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The Brexit Negotiation: More Irritators

O wad some Power the giftie gie us
To see oursels as ithers see us!
It wad frae mony a blunder free us,
An' foolish notion.
Robert Burns

Those of us at the 'Br' end of the Brexit negotiation find it increasingly hard to know how others see us. Our media shovel up stories of European exasperation and worldwide astonishment; or, if you prefer the other side of the argument, European intransigence and a worldwide welcome for future trade. 21 days from our second departure date we still don't know if the UK will be in or out, with a deal or without. It is a painful time. On this blog Charlie Woods called for Rebuilding Empathy in the UK.

The Brexit negotiation is surely one of the most important our nation has ever conducted. Yet it would be hard to argue, after three years and the latest round of mutual recriminations, that it has been well-handled. Of course I don't know the constraints our negotiators are under, so I offer this as food for thought. As far as I'm aware, no mediators have been invited to assist the negotiation (can you imagine?) so it's worth turning to ideas from the field of negotiation.

Irritator 1: the fair and reasonable offer

In a previous blog I discussed Neil Rackham's seminal research on highly effective negotiators. A key finding was that certain phrases have negligible value

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in convincing our opponents but do succeed in irritating them. The examples I gave were 'phrases like "generous offer" or use of words like "fair" or "reasonable" to describe one's own proposal.'

Four days ago Boris Johnson hit the bullseye by declaring: 'What we're saying to our friends is (that) this is a very generous, fair and reasonable offer we've made'. Unsurprisingly the EU doesn't appear to share that view. In negotiation the other party is judge of an offer's fairness, reasonableness, generosity and irritation.

So why do it? Mr Johnson is not the first to praise his own offer and I often hear the same sentiments in mediation. One plausible reason is that the counterpart is not the intended audience. I doubt if the UK Govt really believes it can sway European leaders through spin. Much more significant is one's base: even a Prime Minister needs to convince those nearer home that his behaviour is reasonable. Or at least reasonable enough that its rejection is evidence of the other side's intransigence.

A second reason is less instrumental: self-image. Almost everyone wants to see themselves as fair and reasonable. Even 'tough' negotiators (see below) mostly think they're good guys using robust tactics to advance worthy goals. My own research has found self-presentation to be significant in mediation parties' thinking. It would be a mistake to underestimate its force in our political leaders.



Irritator 2: those last-minute Europeans

In defining irritators, Rackham maintains 'Most negotiators avoid the gratuitous use of direct insults or unfavourable value judgments.' Yet one of our most persistent irritators does just this. It is the canard that 'those Europeans' always do a deal at the last minute (see for example: 'The EU will cut a deal at the very last minute'). Anyone listening to TV or radio news in the UK will have heard this countless times. David Davis, our first lead negotiator, said recently: 'it won't be the first three years that matter, it will be the last three weeks, three days, three hours, three minutes, three seconds'.

Apart from being irritating to our counterparts, this particular assertion has also riled me. ALL negotiations settle at the last minute. It's like the old joke: I always find my

key in the last place I look. How many mediators have seen matters settle in the final minutes of the allotted time, whether it be an hour, 8 hours or 18 hours? If they don't, one side or the other will believe they could have done better. We need to believe we have extracted painful concessions from our counterpart, and they from us. Attributing this to European-ness seems like more rhetoric aimed at the home support.

An irritating afterthought: the tough negotiator

This last irritator is implicit in a number of pronouncements about the Brexit negotiation. It goes like this: up until now the EU has believed it can arm-wrestle the UK into accepting its terms. Those



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who seek further delays are simply pandering to these bullying tactics. Finally in Boris Johnson we have a leader who's prepared to stand up to Europe, if only those pesky parliamentarians wouldn't hamstring him by limiting his ability to leave without a deal (I parody, but only slightly: see for example 'They are not our friends' IDS savages Brussels as UK fights back against EU bully tactics).

Because this line of thinking portrays our negotiation counterparts as bullies, the rational response is to select a tough negotiator to fight back. It is worth reflecting on this approach. Clearly tough guys sometimes win. And intuitively one might think that a unique, 'one-off' negotiation is precisely the moment for such a character.

However, research tends to undermine this hunch. In one study, researchers found that even in a one-off negotiation, a reputation for distributive (hard) bargaining significantly limited the flow of information, leading to poor results (reported in Tinsley et al, 2008, 'Reputations in Negotiation'). Andrea Schneider's empirical study of lawyers found something similar over the longer term: 'increasingly adversarial behavior was perceived as increasingly ineffective' (Schneider A K (2002) Shattering negotiation myths: empirical evidence on the effectiveness of negotiation style. Harvard Negotiation Law Review 7, 143-234, 196).

This is sobering for the UK. Even if we do exit deal-less on October 31st, our leaders' negotiation reputation will stick. No deal doesn't mean no more negotiation: we are told we have dozens of trade deals to secure, not least with the EU. A cautious approach now might serve the country better in the long run.

Conclusion

I still have no idea how others see us, but I've tried to report a little of how we see ourselves. And anyone daring to comment on this particular negotiation needs a dose of humility. I can only offer one perspective at one point in time. Harold Wilson's famous line 'a week is a long time in politics' now looks like an overestimate. Here in the UK we don't know what the next 24 hours holds. Like any mediator I can only plead in my defence: the more you do the work, the less you think you know what's going to happen.

This article first appeared in the Kluwer Mediation Blog. To read this and more articles like it please click [here](#).

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http://www.rowan-consultancy.co.uk/Training/rowan_cert_counsellingskills_online.htm

for details.

Assumptions and Biases

Graham Boyack

One of the skills mediators need to have is the ability they have to manage any biases and assumptions that may affect a mediation. This is important when helping people resolve disputes as the mediator needs to act and have the confidence of the parties of acting in an even-handed manner.



When my colleagues announced that the venue for our Young Talk conference last month was to be Tynecastle Park, the home of Hearts, my initial thoughts on how things might turn out were not good. For my sins, and I must have committed quite a few recently, I am a Hibs fan, and so a visit to our city rival's stadium didn't initially seem like a good idea.

Not surprisingly therefore entering the stadium for the conference I was unsure about what to expect. I didn't however have to manage any biases or assumptions as the setting, service and conference could not have gone better. Young Talk is Scottish Mediation's initiative to get Young People using mediation skills, whether in schools, in youth organisations or indeed anywhere where listening and conversation skills are useful. (We call it Peer Mediation) At Tynecastle we had young people from schools across Scotland, both primary and secondary. They had been invited to the conference which this year had a circus theme.

The circus theme may seem, on the face of it, to have no connection to mediation. However one Edinburgh Player started

their workshops the relevance became immediately apparent. If you are juggling or doing balancing acts it's very important that communications are the best that they can be. That everyone understands what's expected of them and particularly with the balancing acts that everyone trusts

everyone else. As a result the circus skills workshops were like mediation masterclasses.

At the beginning of the day delegates from different schools shared what Peer Mediation meant to them. One of the best comments came from Molly at Croftfoot Primary in Glasgow who said that 'My playground is a happier place since Peer Mediation was introduced'. Often when disagreements and bullying aren't sorted out that they have the potential to make lives miserable for those involved. Simply by giving students the ability to help their fellow students sort things out can make a huge positive difference. Students from other schools talked about how they had made an impact on how they talked and listened at home with their families confirming that the skills gained aren't just for school.

The feedback didn't just come from the students. Teachers talked about how learning mediation skills had a huge impact on the personal development of students. I find speaking at conferences

Assumptions and Biases

Graham Boyack

nerve racking so it was great to see the confidence of the students addressing the conference. That was another assumption that was contradicted by what happened. One of the biggest challenges for Scottish Mediation has been how we fund the work to help young people gain such invaluable mediation skills. I was reflecting after the conference that one of the biggest biases and assumptions we need to overcome is that everyone else would automatically understand and see what we are talking about. As a result we're now working on a report that will map the outcomes and impacts of imparting these life skills to young people. In doing so we'll be focussing on a wider range of outcomes than we had thought we might be at the outset of our work. Initially our focus had been the impact on the schools and for learning. I can now see our report focussing on



much wider issues such as the importance of skilling young people as a way of preparing them for life and the positive impacts these skills will have for the rest of their lives whether that be in their families, in education, in the workplace and eventually in the relationships they establish with their future families. It won't be in the report but I'm sure such learning will also have an impact on how we as a society deal with disagreements, an area where I think we can all agree that there is room for improvement.

The last assumption I got completely wrong was that the guy with the Hearts blazer and tie, one of many who gave us great service, would be Hearts daft. Turned out he was Hibs daft and we enjoyed a few minutes of conversation about our passion for football and for

Five-Day Mediation Skills Course, Edinburgh

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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 infoscmc@sacro.org.uk Course Fee is £600 per participant

Medate 2019 - The Words We Use

Graham Boyack

This year's conference theme is 'The Words We Use'. The conference will look at the how language impacts on people engagement with mediation, how the language we use in mediation impacts on those involved and allow discussion on the response mediators might make to this.

We are delighted to confirm our two plenary sessions: What can mediators learn from crisis negotiators?

In this session, **Elizabeth Stokoe, Laura Burns** and **Colin Harper** will discuss their collaboration via Police Scotland, where they are hostage and crisis negotiators and trainers. About five years ago, Liz began working with the Metropolitan Police, building evidence-based communication training for negotiators based on recordings of live, unfolding crisis conversations between suicidal persons and police negotiators. Using conversation analysis, Liz has identified effective strategies for overcoming resistance to engage in negotiation.

Behind the Veil of Words: Observations about the obscuration of action in the mediation process

Dr Debbie De Girolamo

Debbie De Girolamo is a senior lecturer in law at Queen Mary University of London where she teaches and researches on conflict and dispute resolution at the School of Law, Centre for Commercial Law Studies, in London and Paris. Negotiators (Paris). Debbie is Co-Director of the LLM Specialism in Dispute Resolution, Director of the LLM Programme in Art, Business and Law, and Director of the Postgraduate Diploma Course in International Dispute Resolution (Mediation). Areas of current Debbie has written extensively about dispute resolution processes and has been invited to speak at conferences and workshops internationally on various aspects of her research. by Routledge in 2013. Debbie is a qualified Barrister and Solicitor in Ontario Canada. She also trained as a mediator and became a community mediator in Toronto, Canada.

Our Workshop programme will include the following:

Are our words accessible to communities?

Led by Jill Keegan from Outside the Box and Kathryn Hilditch from Scottish Mediation

Professional parlance: does "lawyer-speak" add fuel to the conflict fire?

Led by Sarah King, School of Law, University of Dundee



EDINBURGH | 14 NOVEMBER

How might an understanding of inclusive language improve mediations?

Led by Amanda Heenan, Arc of Inclusion and Kathryn Hilditch from Scottish Mediation

Framing the language for a Mediation Bill? What would a Mediation Bill mean?

Led by Graham Boyack Scottish Mediation
Buzz words for parties in Mediation
Led by Charlie Irvine, University of Strathclyde

For further details and to book tickets click [here](#).



LLM/MSc Mediation and Conflict Resolution

The 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.

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Distinctive features include:

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- **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 real-world 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 mix. Cohorts 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.



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 t: 0141 444 8600

Citizens Assembly Underway

John Sturrock

As a member of the Stewarding Group of the Citizens Assembly, I felt honoured to attend the first sessions of the Assembly on 26 and 27 October in Edinburgh. Walking into the venue, it had the feel of an historic occasion. And so it turned out. About 120 Scottish citizens, randomly recruited to reflect the make-up of the Scottish population, being broadly representative of Scotland's adult population in terms of age, gender, socio-economic class, ethnic group, geography and political attitude, met together with a mixture of excitement, anticipation and anxiety, for the first of six weekend gatherings.

The co-convenors, David Martin and Kate Wimpres, handled the opening sessions with dignity and restraint. The facilitators and researchers were introduced and played their part in creating an inclusive and safe environment. Care was taken to focus on exercises which built confidence in the process, with more substantive material being left for future occasions, although we had interesting reflections on the general constitutional position in Scotland and the UK and on statistics about Scotland and the Scots.



Michael Russell, the sponsoring Cabinet Secretary, gave a rousing welcome at an opening reception, reassuring the members that their work would be meaningful and listened to. The Scots Makar, Jackie Kay, offered two lovely poems, concluding that "our strength is our difference". We heard again the words of the First Minister when she first

proposed the Assembly in April this year: "...we should try to find ways of debating our choices respectfully, and in a way that seeks maximum areas of agreement. We should lay a foundation that allows us to move forward together, whatever decisions we ultimately arrive at."

The remit of the Assembly is to deliberate three broad issues of Scottish society:

What kind of country are we seeking to build?

How can we best overcome the challenges we face, including those arising from Brexit?

What further work should be carried out to give people the detail they need to make informed choices about the future of the country?

During the weekend, I reflected back to the work and events of Collaborative Scotland in 2013-2015, before, during and after the independence referendum. Some readers will remember those occasions. I sense that we have come a long way since then.

Read more at

<https://www.citizensassembly.scot/>

Scottish Mediation News

Welcome to Scottish Mediation

Scottish Mediation are delighted to welcome Laura McKenna, Abdul Wong, Isabel Haentsch and Irene Murray as new individual members.

Liza Miles joins as a new Practitioner.

Aurellien Human Resources join as organisation members.

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 [here](#).

Training and CPD

Scottish Mediation are delighted to present our **Dig Deep Masterclass November 19th 2019**

This interactive workshop is an opportunity for practitioners to reflect at a deeper level about how your work impacts on you in both the short and longer term.

This event is suitable for new and experienced mediators in any mediation discipline.

Facilitated by Alison Ebbitt and Charlie Irvine the masterclass will cover self reflective practice. It will run from 10am -1pm at 18 York Place, Edinburgh, EH1 3EP. To book please click [here](#).

Also in December we are running our **Workplace Conversion Course** on 3rd and 4th December 2019.

This practical two day course – Tuesday 3rd and Wednesday 4th of December 2019 from 9.30-17.00 (13 hours of CPD),

introduces mediators experienced in other fields to the problem of workplace disagreement and conflict. Participants will learn about the causes of conflicts to watch for, how to adapt their mediation styles, the use of written communication and other techniques over two enjoyable, interactive days with opportunities to practice their newfound skills. This session will be facilitated by Carol Hope and Jeremy Scuse.

For further details and booking please click [here](#).

Scottish Mediation Annual General Meeting

Scottish Mediation held its Annual General Meeting on Monday October 7th. We were delighted to welcome students and staff from James Young High school in West Lothian. They participated in an excellent Q and A exploring the lesson from introducing Peer Mediation in the school and the positive impact it has had for those involved.

The meeting also celebrated the achievements of the last year and looked forward to the challenges and opportunities currently facing Scottish Mediation. A copy of the Director's Report is available by clicking [here](#).

Faith in Change and Conflict

Tuesday 14th – Thursday 16th January 2020

Tuesday 18th – Thursday 20th February 2020

St Mary's Kinnoull, Perth



Does your faith community struggle with change or conflict? Do you want to develop your skills to help others deal with difference and tension?

This advanced course is for all in church leadership who want to deepen their learning about conflict, change and transition. The course will help strengthen your skills, allowing you to support your community through change and transition, and explore how to apply the learning in your own faith context.

"This training has provided a core learning programme for our Interim and Transition Ministry team. These skills are integral to the success of this form of ministry. I am delighted to be able to offer this training and value the opportunity to work with Place for Hope."

Daran Golby, Partnerships and Development Secretary, Ministries Council, Church of Scotland

The course will be delivered mid-week over two residential 3-day blocks of teaching.

Cost: £750 early-bird rate for bookings before 5th November 2019 (£850 standard rate)

This event is eligible for Church of Scotland Study Leave.

For more information and to apply

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Board Profile - Amanda Heenan

Amanda Heenan gives an insight into her passion for mediation and his involvement as a Trustee.

What is your day job?

I am an equality and organisational development consultant. My work is pretty varied, but in the main, I support organisations to really help them understand and improve the equality impact they are making. I love developing skills and confidence to deliver equality and inclusion effectively, and seeing the difference this makes.

What motivates you to get up on a Monday morning?

The fact that I can!

Also, being self-employed has the distinct advantage of taking the dread factor out of Mondays. I see each day as a new opportunity to experience life, and hopefully make a positive contribution.

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

I became a Trustee in September 2016. I have incorporated mediation and 'mediating ways' into all the roles I've had since training as a mediator nearly a decade ago. I have seen the power of mediation to resolve conflict and want to see this applied more widely in the workplace and in society. I applied for the role of Trustee as an opportunity to have a strategic influence and contribute to this wider use of mediation.



We are now living in a socio-political climate where conflict and fear seems to be ever more prevalent. The role of mediation, conflict resolution and peace building is more crucial now than it has ever been.

Did you have any prior knowledge of or involvement with Scottish Mediation before?

I joined Scottish Mediation in 2016, soon after moving up to Scotland from Yorkshire. I wanted to keep my mediation skills up to date and was keen to join a Scottish network supporting and promoting mediation.

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

Seeing an increased focus on developing community skills and confidence in mediation, and engaging with the dedicated project officers in the team. The Board strategy day was also a great opportunity to share ideas and help shape the direction of travel for the organisation.

Board Profile - Amanda Heenan

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

More effectively promoting mediation and breaking down barriers that prevent people from seeing mediation as an effective way to resolve conflict, especially at the early stages of conflict. Widening our membership is also a key area for development.

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

That mediation is more widely seen as a first line of conflict resolution in the workplace and in communities.

What keeps you busy outside of work?

I enjoy painting and drawing, particularly capturing nature and light. I love travelling and exploring the beautiful Scottish countryside. On my travels, I record information and photos of accessible walks for other people who use wheels to get about and share this online.



THE MEDIATION PARTNERSHIP SMR Accredited Mediator Training



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

To book a place, or find out more information, contact Aileen Riddell on 07950 395276 or e-mail enquiries@mediationpartnership.co.uk www.mediationpartnership.co.uk