

In this edition of Collaborate Page

Mediate 2020 1
Details in this year's online conference.

A Wake Up Call for Mediation 2-6
Paul Kirkwood reviews Rachael Field and Jonathan Crowe's challenging new book.

Scottish Mediation News 7
News on membership, events and standards from Scottish Mediation.

Mediation Training Online 8-9
What's it like and does it work? Linda Paterson reflects on recent experience.

Mediation Bits and Pieces 10
News and info on events in Scotland

Mediation Less Taxing 12-13
Graham Boyack examines the award winning HMRC mediation scheme.

The Elephant that Blows Rainbows 14-15
Kathryn Hilditch reviews Dimitra Mousioli's book on mediation for children.

Workplace Employment Group 16
This month's meeting details.

Adverts from:
University of Strathclyde, Scottish Community Mediation Centre, and Rowan Consultancy.



Mediate 2020 - 16/17 November.

Next week Mediate 2020 is going fully online delivered over two half day sessions.

On our first day we are delighted to welcome Paul Embley the CIO and Technology Division Director at the National Center for State Courts in the USA. Paul is going to speak about developments in Online Dispute Resolution and Mediation.

We also feature a Panel Discussion looking at the Building Back better with Mediation featuring Dr Claire Macaulay (Medical Mediation Foundation), Sarah Allen (Scottish Land Commission) and Rachel Bicknell (Squaring Circles)

On our second day we welcome Professors Rachael Field and Jonathan Crowe from Bond University in Australia. They recently published Mediation Ethics from Theory to Practice. (Review on the next Page).

Our plenary on Tuesday will focus on how mediators respond to racism with reflections from people working within those contexts and how this may impact on mediation practice.

We also feature workshops on Resilience, Lay People and Justice, Covid Mediation in Canada and Scotland and Young People and Positive Conversations.

For more information click [here](#).

A Wake-Up Call for Mediation!

Paul Kirkwood

Mediation Ethics: from Theory to Practice by Rachael Field and Jonathan Crowe, is, despite its low-key title, a refreshing, challenging and for mediation, controversial book-it deserves your attention.

Self-Determination, Informed Consent and Professionalism are the Primary Principles which should underpin Mediation in the Modern Age. In this new Mediation Ethic – Neutrality and Impartiality need to take a back seat. Is this a moment of truth for Mediation?

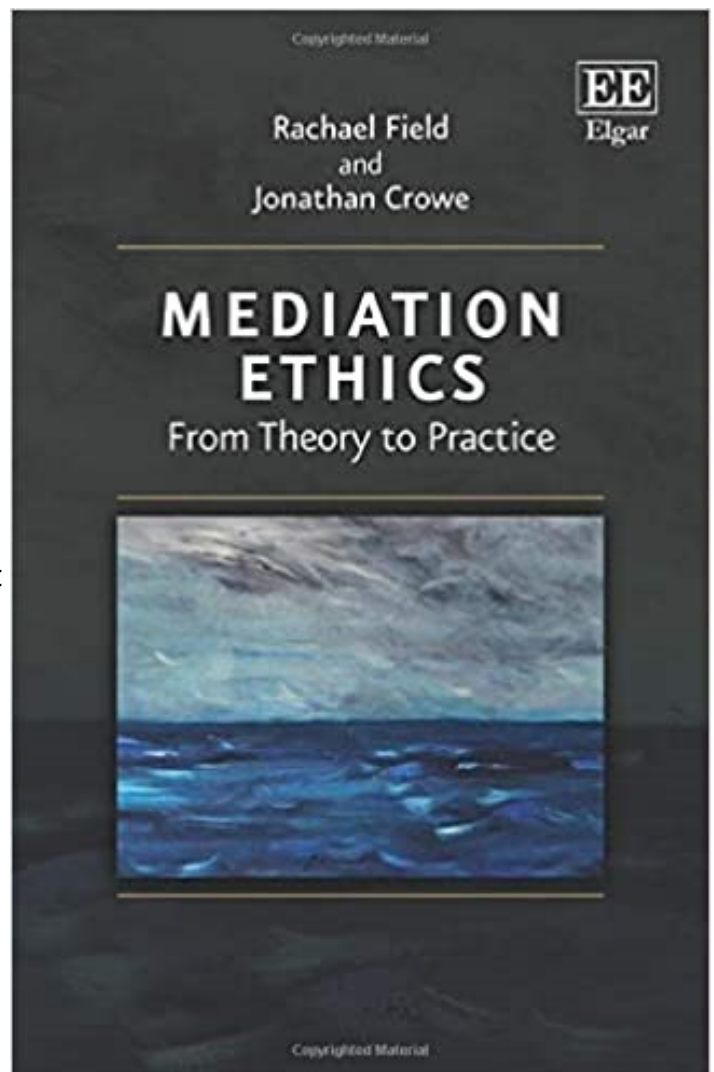
The fundamental premise of the book is that the time-honoured sacred cows and principles thought to underpin mediation-Neutrality and Impartiality-need to be relegated to being tools (or potential mediation techniques) in the mediator's kit, rather than seen as foundational principles. Instead mediators should embrace the real foundational principle of mediation-Relational Self-Determination armoured by Informed (legal?) Consent and a Professionalism that should include a 'fiduciary' duty to all parties.

In support of this premise the authors propose a new 'contextually driven' paradigm of mediation ethics that is not rule-based, but is driven by the context of the situation in which a decision about how to intervene by a mediator, must be made. 'As contextual ethical approaches do not prescribe a specific path to resolving a dilemma, they require competent, discretionary, professional judgements that take account of the circumstances of individual cases and respond to them reflectively and relationally' (Page 213 and see footnote 5).

This idea of contextual ethics (or ethics derived from practice) is compared to the 'rule-based' or 'regulatory' approach to ethics taken in the legal profession, which in the context of mediation is regarded as being 'too fixed' and 'limiting' or 'an impediment and a barrier' to the creativity necessary for mediators in fluid fast moving circumstances. Additionally, the authors reflect on the hierarchical, formalistic and coercive nature of regulatory systems. The authors in anticipating a response from the wider profession to what might be seen as an almost 'Proudhonian' proposition (anything goes), suggest that they support neither a

rule-based/regulatory approach, nor a strictly contextual (or practice based) approach, 'Rather, a guided model that sits between these two extremes is most appropriate because it provides a principled framework that offers practical guidance for mediation training and practice' (Page 175).

So far so good, but I may have put the cart before the horse. Why are the authors dropping neutrality and impartiality as



foundational principles when these concepts are fundamental to the way in which so many mediators perceive themselves and their role in mediation?

This book undertakes a thorough review of the concepts of neutrality and impartiality in mediation and how they came to be imported there from law and legal practice, and notes how they have been used as a means of

A Wake-Up Call for Mediation!

Paul Kirkwood

justifying the practice or profession of mediation as being something that is equally as good as litigation or arbitration as a means of dispute resolution. The authors posit that the importation was not necessary because (1) it is the principle of self-determination that sets mediation apart from these other forms of dispute resolution and (2) that principle is what makes mediation 'good' and 'fair'. It's not about the imposition of a decision on parties by a third-party – parties self-determine their own outcome with the help of an engaged, active and interventionist mediator.

In any event the authors argue, the concepts of neutrality and impartiality turn out, in the context of mediation, to be deeply flawed and actually work to actively prevent and forestall mediators being allowed to intervene in a way that would enable them to provide support to parties which would enhance party self-determination. Take for example providing parties with information (legal or

about legal systems) that would assist in ensuring that they do have the ability to make a decision on the basis of informed consent. A duty of strict neutrality and a regulatory requirement not to intervene would prevent the provision of such information and ultimately mean, in an unbalanced power situation, that the mediators' professed neutrality or impartiality would simply lead to a reinforcing of the power imbalance where one party would make an uninformed decision and only the other party would be truly self-determining. As the authors say 'Our proposed conceptual framework for a new ethical paradigm in mediation focuses on informed consent as the primary basis for achieving party self-determination. It is informed consent, not mediator neutrality, in our view, that provides the mechanism by which authentic party self-determination is achieved' (Page 181).

The authors argue that in their model of



Mediation CPD Short Course
Developing Your Cross-Cultural Skills

20 & 27 November 9:30-12:30

ORGANISATIONAL | OCCUPATIONAL | GENDER | RELIGION | GENERATIONAL | NATIONAL | REGIONAL

Workplace Mediation: Developing Your Cross-Cultural Skills (8 hours CPD) - £45 inc vat

This online course will introduce participants to the impact of culture on mediation. It will explore how a good understanding of cultural factors can assist mediators to facilitate agreement between mediating parties. It will not just focus on National Culture, but also on gender, occupation, religion, etc.

Presenter: Tony Buon, a very experienced Scottish Mediation Registered Mediator

Book via Eventbrite - call 07762709377 - email tony@buon.net - web: www.buon.net

A Wake-Up Call for Mediation!

Paul Kirkwood

mediation 'the ethical facilitation of party self-determination is the core objective of the mediator's role' (Page 181). In some situations, for example where the power dynamic between parties is equal, a mediator can appropriately adopt a neutral or impartial stance to achieve this-but neutrality/impartiality are not necessarily required to realise this value. Where there is a power imbalance, mediators may require to act in a way that contradicts the ethics of neutrality as it is currently understood in order to support party self-determination (Page 181).

The authors identify four core characteristics of party self-determination: (1) active and direct participation by the parties in communicating and negotiating; (2) party choice and control over the substantive norms that guide their decision-making (for example law); (3) party involvement in the creation of options for settlement (it is envisaged that mediators can play an active role in helping parties develop options); (4) party control over whether to come to an agreement, and if so the terms of that agreement.

For the authors the imperative of pursuing party self-determination provides the ethical driver for mediators' actions and decision-making. Informed Consent and Professionalism provide additional ethical checks on the mediator's practice (Page 183).

In this regard the authors note that for self-determination to lead to agreements that can be considered principled and fair, genuine self-determination has to be achievable in practice (page 193)-the way to ensure this is by using Informed Consent and Professionalism.

In the authors view, Informed Consent (which has also been borrowed from legal doctrine) can be supported by the mediator in a number of ways. For example, by the provision of information to unrepresented parties (page 197). However, they consider that there are three elements to achieving real Informed Consent: (1) maximisation of party control through the use of intake process and party preparation strategies; (2) ethical mediator activism in support of

informed consent; (3) party access to legal and other external advice.

The intake process should be used by mediators to assess a party's capacity for informed consent and to diagnose that party's needs in achieving it-this would include assessing their ability to access necessary legal/professional advice and also their capacity to negotiate effectively. Where these capacities appear wanting, the mediator should take active steps to help 'remedy' the situation by pointing the party



Photo by Shane Rounce <https://unsplash.com/@shanerounce>

to sources of help- 'or making 'warm' (actively assisted) referrals to relevant services. In this sense, intake processes can be considered as a way to screen parties into mediation, and also into

A Wake-Up Call for Mediation!

Paul Kirkwood

the most appropriate model of mediation for their dispute and their capacity for informed consent" (Page 200).

The intake process also provides space for mediators to ensure that parties maximise their own control and should centre 'on capacity building through mediation preparation or coaching, ensuring that the parties know and understand the process and its principles, and that they have developed strategies for their participation' (Page 201). The authors also consider that 'ethical mediator activism' is a necessary part of supporting party self-determination by facilitating informed consent of individual parties, and that if necessary, this may be required in the form of information and even advice (page 204). Quoting Weckstein, the authors note, 'if a party cannot or will not access external advice to support their informed consent, then 'it should not be considered improper for the mediator to serve as a source of pertinent information' because 'educating disputants about relevant norms and information enhances, rather than undermines, party self-determination' (Pages 204/205).

The authors observe that under the current neutrality centred ethical paradigm, mediators have to differentiate between the provision of 'information' and the provision of 'advice' because the latter would be 'unethical', even if within the mediator's technical competence. They contrast that with their proposed new ethical paradigm and note that 'the critical ethical distinction is not whether a mediator has provided information as opposed to advice, as both information and advice can potentially ethically support party self-determination. Rather, in terms of the professional ideology articulated (subsequently) the issue is whether the information or advice is within the technical competence of the mediator, and whether it is provided as an appropriate fulfilment of the mediator's fiduciary duty to the parties' (Page 205). In considering this ethical duty it behoves the mediator to decide whether a party has the capacity to use the information or advice proffered in a genuinely self-determined way. If the party doesn't have the capacity, and is likely to accept the advice as a decision, then the provision of

information or advice in those circumstances would be unethical.

The final aspect of the authors proposed new mediation ethics 'is an ideology of professionalism centred on technical competence and a fiduciary-like obligation to the parties (Page 207). This is necessary because 'an explicit professional ideology is important to providing boundaries to the more interventionist and activist role envisaged for mediators in the proposed new ethical paradigm' (Page 208).

A fiduciary duty arises (1) because of the high degree of trust placed by the parties in the mediator and the power that the mediator has in the whole process and (2) because the practice of mediation, in the context of the rule of law, constitutes a service to public welfare (Page 209).

In conclusion the authors advise that 'The mediation community is therefore facing a moment of truth. Mediation practitioners must reconsider, and reframe, their identity and their role; furthermore, they must respond to the serious obligation that results from the authority and power inherent in their position' (Page 210).

This is a revolutionary concept and it remains to be seen how the mediation world will react and what impact this will have on it. Speaking for my own part, I have never considered neutrality or impartiality to be possible-these notions are idealistic, not realistic. I agree with the authors that mediation can only be fair if parties' are able to self-determine on the basis of parties genuinely informed consent-and that there should be an ethical and indeed fiduciary duty, as conceptualised in this book, on mediators to ensure that parties are genuinely informed. This, by definition, requires neutrality and impartiality as foundational principles to fall by the wayside. In my own mediation practice, I explain to parties that I am not 'on either of their sides', but rather that I am there to try and help both parties; that I am omni-partial (a Clokeian concept). I explain that I can do this by using the 'tool of confidentiality' where that is appropriate in private session, to enable full, frank and challenging

A Wake-Up Call for Mediation!

Paul Kirkwood

conversations where information exchanged will only be disclosed with specific party permission. This is where the fiduciary duty should kick in, in a practical way -it is the obligation not to betray party trust with regard to confidential discussions and the equally important obligation to help the party who is struggling in accessing and understanding critical information to enable them to give informed consent and to be able to genuinely self-determine. To fail to act in such a way amounts to, in my opinion a dereliction of duty.

To my mind, the authors are articulating a set of principles which provide a framework for allowing and justifying the practical

myself) may already follow. These refined principles enable mediators to practice without fear of falling foul of the irreconcilable clash between the principles of neutrality and impartiality (which prevent intervention) on the one hand and the principles of self-determination, informed consent and professionalism (which require intervention) on the other.

This concept of mediation requires mediators to be activist and interventionist. Thanks to this book and its authors, it is shown to be possible to do this in an ethical way.

Most of the clients, lawyers and expert witnesses I have worked with in mediation have made it clear that they want mediators to bring their knowledge and experience of dispute resolution into the mediation and not to leave it outside. They don't want an anaemic mediator who is 'strictly neutral' and who sits on his hands-they want someone who is active and where necessary interventionist-otherwise they say, 'what are you here for-what are you adding?'.

To conclude – this book with its revolutionary new 'codifying' of principles provides an ethical means of escaping the convoluted necessity of adhering to neutrality/impartiality -not altogether 'dumping them' but quite rightly relegating them to the tools they should be. I applaud and endorse it.

Rachel Field and Jonathan Crowe the authors of Mediation Ethics from Theory to Practice are speaking at Mediate 2020 on Tuesday 17th November online.

For tickets click [here](#).



Photo By Marcus Spiske <https://unsplash.com/@markusspiske>

approach which some mediators (including

Scottish Mediation News

Welcome to Scottish Mediation

Scottish Mediation are delighted to welcome Vanessa Collinridge, Robbie MacIntosh, Margaret Stewart, Sandy Wilson and Colin Harper and Craig Murray who join as new individual members.

The University of St Andrews and Start Mediation 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](#).

Welcome Heather Zajac

Scottish Mediation are delighted to welcome Heather Zajac as our new Project Officer Training and Development.

Heather has previously held roles with the Roc Trust and the Scottish Churches Housing Association.

Heather's passion is to lead developments in policy and practice relating to learning and development. She is an experienced trainer and demonstrated a history of working in youth development, homelessness and non-profit organisations as well as a published author specialising in Resilience.

Online Mediation workshop

Date: 18th December 2020



A half-day workshop, looking at the mechanics and dynamics of holding a mediation meeting online, this workshop will help learners develop new skills and techniques and provide opportunities to practice in a safe environment. This course is facilitated by two trainers with extensive experience of training in mediation skills and of delivering live online inputs.

Cost: £30 per participant, deadline for bookings: Thursday 10th December.

Contact infoscmc@sacro.org.uk for more information

Delivering Accredited Mediator Training Online

Linda Paterson, The Mediation Partnership

Having just co-delivered our Scottish Mediation Accredited Mediator Training Course online for the first time, I thought it may be useful to reflect on this experience and some of the learning points arising from it.

Mediation is generally held to be a discipline which relies very much on face-to-face interaction with those involved, therefore it was with some trepidation that we approached converting a 40 hour onsite practical training programme to an entirely online experience. We were not completely new to training online, having delivered online courses for the University of Aberdeen over the last couple of years. However, these were developed as online courses in the first instance, concentrating more on theory input and tutorial discussion, rather than large amounts of skills practice and role play. The Advanced Course did involve three on-site days to gain invaluable practical experience, which were due to take place in March of this year.

Then Covid struck, and we had to hastily convert the onsite training days into an online offering that would meet our students needs, given global travel restrictions. The result was a lot more successful than we had feared it might be. Building on this, might it be possible to do the same for our 40 hour SM Accredited course? We were beginning to think it might.

Then a request came in from an organisation who had approached us for training pre-Covid to ask whether we could deliver our course online, in order to meet their new Covid safety procedures. This focused our minds and we decided to start by running an open course – we already had a couple of delegates booked on to a pre-Covid scheduled course whom we didn't want to disappoint, and we also wanted to see if there was any demand for online training. We were pleasantly surprised by the response at relatively

short notice, and, having checked with Scottish Mediation that our accreditation would still stand, and notified them of any changes, we began delivering the course in mid July.

Previously, the course had been delivered over five days onsite, usually split into Days 1 & 2, with a break of a week or two, then Days 3 & 4 and Assessment Day. We felt that a full day's training online would be just too intense and decided to split it into half day sessions, with an additional half day for assessments. We used the Zoom platform, which served our purpose well, with the Break-Out Rooms function being particularly invaluable for small group exercises and role plays.

Getting to grips with the technology was certainly a learning experience, and that "Dr Who" moment of sending delegates to Break-Out Rooms was always slightly unnerving, as they disappeared from the screen. They always reappeared in their allocated rooms, some immediately, others circulating in the ether for a bit longer before arriving!

The role plays worked surprisingly well. Given that mediation often relies on subtle cues like body language, physical reactions, tone of voice and sometimes just the "feeling" that you get from the parties involved, can mediation when people are physically distanced from each other and the mediator actually work? Some nuances are undoubtedly lost when mediating online. However, some visual clues can be more pronounced when people are seeing each other's faces close up on the screen. There can also be a self-regulatory effect, as people are able to see their own expressions as well as others, something which doesn't happen in a face-to-face meeting. And we know that online mediation can and does work, as many mediators are already using this format very successfully.

Delivering Accredited Mediator Training Online

Linda Paterson, The Mediation Partnership

Overall, as a self-confessed technophobe, I was delighted with how well the online platform worked for practical mediation skills training (having only used Zoom so far). From an accessibility point of view, it certainly has a lot to offer, allowing people to access it from their own homes irregardless of their situation.

But most importantly, what about the experience of the delegates? How was it for them? Feedback from evaluations has been overwhelmingly positive, as encapsulated in some of the comments below: "I feel the experience met my expectations and the outcomes fully satisfied my training needs."

"Both Trainers are to be commended for overcoming the technicalities of Zoom and adapting the activities to work on the platform."

"Activities were well balanced. Training styles were really positive and encouraging and the pace of the learning was just right."

"I found the training to be of monumental help. It was great to receive advice on my own performance, and listen to the advice being given to others."

One area in which online training falls short of the face-to-face experience is in the opportunities for informal chat between delegates, pre-course and during breaks, where experiences can be shared. The nature of mediation training often means that training groups feel bonded by a common experience, and this is consolidated through opportunities to chat generally. As flagged up by one delegate "often it is the peer to peer aspect of a course that allows participants to discuss the learning and "de-stress". The support of others on the course can be a real positive when learning."

We intend to take this on board for future courses, and try to build in some informal time within the training to allow delegates this opportunity, making full use of Break-Out Rooms for this purpose.

Overall, the experience of delivering mediation training online has been an extremely positive experience, and something we are very happy to continue with.

A Conversation: The UK Constitution and its Future: What needs to happen now?

1800, Thursday 19 November 2020



In association with Core and Collaborative Scotland, John Sturrock QC will be joined in this online event by two distinguished guests.

David Melding CBE MS, is a Conservative member and former Deputy Presiding Officer of the Welsh Senedd, and author of thought-provoking books about the constitution.

Andrew Wilson is a former SNP MSP, a well-known economist and commentator, a Founding Partner of Charlotte Street Partners and author of the Sustainable Growth Commission Report for the First Minister of Scotland.

John Sturrock comments: "David and Andrew are two of the most thoughtful observers of, and contributors to, discussions about the future of the United Kingdom. Both are distinguished by their willingness to speak openly and frankly about policies even if that may lead them to disagree with colleagues in their parties. In light of Brexit, the pandemic and changing public opinion in Wales and Scotland, there is much to ponder. This promises to be a fascinating conversation."

This is a free event. Register here:

<https://www.eventbrite.com/e/the-uk-constitution-and-its-future-what-needs-to-happen-now-tickets-125930628901>

or contact: Paula.Cumming@core-solutions.com or on 0131 524 8188

Mediation Bits and Pieces

Core Solutions - Online Winter School

Monday 22 - Thursday 26 (morning only)
February 2021
(with a three-hour Orientation Workshop a week or two in advance (timed to suit the convenience of participants)).

After the success of our recent online Summer School, Core are launching a new Winter School online, using Zoom and their bespoke web-based platform for materials and other communication.

"I really enjoyed the course and got a lot out of it. It worked really well on Zoom. Felt we had created a real bond which I was surprised about being able to do virtually."

"I thought the course last week was excellent and feel I've now got a much greater understanding of how mediation can be deployed to resolve complex disputes."

Summer School 2020 participants

Mediation Clinic - Scottish Legal Awards

Strathclyde Mediation Clinic jointly won the Community Contribution Award at the Scottish Legal Awards 2020 last week. They were up against stiff competition including Edinburgh Free Legal Advice Clinic and major firms like Digby Brown, the other joint winners. Scottish Legal Awards honours the bright stars of the Scottish legal firmament so this is a significant achievement, demonstrating the respect for the Clinic's work within the justice system.

Clinic Director, Charlie Irvine, said:
I'm delighted the Clinic has been honoured in this way. It is a tribute to the high quality work of students, alumni and supporters.

Prof Claire McDiarmid, Head of the Law School, added:
Strathclyde's mediation clinic goes from strength to strength and the School is extremely proud that it has received this, very well-deserved, external recognition.

How do you keep your mediation skills honed?

Many people learn mediation skills but then rarely use them. Internal workplace mediators, for example, are often trained up, ready to facilitate mediation between colleagues, but may only get called upon to mediate once or twice a year, if that. Their skills can get rusty and their confidence declines. How do occasional mediators keep their skills fresh? I've listed some ways below and would like to hear other ways that you use to keep your skills alive.

Group supervision sessions, regular meetings of a closed group, where mediators share cases, dilemmas and learning. They reflect on these with a more experienced mediator acting as supervisor. Proctor and Inskipp give the three-fold purpose of supervision as being Restorative, Normative and Formative: helping mediators be reassured and to process their work, maintaining quality standards and educating them on how to practice well. Doing this in a group setting enables peer learning.

Peer supervision, similar to the above, but members facilitate themselves. I find that these groups require more commitment.. They often start with enthusiasm, but the day job and other pressures can make it hard to sustain over time. CPD, attending further training, or events like Mediate 2020, keep us connected with our fellow mediators and in touch with developments.

Refresher practice sessions, where trained mediators gather to role play whole mediations from beginning to end. I believe that using our skills is the best way to keep them sharp. I can read and listen about mediation, but I nourish my skills by using them. That's why Rowan Consultancy is offering a Mediation Skills Refresher session on January 26th .

Details at <https://www.tickettailor.com/events/rowanconsultancy>

It's for workplace mediators to practice their skills in role play, where it's safe to experiment, to make mistakes amongst peers.



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, in Scotland and overseas.

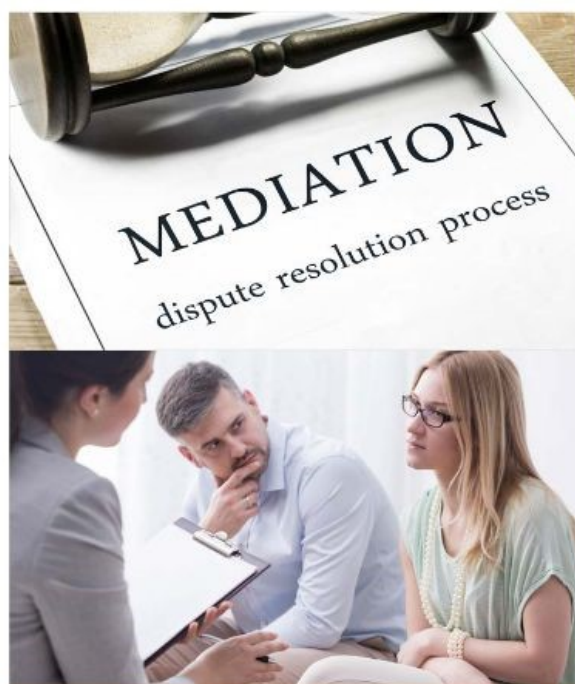
Legal training is not a pre-requisite; the MSc/LLM option means students from a wide range of disciplines can tailor the course to their needs.

Distinctive features include:

- A thorough introduction to the academic study of mediation
- A focus on interpersonal mediation skills including the ability to deliver online mediation
- **The Mediation Clinic**, enabling students to work closely with experienced mediators. The arrival of Simple Procedure has brought many more cases to the Clinic, increasing the opportunities for students to gain real world experience
- 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. Recent cohorts have included students from India, New Zealand, Ecuador, Brazil, Ghana, Nigeria, Seychelles, China, Canada, USA, Germany, Spain, Czech Republic, Poland, Belgium, Iceland and the UK
- Suitable for leaders, 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 and arbitration plus classes from throughout the Law School.

Start Date: September each year
Mode of Study: Full-Time or Part-Time taught by a combination of evening lectures and intensive weekend sessions. For 2020 we are introducing a blend of online and face-to-face teaching.



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

Less Taxing With Mediation

Graham Boyack

If you'd asked me to guess what sort of webinars I might be looking at during the Covid situation, I don't think that one from the Chartered Institute of Taxation would have featured on my list. It's not that Taxation isn't important, it's just not something that had been on my radar. I was alerted to just such a webinar being held by the CIT branch by the Chair of our board and, once I saw it had a mediation angle, I thought "let's have a look".

My previous experience of taxation disputes had been one in an earlier life where we had had a dispute over the level of VAT we were paying. In that case it ended up being contested and took a few years to sort out. That involved having to put aside money in case we lost, paying fees to our accountants and specialist tax advisers to take us through the process and a whole heap of management time devoted to making sure we had discussed things thoroughly and got together all the information that was required.

The webinar discussion was led by VAT specialist Veronica Donnelly from AZETS and I was both surprised and pleased to hear that Her Majesties Revenue and Customs (HMRC) have had a mediation scheme running for a few years now. HMRC have adapted the scheme over the past few years and made it more accessible this year.

Essentially the scheme is about allowing the taxpayer and HMRC to get together to solve a common problem. That may sound very straight forward but without setting up such a scheme it is often difficult for those sorts of conversations to take place and, in the absence of them disputes tend to just fester and grow. In essence, taxpayers can apply for Alternative Dispute Resolution (which will usually be mediation) at any stage and

don't have to wait until they get to a tribunal before doing so. ADR can be considered where communications have broken down, where the facts are disputed, where the dispute is a result of a misunderstanding, where you want to know why HMRC have not agreed to the evidence you want to use, where you're not clear on the information HMRC has used and where there is a need for further explanation.

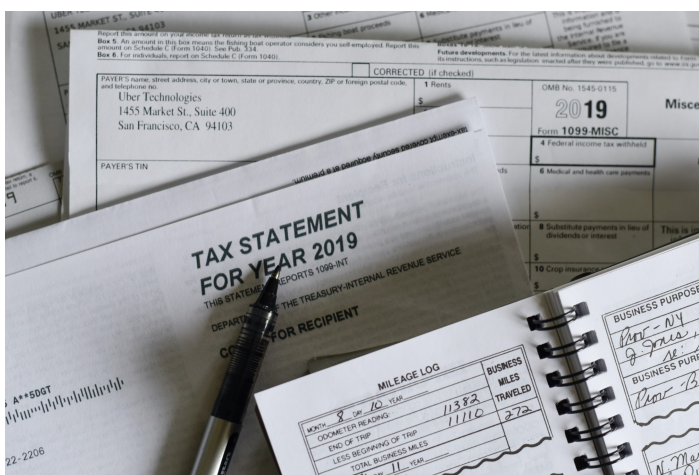


Photo by Olga de Lawrence <https://unsplash.com/@walkingondream>

After applying for ADR an HMRC facilitator will be in contact to discuss the case and consider whether ADR is appropriate. This is usually done by video conference. The process is like 'normal' mediation but with a few differences. The principal one is that if, in the course of discussion, you admit to a tax liability this can be taken forward and doesn't stay inside the normally confidential confines of the mediation. Confidentiality however applies to all other aspects of the discussions and what is said inside the ADR process cannot be used "against you" should the case eventually go to tribunal.

The good news, as Veronica described it, is that the system works and that it has some great benefits. It can provide an

Less Taxing With Mediation

Graham Boyack

opportunity for small business who aren't interested in being a test case to get their case resolved quickly; equally where HMRC decide, after a conversation, to change their view, they can do so gracefully without setting a precedent in the glare of the formal VAT tribunal. The process does, of course, need parties on both sides to be prepared to participate in the dialogue. Like any other mediation it also needs to have the decision makers "in the room". If you've not been involved in how the conversation has led to a certain point it can be difficult sometimes to agree with the result.

scheme had won an award for Innovation at this year's National Mediation Awards. What to me made it a winner was that that HMRC have applied mediating ways to produce a mediation scheme that works for the disputes they deal with. It's an approach that I hope will lead to similar ideas in different areas and sectors across Scotland and, as you might expect, Scottish Mediation are ready and willing to help other organisations to make such ideas a reality.

Reflecting on the seminar I did a little more research and found that HMRC's

Take the Green Pledge

A green pledge for mediation has been developed via a number of posts from mediators reflecting on what positive steps mediators can take to help tackle climate change. The Board of Scottish Mediation recently resolved to do what it can to support the pledge and encourage mediators to sign up. The call to arms is given here and on page 15 we detail the steps mediators can take. An article about the pledge is available [here](#).

We know that mediation is a sustainable, efficient, cost-effective way to resolve disputes and other differences. As a mediation community, we have talked about how we might mediate climate change issues. We have probably not spent the same amount of time talking about how, as a community, we might address climate change in our own behaviour and practices.

The time has come to address our contribution to the climate emergency facing us all. The move which many of us have made to online mediation in response to the Covid pandemic has shown us that environmentally friendly ways of mediating can be both easily accessible and highly effective. This illustrative pledge outlines concrete steps that each of us can take, both during and after the Covid pandemic, to reduce the impact of each mediation we conduct upon the climate. We acknowledge, as the inspiration for this, the Pledge for Greener Arbitrations by the arbitrator, Lucy Greenwood.

Please sign up below to show your support for this initiative which could, we hope, have a real impact upon our behaviour and fundamentally change the way in which we conduct mediations. The pledge is broad enough to allow all those involved in mediation to make changes to their behaviour and to lead the way in responsible mediating. It offers a foundation which, we hope, mediators will build upon with their own further measures tailored to their practices.

To sign up and for more information click [here](#).

The Elephant that Blows Rainbows

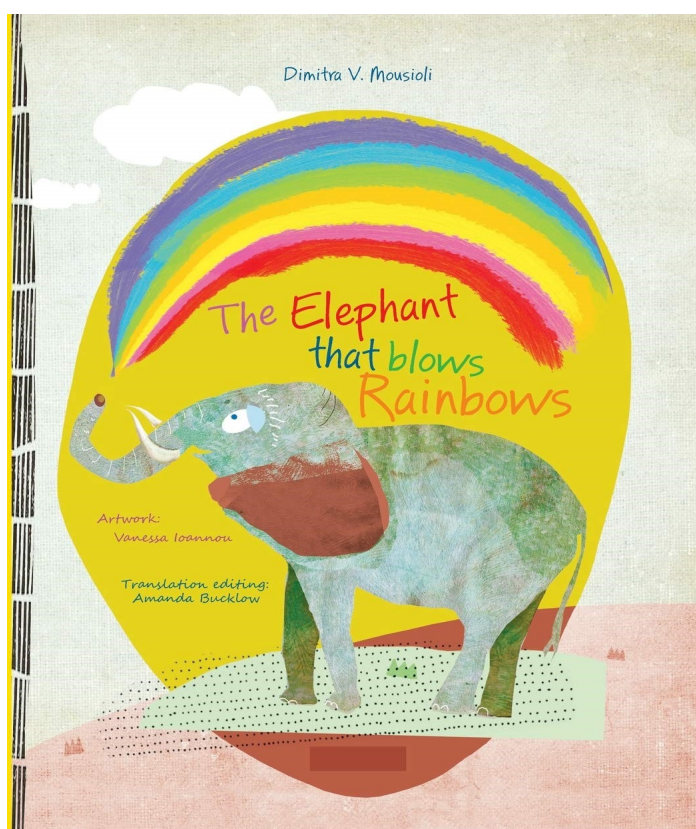
Kathryn Hilditch

A couple of months ago we received an email from Dimitra Mousioli, a lawyer and mediator, telling us about her book -The Elephant that Blows Rainbows – which seeks to support children to learn about mediation and how it can be a more positive experience than dealing with disputes in a more traditional, court-based manner. We were immediately taken with the bright and charming illustrations that she presented in the samples we received by email and were keen to see more. Dimitra kindly offered to send us a copy of her book with the intention of considering how it might potentially link into our peer mediation training approach in some way.

We were delighted to receive a full copy of the book, which doesn't disappoint in terms of the beautiful and colourful images which, while bright and positive, also feel calming and serene, which perhaps reflects the mediation approach being brought to life. Dimitra has taken what is a challenging subject, that of a dispute which initially is going to court for a decision on who is right and who is wrong but is instead resolved using a mediation approach, and put it into the context of animals within a forest quarrelling over the use of the forest's natural resources. The book cleverly explains both the potential perils of a court-based approach and the potential benefits of a mediation approach, whilst using characters which will be relatable and fun to a young audience.

The book certainly outlines the process well – from the Judge-Owl who usually resolves all of the forest disputes and so has a long queue of disputants to deal with, the warring disputants (a weasel and a badger) with different and conflicting views of the same situation, and the calm, empathetic Elephant-Mediator who supports them (and their representatives) through the mediation

process so effectively towards greater understanding of each other and a positive resolution. For developing an understanding of this process and how mediation may support a positive resolution of disputes, the book could certainly be a good tool to use for young people who are starting out learning about alternative ways of dealing with



conflict.

On my initial reading of the book, I felt that the level of detail goes a bit further than might be necessary for a tool which is aimed at children. I also felt that some of the language is perhaps a bit complicated and that this could impact on whether young people would stay engaged with the book. This led me to question the target age range of the book as I felt that the language might suit an older age range while the illustrations would suggest the book is aimed at younger, primary-school aged children.

The Elephant that Blows Rainbows

Kathryn Hilditch

I expressed these concerns to the author and she very helpfully confirmed that the book is aimed at the 8-11 age range and that it is intended to be read with the support of adults who can help young people to understand and learn from the content whilst offering them a chance to develop their learning further through ongoing discussion. I can certainly see how this could work, and I think it would be especially supportive for those interested in becoming peer mediators, helping them to put their learning into a wider context.

To conclude therefore, I feel that the overall concept of the book is fantastic and we are delighted that this resource has been produced. It is an important resource to help young people learn about different approaches to dealing with conflict and anything that does this, we at Scottish Mediation are very happy to support.

Mental Health

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Rachel was wonderful - so funny and engaging 10/10 "
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Approved
Centre

Workplace Employment Initiative Group

November 2019

Dear Scottish Mediation colleague

Our next ,meeting takes place on Tuesday 24 November 2020 at 2pm. Our speaker will be Colin Harper, coach and advisor on negotiating/communication skills (previously Operational Lead for the Police Scotland Hostage & Crisis Negotiation Unit), on "How Crisis Negotiators develop trust and build relationships"

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.

This meeting will take place online and to receive a link for the meeting 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