that challenged my initial assumptions. I also developed better comparative analysis skills and became more confident in drawing lessons from international practice. On a more practical level, I refined my research design mid-way

I learned that a dissertation is a living project that must respond to new findings and perspectives.

through the process, which taught me to be both flexible and focused.

What aspects of your dissertation were particularly challenging? How did you overcome the challenges?

One of the main challenges was realising, rather late in the process, that my original dissertation proposal was too wide and did not fully align with the direction my reading and reflections were taking me. I overcame this by pivoting my focus towards mandatory mediation more directly, even though it meant discarding parts of my earlier work. Another challenge was the limited availability of recent empirical research on mediation outcomes in Lagos. I had to rely on a few key sources and triangulate this with insights gathered from conference discussions and available court data.

What aspects of your dissertation are you most proud of?

I am proud of the fact that I pursued a topic that is not only legally relevant but socially impactful. The work considers access to justice in contexts where traditional litigation is unaffordable or inefficient. I'm also pleased that my research may help shed light on how emerging economies can reform dispute resolution mechanisms in a way that aligns with international best practice, without losing sight of local needs and values.

If you were to do your dissertation now, with the benefit of hindsight, would you change anything about your dissertation? If so, what?

Absolutely. I would give myself more flexibility in the early stages instead of feeling constrained by the initial proposal. I learned that a dissertation is a living project that must respond to new findings and perspectives. I also wish I had sought more primary data or interviews with mediation users and practitioners in Lagos, though this was difficult due to time constraints and location.

Was your dissertation helpful in shaping your mediation practice? If so, how?

Yes, it definitely deepened my understanding of how legal frameworks, institutional policies, and cultural norms interact within mediation practice. It has made me more sensitive to the risks of imposing processes that may appear efficient on the surface but could backfire if they undermine the voluntary nature of dispute resolution. As a practitioner, I now see greater value in hybrid systems that offer flexibility, informed consent, and robust procedural safeguards.

What advice would you give to students who will be working on their dissertations this summer?

Start early and stay open-minded. Your proposal is just a starting point—not a straitjacket. Be prepared to refine your focus as your understanding deepens. Don't hesitate to speak to practitioners or attend relevant conferences - these real-world perspectives are invaluable. Finally, engage deeply with your supervisor, and don't be afraid to challenge your own assumptions along the way.

Is there anything else you would like to share with our readers?

The dissertation process was as much about self-discovery as it was about academic research. It taught me resilience, flexibility and the importance of curiosity. I'm grateful for the experience and hope that my work contributes to the evolving dialogue on mediation in Nigeria and beyond.

Eunice Olatunji joined the 2022 stream of the MSc in Mediation and Conflict Resolution programme in September 2022. Eunice had experience of mediation having trained as a lawyer and worked with the Lagos State Multi Door Court House, the first in West Africa, for about seven years before her quest for more knowledge and global reach led her to enrol for the programme at the University of Strathclyde.

From the Chair.....



Tom Scade



**Sneha Selina
Bonomally**

As summer settles in and the days stretch long and bright, this feels like a natural moment to pause and reflect on where we are. Just as the season brings warmth and growth, the Mediation Clinic continues to thrive with energy, commitment and care.

Between April 2024 and March 2025, the Clinic experienced its busiest year to date, receiving 401 referrals. This increase speaks not only to the growing demand for mediation, but also to the trust being placed in our approach. Of those referrals, 257 mediations were carried out, with 197 reaching a successful settlement. That's a settlement rate of 76.7 percent and an estimated saving of over £230,000 for the Scottish Court system. But more than figures, these numbers represent people being given the chance to be heard, to be supported and to find a constructive way forward.

We're also pleased to share that the Clinic has received a new grant of £117,168 from the Scottish Government. This vital funding allows us to bring on board a new part-time assistant to work alongside Pauline, providing essential support as the Clinic's activity continues to expand. It's a hugely welcome step forward, and one that will help ensure we can keep meeting the needs of those who turn to us.

There's also a real sense of pride in being shortlisted for the Community Care & Social Responsibility Award at the upcoming Scottish Legal Awards. To be named among the nine finalists is a meaningful recognition of the impact the Clinic is making in communities across Scotland. Whatever the outcome, we'll be celebrating the work we've done together and the values that underpin it.

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In May, we hosted a Continuing Professional Development session on Neurodiversity and Mediation, delivered by Doug Ross, Staff Disability Adviser at the University of Strathclyde. The session offered thoughtful insight and practical advice, and the feedback has been overwhelmingly positive. It's encouraging to see these conversations taking root and shaping the way we work with both clients and colleagues.

Regular peer review sessions remain central to the Clinic's learning culture. Led by Pauline McKay, Ben Cramer, Gordon McKinlay, Leon Watson, Patrick Scott, Roy Poyntz, Robert Campbell and Frances Sim, these sessions help maintain high standards while nurturing a supportive and reflective environment for our mediators.

To every mediator, student, volunteer, partner and supporter—thank you. It is your time, your

compassion and your belief in the value of mediation that make the Clinic what it is. We are continually inspired by what we are building together.

As we look ahead to the second half of the year, we hope you find time to rest, reflect and recharge. There is much more to come, and we are glad to be on this journey with you.

Tom Scade and Sneha Selina Bonomally
Co-chairs, Mediation Clinic

Tom Scade completed the LLM in Mediation and Conflict Resolution course at the University of Strathclyde in September 2022 and was awarded an LLM in Mediation and Conflict Resolution with Distinction. He is

currently an Accredited Mediator with Scottish Mediation and volunteers as a lead mediator with Strathclyde Mediation Clinic, carrying out mainly Simple Procedure related mediations.

Sneha Selina Bonomally is currently a PhD candidate in Environmental and Planning Law at the University of Strathclyde, focusing specifically on the use of mediation as an alternative dispute resolution mechanism. She is a registered practitioner with Scottish Mediation, actively contributing to Strathclyde Mediation Clinic as a lead mediator, primarily handling Simple Procedure cases. In addition to her mediation work, Sneha is also a qualified architect by profession.

Clinic News



Pauline McKay

As the Mediation Clinic Co-ordinator, I am often asked how to gain experience as a mediator.

Starting out can feel both exciting and uncertain! We know mediation is a skill best developed through practice, reflection, and exposure to a wide range of mediation case types and styles. However, it can be difficult to know where to start when you are just beginning. Below are practical ways that may help you build skills, confidence and connections in the mediation world.

Exploring Volunteer Opportunities

Many community-based mediation services welcome volunteers and provide training and/or CPD events. These organisations often deal with neighbour disputes or restorative justice processes which are ideal settings to practise our core skills such as active listening, impartiality and reframing. It is a useful training ground whilst offering services pro-bono. Some organisations may offer free training in exchange for a certain number of committed hours to their organisation. Your experience will grow quickly and the skills you pick up are easily transferable across different types of mediation.

Approaching mediation services, restorative justice projects and housing and tenant associations will do no harm. These do not

have to be local organisations. The power of online mediation means you can mediate from anywhere.

Network with Other Mediators

Connecting with other mediators is another valuable step you can take. Many experienced mediators are open to sharing insights, mentoring new practitioners, or even offering opportunities to observe or assist on cases. Observing and assisting exposes you to different styles and approaches, which you may still be trying to establish for yourself. Peer support sessions are also invaluable, not only to meet other mediators but to share and hear of other experiences whilst building confidence.

You may wish to approach mediation networks, attend meet-ups in person or online, or reach out to practitioners whose work you have come across. Sign up to mailing lists and use social media to widen your circle. [LinkedIn](#) is particularly useful for making connections and discovering mediation events online.

Continuing Professional Development (CPD), Webinars and Training Opportunities

As mediators, we are constantly learning and reflecting! CPD events offer both learning and networking. These sessions can expand your understanding of specific areas of mediation and keeping your knowledge up to date. CPD events can include case discussions, role-play, breakout sessions and guest speakers. They provide a powerful learning environment with the chance to meet others at various stages of their mediation journey.

Online webinars are also a fantastic opportunity to hear from mediators who are new to you. Many (but not all) of these events

are via online seminars and are free. Again, social media could be your friend here.

Look out for events run by mediation bodies and professional associations, universities and community organisations. There are law firms that also run free webinars. Again, it does not have to be in your local area, and many are online.

Conferences

Mediation conferences are great opportunities to immerse yourself in the field. These events often feature leading voices in conflict resolution and updates on research and policy. The breakout sessions are ideal for building skills and getting involved in discussion. Conferences allow you to learn from experienced professionals, stay informed about best practices, meet potential collaborators and contacts, and share your own experiences. And what a great opportunity to ask questions! You may even be confident enough to propose a workshop or co-present with others to start building visibility in the mediation field.

Paid Work

If you are an accredited mediator (or training to be) and want to get your services out there, and get paid, people will want to know more about you.

If you are based in Scotland, consider registering with [Scottish Mediation](#) and you can request to be found via their search facility. You may also want to register with mediation services that sub-contract cases, such as [Scottish Mediation](#), and let them know that you are willing to be allocated a case if they are contacted. The [Civil Mediation Council](#) and the [TCM Group](#) may also be worth contacting.

You could try to build relationships with solicitors, HR consultants, complaints organisations or any other organisation that might want to use your service. Ask for a chat and introduce yourself.

Other ways of gaining visibility are creating a LinkedIn profile (which is free), networking and attending courses.

Some mediators may create a simple, professional webpage, highlighting their specialisms, training and any testimonials. This will have costs associated for creating and hosting, and you may need to weigh up whether the costs are worthwhile when reaching out for potential work. It can be useful to have your webpage link or LinkedIn profile at the bottom of your emails so that potential clients can check you out.

Building experience as a mediator is an ongoing journey that combines learning, practice and dealing with people. This is by no means an exhaustive list but by staying proactive and open to opportunities, you will gradually develop a wider network that contributes to your ongoing mediation venture.

Pauline McKay

Co-ordinator, Mediation Clinic

Pauline McKay completed the PG Certificate in Mediation and Conflict Resolution course at the University of Strathclyde in 2020. She is currently an Accredited Mediator with Scottish Mediation, the Clinic Co-ordinator of Strathclyde Mediation Clinic and volunteers as a lead mediator with the Clinic, Lothian and Borders Mediation Service and other Community organisations.

Patrick's Ponderings – Mediator Confidentiality

by Patrick Scott



Patrick Scott

Confidentiality is one of the fundamental principles of mediation. Parties sign a written Agreement to Mediate containing a confidentiality clause. But it is not only the parties who sign the Agreement - the mediators do so as well. In this ponder I am going to try to emphasise the importance of this level of confidentiality, particularly with regard to information sharing between parties.

The starting point is that any information obtained from a party in a private session cannot be shared with the other party without consent. No mediator with whom I have co-mediated has ever intentionally breached this ethical duty, but sometimes mediators inadvertently step over the line.

Mediation processes usually commence with an intake call. These intake calls are often conducted by a person who will not ultimately be the mediator. A written intake document is prepared, and this is provided to the mediators who are going to be doing the mediation. It sometimes happens, fortunately not often, that my co-mediator refers one of the parties to information contained in the intake form. However, it is information that has been supplied by the other party. The problem here is that that co-mediator has not appreciated

the fact that the information contained in the intake form has been obtained from the parties in a private session and is confidential. I suspect that the co-mediator sees that form in the same light as the court papers, which are not confidential. However, the intake form is, and any disclosure of information from one party to the other is a breach of confidentiality.

In view of the fundamental importance of confidentiality, my advice is to err on the side of caution and rather share too little than too much!

The next challenge is dealing with information obtained from parties in private sessions, whether on Zoom or in person. Information thus obtained can be shared, with consent. The difficulty for the mediator is to know what precise information can be shared. It is so easy to fall into the trap of embellishing information or conveying it in a different context. My rule of thumb is not to share information other than offers and counteroffers. Any other information can be shared by the parties themselves in a joint session. So much can be 'lost in translation'. It is also very difficult for the mediator to remember what was said in a joint session and what was said in a private session, even if you are taking notes. Another possibility is to preserve confidentiality in the private sessions, but to inform the parties that information so shared will only be treated as confidential if the parties specifically request certain information not to be shared. This makes life easier for the mediators but

perhaps limits the parties in what information they are prepared to share. I would, however, suggest that this latter approach be adopted in shuttle mediation as it will be more difficult to properly discuss the issues if the mediators are too restricted in the information that can be shared. In view of the fundamental importance of confidentiality, my advice is to err on the side of caution and rather share too little than too much!

Patrick Scott completed the LLM in Mediation and Conflict Resolution course at Strathclyde University in 2018 and was awarded an LLM in Mediation and Conflict Resolution with Distinction. He is currently an Accredited Mediator with Scottish Mediation, serves on the Scottish Legal Complaints Commission (SLCC) Panel of Mediators and volunteers as a lead mediator with Strathclyde Mediation Clinic. He is also on the Board of Trustees of Scottish Mediation.

Mediation Mulligans

by Alan Jeffrey



Alan Jeffrey

In this regular column, mediator Alan Jeffrey candidly shares examples of the mistakes, missteps, and gaffes he has encountered on his mediation journey – and, most importantly, the lessons that he has learned from them!

As I sit down to write this blog, far too close to the agreed deadline, I feel the pull of the open ChatGPT tab on my laptop. The siren beckons. It's been a hectic month: staffing challenges at work, childcare, moving house. One perfectly worded prompt and I could be freed from the anxiety of procrastination as I am saved by the machine.

But I close the tab.

Pandora's box might win on another day, but not today.

Ironically, the procrastination that almost handed this blog over to AI might actually save it. Why? I haven't been mediating lately, not for around 6 weeks. And this column, at least in theory, is supposed to explore the mistakes I've made in mediation. No mediations, no mistakes... no blog? See you next month?

But of course, **the mistake is not doing enough mediations.**

The absence of cases on my calendar isn't actually due to procrastination (in fact, I'm often accused of *pre*crastination), but rather a shift in role. With office staffing issues leaving me at the helm, I've found myself in a more strategic space. Writing reports and funding bids, recruiting, delivering talks, supporting

staff, line-managing mediators, and overseeing mediation projects.

So, as my last formal mediation disappears into the rear-view mirror, I can't help but wonder:

Is a mediator still a mediator if they're not mediating?

When did 'mediator' become such a central part of my identity? I haven't been doing it *that* long, yet when people ask what I do, I answer with pride. They seem genuinely interested, and I love explaining the theory, the practice, and sharing anonymised stories.

And yet, just six weeks removed, I start to feel like a fraud.

"I'm a mediator," I say... but am I really, if I'm barely mediating?

This self-questioning came into sharper focus recently, while co-facilitating a Mediation Skills training course for the Scottish Centre for Conflict Resolution. The participants were a brilliant group of residential care staff - thoughtful, engaged, and maybe a little apprehensive. But few, if any, were there to become professional mediators.

They weren't chasing the title. They weren't chasing the identity.

They were there for the *skills*.

Skills they could see very clearly could fold neatly into their day-to-day work. Upon reflection I see that they understood something I was in danger of forgetting: the *practice* is more important than the label.

With that in mind, I've started to look back over the past six weeks differently. True, I haven't been taking formal cases, letting my amazing team step in instead. But the core tenets of mediation haven't gone unused.

- My **active listening** skills have helped team members debrief after difficult conversations.
- My **negotiation** skills have adapted to multi-agency working and crafting funding proposals.
- My **relationship-building** abilities are going strong in recruitment and partnership work.
- And yes, I still encounter conflict, and opportunities for **conflict resolution**, daily.

So, no, I haven't been mediating. But I haven't stopped mediating, either.

I close this piece with confidence that the work I've been doing will lead to more people accessing mediation and more people being paid to mediate. My skills aren't shrivelling; they're evolving and providing value in new contexts.

But if I don't find time for a proper mediation case before the next blog deadline... I'm not making any promises about resisting the call of that ChatGPT tab.

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