For people interested in mediation in Scotland

May 2019 Issue No 114

# collaborate

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the Mediation Partnership.

# Giving People a Voice in Complaints

When people complain, there are two primary reasons that they do so; firstly, they want to be heard and secondly, they don't want someone following them to have the same difficulties or issues that they have faced. Yet in most cases one of the most useful tools in resolving complaints, mediation, is not widely used in Scotland.

Scottish Mediation is engaged in work to encourage and support the use of mediation in complaints. In that work one of the biggest barriers to the use of mediation is that people often don't understand what it is and how it might help. One of the ways we have sought to tackle this is by providing mediation skills training to those involved in complaints. The impact of this has been that people have a better understanding of how mediation works so they are better placed to know when it might be a useful tool for them to use. It is also the case that if someone has experience of what mediation is and how it works they are in a better position to explain to those involved in a complaint how it might work.

What we have also found is that the use of mediation to help resolve a complaint doesn't necessarily have to be a formal process but can be as simple as using mediators as independent facilitators to host a meeting or a discussion. I am still struck by how that can change the dynamics of a meeting and help people to be heard.

#### **Organisations Using Mediation in** Complaints

At the Scottish Legal Complaints Commission (SLCC) people making complaints about the service lawyers have provided are given the opportunity to try media-

50% of those offered mediation take up the offer and of those that do there is a 75% resolution rate. with 88% of those taking part saying that they would recommend it to others. The SLCC scheme,

which has helped to provide earlier resolution of complaints, is free to participants. It has been empowering for the

parties who have often come up with resolutions that may not have been otherwise possible and effective in allowing people to resolve issues and move on.

The University of Dundee Early Dispute Resolution (EDR) has been in place since 2008. There mediation is used widely

### Are you an experienced mediator or facilitator looking to diversify your skills?

If so, join us on our 2-day training course in May 2019:

### Facilitating Large Groups in Conflict\*

When? Tuesday May 28<sup>th</sup> – Wednesday May 29<sup>th</sup>, 2019. Where? The Bay Hotel, Burntisland Road, Kinghorn, Fife, KY3 9YE. What will be covered? The course will focus on developing participants skills in group facilitation techniques used in the various stages of a multi-party mediation process. Cost: £250 including all training materials, lunch, refreshments. Click on the link for further information: http://centreforgoodrelations.com/courses.php To register your interest, please complete our online form: https://goo.gl/forms/e1ye0mzqV30DgZeD3 To have a chat about the course please contact Abdul Rahim at Centre for Good Relations by email: abdul@centreforgoodrelations.com or

Tel: 07960 683328.

\*'Facilitating Large Groups in Conflict' is a standalone 2-day course.

avoiding, preventing, and resolving disputes. It has a wider potential impact to culture and communication, and provides an alternative route to formal complaints and grievance processes. The mediators tion to resolve their complaint. Just under are University Staff and Students who do their work in addition to their

across the University. EDR's purpose is to

assist staff and students in anticipating,

formal role with the University and come from a wide range of departments. Since 2008 they have carried out over 200 workplace mediations. In addition they carry out group facilitated discussion and train people in the skills of mediation to help with day to day interac-

tions across the University.

There has been common feedback from both schemes with the wider benefits summarised as early resolution, allowing complainers and practitioners to "clear the air", producing mutually satisfactory outcomes, leaving both parties with less ill will towards each other and rescuing the relationships.





#### What needs to be done?

For me the information available to people who are asked to consider mediation needs to be better. Organisations like

SLCC use video and blogs to help demonstrate what mediation is and how it works. We also, however, need to ensure that mediation is integral to how complaints systems work. I recently did a mediation where the parties had been in dispute for over five years. None of the par-



That is something Scottish Mediation is committed to supporting and we recognise that engaging with organisations to talk about the use of mediation is an important part of that work. I spent some of Monday morning speaking to a general management team in a large organi-

ties had spoken to each other and my view was that if they had communicated, their dispute could have been resolved without my involvement. sation for whom complaints are an essential learning tool in their success. I'm now planning to speak to more as the year goes on.

There is also work to be done to encourage people to adopt the use of mediation in resolving complaints and to share the

positive impacts of doing so with others.



# THE MEDIATION PARTNERSHIP SMR Accredited Mediator Training



First Course in Scotland to be accredited by the Scottish Mediation Register

### Dates: Thurs 26<sup>th</sup> & Fri 27<sup>th</sup> Sept, Tues 8<sup>th</sup>, Weds 9<sup>th</sup> & Thurs 10<sup>th</sup> October 2019 (includes assessment)

This intensive five-day course is suitable for mediators, lawyers, managers, HR personnel and anyone with an interest in gaining or enhancing mediation skills. It will provide delegates with a clear theoretical and practical training course, in line with the Scottish Mediation (SM) *Guidance on Mediator Competency*.

"Best training event I have ever been to. Excellent guidance. Great fun." Delegate from the University of Aberdeen

"Previous training felt like learning the highway code and having a 'go' in a simulator, whereas with Linda and Aileen it was like getting to drive the car with two very able and encouraging instructors on board to make it a safe and enjoyable experience." Lili Hunter, Lili Hunter Consulting Ltd

Discounts available for self-funders and public/voluntary sector. To book a place, or find out more information, contact Aileen Riddell on 07950 395276 or e-mail <u>enquiries@mediationpartnership.co.uk</u> <u>www.mediationpartnership.co.uk</u>

# **Civic Mediation**

#### **Kathryn Hilditch**

At the beginning of March, I had the pleasure of attending Module 1 of the Civic Mediation Theory and Practice course ran by Sam Tedcastle and Abdul Rahim from the Centre for Good Relations. This was a fascinating insight into the civic mediation approach and the type of situation where it could be used. The module was delivered over four consecutive days and gave participants the opportunity to reflect on their own approach to conflict and then to consider how they might use the ideas of civic mediation to approach a conflict situation relevant to their own work or life. From my perspective, it offered me the chance to consider where a civic mediation approach may be beneficial to some of the work that we do here at Scottish Mediation.

Civic Mediation involves taking a comprehensive approach to dealing with conflict where there are multiple parties and large groups involved. While civic mediation incorporates

the traditional five-stage model for facilitating meetings that most mediators are familiar with, it is much wider than this and involves a systemic approach involving a lot of work with the different parties involved before you would bring them together to discuss issues surrounding the conflict. Civic Madiation parties

conflict. Civic Mediation processes, therefore, often continue over a period of years and involve a wealth of partnership working, involving as many people who are directly involved in, affected by, and can have an influence on the conflict as possible.The work and relationships also continue after any meetings have taken place offering ongoing support to those involved.

It was great to meet and work with the group who were from a wide range of professional and personal backgrounds. This meant that the discussions were diverse and allowed for a range of ideas and examples to be considered.

Sam and Abdul are amazing trainers who offer lots of examples from their experience which really bring civic mediation to life. They

forge a friendly and supportive atmosphere which allowed for everyone to feel comfortable sharing thoughts and ideas and bringing their personal experience into the room. The course was a real eye-opener to the possibilities around civic mediation. I believe it would be a great experience for anyone and particularly those interested in taking a wider approach to their mediation practice and where there are multiple parties involved. Equally, on a personal level, it gave me an opportunity to consider my approach to conflict and to reflect on how this impacts upon both my working and personal life.

One of the other participants, Catherine Brys who has previously trained in a more traditional mediation model adds that 'What I took away from the course was how civic mediation can be applied to a wide variety of situations in society which don't fall within traditional areas of mediation. The course participants worked on thinking through how

they will apply civic mediation principles and techniques to situations relevant to their specific (work) interests or to topics which have been recently in the news. Examples included tackling the systemic issues surrounding football violence, addressing the culture of late payment

of suppliers in certain industries and the decommissioning of nuclear power plants. Civic mediation principles can be seen as a structured approach to encouraging a variety of stakeholders to foster an understanding of each others' perspectives and to collaborate constructively to address an issue or grasp an opportunity. It's really about partnership working.'

At the end of May, some of the participants will be reuniting to attend the final two days of the course, Module 2-Facilitating Large Groups in Conflict which will look at putting some of the theory we have learned into practice. I am excited about having the opportunity to practice the skills and consider further how civic mediation might fit in with my work here at Scottish Mediation.



#### **Tutoring the Mediation Elective at Edinburgh University** Paul Kirkwood

As a Law Society of Scotland Accredited Commercial Mediator and Solicitor I was chuffed, and honoured, to be invited by Pam Lyall- trailblazing Commercial Mediator and Solicitor, to assist in tutoring the Mediation Elective on the Diploma of Professional Legal Practice at the University of Edinburgh earlier this year. It meant returning as a Dominie to my Alma Mater-an interesting and rewarding experience. Also tutoring were Alun Thomas-Commercial Mediator and Solicitor, the Chair of Scottish Mediation and Alison Ebbitt- a very senior Family Mediator who taught me on the Legal Masters Degree (LLM) in Mediation, Negotiation and Conflict Resolution at the University of Strathclyde. I was in seriously august company! This is a fantastic course, teaching the next generation of solici- elicit information and the use of closed gues-

avoiders or harmonizers)-oh yes, we all have these even though most of us don't realise. Doing so shows them how they might adapt these to include other styles of conflict resolution that they may naturally shy away from.

We look closely at understanding and analysing conflict and its stages (or spirals)-what is this dispute about and what stage is it at. We look at effective communication styles, focusing particularly on the skill of 'active listening'-something good mediators do well and manage to get antagonistic parties in mediation to do too (this is something many people are often not good at). We look at the active use of open questions in joint sessions to



tors and advocates about mediation both from a theoretical point of view and from a practical point of view. The course focuses on theory in its one-hour lectures and on learning by doing in its two-hour workshops. It is taught over a period of two months and is intensive both in terms of the breadth of material taught and covered and in terms of actually practising mediation. The course is formally assessed and failure to reach a high level of pass means a resit-so the students are under pressure from the get-go.

The course covers the psychological impact of conflict, including a look at the brain's neurobiology-the driver of human behaviour and how that commonly manifests itself through socially expressed cognitive biases. It helps students to identify their own conflict styles (directors, co-operators, compromisers,

tions, or focused questions, in private sessions where confidentiality can be maintained. We also consider the mediator practice of summarising parties' statements in a way that assists in identifying common ground- which often leads to breaking impasse. We study Principled Negotiation-a methodology popularised by Fisher, Ury and Patton in their seminal work "Getting to Yes"and used by many mediators in their practice of encouraging disputees in mediation into a genuine and constructive dialogue with each other.

Students are introduced to different models of mediation-from mainstream Facilitative Mediation and it's 'stages'; Transformative Mediation-where mediators are more hands off and much less interventionist; through to looking at Commercial Mediation in legal dis-

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Strathclyde



he ability to deal with conflict is a key skill in the modern workplace. The UK's leading postgraduate programme In Mediation and Conflict Resolution at Strathclyde law school provides a thorough, practical and exciting introduction to this developing area. Our alumni are working as freelance. mediators and in law firms, public sector bodies, NGOs and mediation organisations.

#### Legal training is not a pre-requisite; the MSc/LLM option caters for students from a wide range of disciplines.

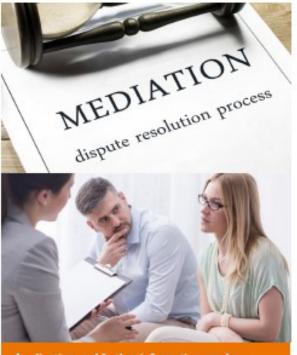
Distinctive features include:

- A focus on Interpersonal mediation skills and a thorough Introduction to the academic dimension of the discipline
- The Mediation Clinic, providing opportunities to work with experienced mediators on real cases.
  - The Mediation Clinic continues to increase the number of cases mediated, thanks to the new Sheriff Court Simple Procedure. This has created more opportunities for students to gain experience of realworld mediation.
- Accreditation by Scottish Mediation (as fulfilling the training requirement for the Scottish Mediation Register)
- Rigorous and multi-disciplinary, taught by UK and International experts
- A truly International mtx. Cohort's have included students from New Zealand, India, Ecuador, Seychelles, Canada, USA, Belgium, Ghana, Nigeria and the UK
- Suitable for managers, lawyers, mediators, HR, health professionals and anyone working with people

Participants will enhance their confidence in dealing with Interpersonal and organisational conflict while developing their communication and problem-solving skills. As well as core classes on mediation theory and practice, students may choose electives in negotiation, employment mediation, mediation law and policy, arbitration as well as classes from Human Rights, Construction Law and International Economic Law.

# Start Date:

September each year Mode of Study: Full-Time or Part-Time taught by a combination of evening lectures and intensive weekend sessions to maximise flexibility.



Application and further information can be obtained from: http://www.strath.ac.uk/humanities/courses/law/ courses/mediation/

#### Contact

e: hass-pgt-enquiries@strath.ac.uk t: 0141 444 8600

putes (sometimes referred to as a form of Evaluative Mediation) involving clients, lawyers and mediators. With regard to the latter the course looks at the role of lawyers in mediation and what they can do positively to maximise client best interest, both in terms of how they conduct themselves as lawyers at mediation, and in how they prepare their clients to engage in mediation. The latter aspect teaches potential solicitors the practical art of taking their clients through a risk analysis of their own case pre-

mediation-SWOT (strengths, weaknesses, opportunities and threats)and looking at Batna's and Watna's-if you can't resolve this case in mediationwhat is your best alternative to a negotiated outcome and what is your worst? In this regard the course is highly practical.

Throughout the course the students take part in role-playing genuine disputes which have been anonymized. They take turns in playing parties and mediators (they are also introduced to the practice of co-

mediation-a skill in itself) and they have to take disputes in mediation through from start to finish. They benefit from seeing live, unscripted and unrehearsed demonstrations of commercial mediation in legal disputes in the lectures, which replicate real cases using mediators, solicitors and parties. The emphasis is on learning by watching and then learning by doing.

It was a real joy to see students develop as they soaked up the theory and made hard efforts to turn what they'd learned into practical reality in the role-play mediations. Most really 'got' the connection between how people behave naturally in conflict and how mediators in practice, using skills they have developed, try to counteract the normal 'away reflex' of most humans engaged in conflict, into a 'going towards' engagement in dialogue. The quality of the students' written work at the end of the course was excellent and demonstrated that they had really engaged and learned. One student had given a great deal of thought to her concern, that despite the power of self-determination parties undoubtedly have in mediation, it is also the case that mediators have significant power too-and she was concerned about the inappropriate use of that power and the possibility of mediator manipulation. I had to write my own essay in response, when providing critical feedback!

I don't mind saying that these three-hour sessions are tiring- our 'c-system', reflective,



thinking brains are switched on all the time during this process-there is nowhere for anyone to hide, students or tutors-and it is mentally taxing. So are real commercial mediations – for all the participants- that's what it's really like! But it is a very rewarding way of learning about mediation and negotiation, both theoretically and in practice. It will undoubtedly stand these young lawyers in good stead for their nascent legal careers at the same time as actively promoting mediation as a highly practical and desirable form of normal conflict resolution and negotiation. I wish they'd taught it when I was first a student all those years ago!

Posted by Paul Kirkwood, director of www.MNCRS.co.uk – Mediation, Negotiation and Conflict Resolution Services.

# **Scottish Mediation News**

# Mediate 2019

Scottish Mediation are delighted to announce that this years conference theme will be "The Words We Use".

The theme recognises the importance of communication about mediation and in mediation, and the different forms this can take.

It is planned for mid to late November and further details will be announced soon.

### Welcome to Scottish Mediation

Scottish Mediation are delighted to welcome Helen Tuohy, Emma Murphy, Pauline McLeod and Louise Dunlop as new individual members.

Natalie O'Hare joins as a new Practitioner.

Whether you are an organisation, a practitioner of mediation or someone interested in finding out more we have a range of memberships available which can be viewed <u>here</u>.

# Training and CPD –Save the Dates

Scottish Mediation are delighted to present our spring **CPD Mental Health and Mediation.** Led by Alison Ebbitt the CPD will focus on understanding the different ways people who are affected by mental health feel. It will look at good practice for mediators in mediating where people with mental health issues are involved and appropriate techniques to consider in such instances.





# Core's Flagship Mediation Training Course: Using Mediation Skills as a Leader

**Residential Summer School** 

Sunday I September, 16.30 – Wednesday 4 September, 16.30 2019 (CPD: 24hrs +)

at the excellent Carberry Tower, Musselburgh

(this three-day course or other relevant mediation skills training is a pre-requisite for attending the Assessment Module)

Early Bird places available until 24 May

#### Assessment Module

Tuesday 29 October - Friday I November 2019 (CPD: 32hrs)

For details of Core's mediation, facilitation and training services, contact Miriam Kennedy at 0131 524 8188 or Miriam.Kennedy@core-solutions.com www.core-solutions.com/training

# Moving to mediation makes for earlier resolution

#### John Sturrock

As a mediator I look back on my years as against valuations made by local assesan advocate at the Scottish Bar with great affection. The intensive preparation ral gas liquids plant in Fife? Or Hibs, the night before. The pre-court anxiety as one wondered which judge would be allocated. Gathering volumes of case reports from the Advocates' Library. The discomfort of the old courts in Parliament House. Those lengthy cases where evidence was heard over several days or even weeks. Sitting next to and observing the outstanding Queen's Counsel of the day in action. The anticipation while awaiting the opinion of the court, perhaps weeks after a hearing.

Lately, however, reflecting on the cases in which I was involved, I have asked myself: could at least some of these have been mediated, had mediation been available? Then, as now, most cases in the Court of Session settled without being decided in court. In the mideighties and into the 'nineties, settlement nearly always took place on the morning the case was due to start. Parliament Hall was a mass of bodies. Clients and solicitors would be looking anxiously at counsel who would be strolling up and down the Hall, in step, discussing the strengths and weaknesses of their cases. This was hardcore negotiation and there were many masters of the art.

Many of these cases could, and in hindsight probably should, have settled earlier. But the system in those days did not cater as it does now for earlier resolution. Agreement is now reached at earlier it was within "reasonable contemplation" stages in many cases. Let's leave for now whether even earlier and/or more satisfactory outcomes could be achieved with mediation.

I am interested in those cases of mine which did go to court. What if mediation had been suggested in the Lands Tribunal cases where I was junior counsel to David Hope QC (as he was), in which we acted for the appellants Exxon and Shell sors in respect of the Mossmorran natu-Hearts and Celtic regarding the valuations of Easter Road, Tynecastle and Celtic Park? Could a mediator have been brought in? Probably not, as these were issues of valuation principle with wider application and too much at stake. They probably needed judicial determination.



But what about Balfour Beatty against Scottish Power which reached the House of Lords? In a case about the continuous concrete pour needed to construct the Union Canal aqueduct over the new Edinburgh bypass, the question was whether that a blown fuse would lead to demolition of the aqueduct. The case was decided on a point on which, as I recall, there was very little evidence at the first court hearing but which became fairly central in the appeal to the House of Lords. There was risk on both sides and the costs must have been relatively high compared to the sum sued for. It was all or nothing. Nearly ten years elapsed between the event and the final decision. I

# Moving to mediation makes for earlier resolution

John Sturrock

suspect that it could well have been mediated satisfactorily at a much earlier stage. That would have resulted in one less House of Lords authority of course but I am not sure the parties would have been too concerned.

In another complex matter, I was junior counsel for the pursuers in what was then one of the biggest intellectual property cases, Conoco against Merpro Montassa. This concerned a patent for a hydrocyclone which separated oil and water in the North Sea. We had weeks of evidence and had commenced our appeal when the case settled for commercial reasons. There was much at stake and the outcome was always uncertain. I imagine that mediation, which is now regularly used in IP matters, could have brought about an earlier commercial resolution.

I often recall Mr and Mrs Pickering for whom I acted alone in a judicial review of a planning decision, against both the regional and district authorities, each represented by senior and junior counsel.

### Five-Day Mediation Skills Course, Edinburgh

30+31 May, 6, 7, 10 June 2019



Although we lost in the first court, there may have been a good appeal point. But the Pickerings did not have the resources to continue. Then, as now, the question arises: could a matter of public law have been negotiated using mediation, to the benefit of all concerned – and saving time and money? Quite possibly. Times have changed.



Last few places left!

Designed for people who will be using mediation skills in their work, this course is accredited by the Scottish Credit and Qualifications Framework. The course provides information on key concepts in mediation and the opportunity to discuss and practice basic skills in a safe, relaxed atmosphere. It covers the whole mediation process from first contact with the service to closing a case. The mediator's role is explained and practised using typical scenarios for first visits to explore mediation as an option, preparing clients for joint meetings and handling difficult behaviour at a meeting. The course is assessed based on activities from day three onwards culminating in a full role-play of a mediation meeting on day five.

To book a place or for more information please contact: Robert Lambden at Scottish Community Mediation Centre: e-mail <u>infoscmc@sacro.org.uk</u> Course Fee is £600 per participant

# **Scottish Mediation News**

### **Planning Bill Progress**

The Planning (Scotland) Bill is now progressing to stage three in the Scottish Parliament with discussion scheduled for June 2019. The Bill was heavily amended at Stage 2 and it is likely there will be a lot of discussion before the Bill can pass. Scottish Mediation is pressing for the Bill to include a recognition of the need for mediation to be part of a modern planning system and are working to make this happen.

### **Peer Mediation Conference**

Scottish Mediation are delighted to be holding a conference in September to celebrate and reflect on the work of it's Peer Mediation project Young Talk. The conference is being held with a circus theme at Tynecastle Park in Edinburgh and wil be attended by young people, teachers and those involved in Peer mediation across Scotland.

### Farewell Rob...And a Huge Thanks

The end of April saw Rob Barrett, Scottish Mediation's Civil Justice Project's Researcher, finish his work on the project. Over the 6 months of the Project Rob put a huge effort into researching the options to advance mediation in the civil justice system in Scotland. His draft report is being prepared for publication and Scottish Mediation will be launching it in the very near future.

It is anticipated that a lot of work to promote and consult on taking the report forwardwill take place over the next period. Watch this space.



# **Board Profile - Alun Thomas**

# Scottish Mediation Chair gives an insight into his passion for mediation and his involvement as a Trustee.

#### What is your day job?

I am an Employment Lawyer – a partner at Anderson Strathern LLP and lead a team of 16 in the Employment and Pensions Unit there

#### What motivates you to get up on a Monday morning?

The fact that every day brings new challenges. Working in the area I do involves dealing with people, normally in some form of conflict or dispute, whether they are an employer or an employee. Trying to help people find resolutions rather than confrontation is what it's all about.

#### How long have you been a Trustee, and why did you become involved?

I've been a trustee for 10 years, since October last year as Chair. I felt it was right for me contribute something having taken so much

out of being involved for a number of years as a member of Scottish Mediation and particularly the WEIG group.

#### **Did you have any prior knowledge of or involvement with Scottish Mediation before?** Yes – I've been a member for 10 years or more.

# What have been the highlights of your involvement with Scottish Mediation?

I've enjoyed the conferences – it's great to meet up with mediators from all over Scotland and the world working in all sorts of different areas, and also the regular WEIG sessions – for the same reasons.

# What do you see as the main issues that Board has to address at present?



I'd like to see the Register develop as a recognised "shop window" for mediators in Scotland both by becoming the go to place for folk seeking mediators and for mediators seeking to tell the world what they do.

#### If you could change only one thing for mediators, what would it be?

For Scotland to be seen as a place where mediation is seen as the natural first choice for resolving disputes and for the adversarial approach to be recognised as the resort of the unimaginative or the under advised.

#### What keeps you busy outside of work?

The usual, I guess; family, walking, micro pubs, theatre and live music whenever I can, normally in that order.

# **Workplace Employment Initiative Group**

May 2019

Dear Scottish Mediation colleague

### **Insurers and Mediation**

The next meeting of the Workplace Employment Initiative group (WEIG) is planned to take place in late June and a venue and date are in the process of being confirmed. If you would like to be notified when the date and venue are available please email admin@scottishmediation.org.uk

All meetings are open to Scottish Mediation members and provide an opportunity for mediators involved and/ or interested in workplace mediation to come together to network and share experiences.

Please email admin@scottishmediation.org.uk if you are able to attend.

Looking forward to meeting up,

Slainte

Linn

Linn Phipps, Chair, SMN WEIG, 07917 564440