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Adverts from:
Rowan Consultancy, University of Strathclyde, University of St Andrews and The Mediation Partnership.

Mediate 2022 Now Live

Mediate 2022 is now open for booking with early bird rates available.

Our keynote speaker is Kathryn Mannix. Kathryn was a consultant in palliative medicine in the North of England for 20 years, working in hospices, patients' own homes and a large teaching hospital both as a physician and as a Cognitive Behaviour Therapist. Her



EDINBURGH | 7 NOVEMBER

book, Listen, about tender communication, was published in September 2021 to critical acclaim, and draws on her lifetime experience in communicating with people under emotionally-charged circumstances.

There will be a range of workshops on mediation practice, what happens when you get stuck, conflict avoidance in construction and on Peer Mediation in schools.

To access tickets click [here](#).



A Ukrainian Mediator in Scotland

Hanna Dushkova

On the 24th of February 2022, our peaceful and happy life changed. The war brought feelings we could not accept for a long time such as unsafety, being indefinite, trembling, and sometimes unbearably fear during the bombing. I remember this horrible day. We were woken up at 7 am due to the call of my sister, and then mother-in-law. "Wake up! Didn't you hear explosions? The war started! Ukraine has been attacked!". I can't describe my emotions at that moment. We didn't believe it. Nobody believed such could happen in the 21st century. Everybody was nearly in a panic.

Since the first days of the war, my husband Vitalii Diakov and I decided not to stand aside and began to help the defence of the Odesa region with food, clothes, and the collection of funds for various military needs. We are very thankful for all the people who supported and continue to support the Ukrainian army.

The war brought grief to every Ukrainian family. During this time, more than 12 million people were forced to leave their homes and seek safe housing in other regions of the country or beyond. UNICEF reports that almost two-thirds of children in Ukraine are internally displaced persons or have left the borders of Ukraine, hiding from the war.

All of this affected the deterioration of people's emotional state and increased the level of tension, stress, and the level of aggression, which in turn led to the destruction of relationships within families and sharply increased the number of family disputes and conflicts.

Since July 2022 I became a volunteer mediator and participant in the unique Ukrainian project "Family Mediation in the Time of War" which was organized with the international support and assistance of the NGO "League of Mediators of Ukraine". The main goal of our Project is to provide an online cross-border family mediation service for Ukrainian families whose members were forced to leave the country due to hostilities.

In this project, I provide mediation and conflict-coaching sessions with the Ukrainian people who suffered because of the war. As for my personal results as a mediator in this project I can share my last completed case.

On Monday the 12th of September 2022 one more conflict was successfully resolved. The



parties were separated because of the war. The first party was evacuated abroad and the other – was left in Ukraine. The conflict began to increase several years ago but exploded this spring.

Working with the parties in mediation lasted almost 2 months. The conflict was highly charged with emotions and complicated by the war. At the first meetings, there was a process of releasing emotions accumulated over many years, due to the lack of previous skills to speak sincerely, openly, and empathically, in the language of feelings and needs. Actually, without this stage, we would not be able to move forward with the mediation parties.

The Art of Possibilism

Emma Anstead

After several joint meetings, a psychological transformation took place. People rose from the emotional to the rational (conscious) level. Transformational and understanding approaches in mediation helped, working with emotions, empathy, open questions and paraphrasing also helped to lead the parties on a new communication level. Also, an important tool in reaching an agreement was interim agreements, which parties tested between meetings and came to the next meeting with practical experience and feedback.

In general, we needed 8 meetings (2 separated and 6 joined) in the online format.

As a result of the mediation, the parties reached mutually acceptable agreements and rebuilt communication. Parties were grateful for our (mine and my co-mediators) work and our questions and were sincerely satisfied with the mediation results. Here is the magic of mediation in real life!

Currently, I and my husband are located in Dundee, Scotland. We are looking forward to continuing our professional way. Our plan is to run educational courses for Ukrainian refugees in Scotland on communication skills and emotional intelligence to give them a better understanding of emotional state and emotional management.

I am open to collaborating and receiving feedback from the readers on my e-mail at teenna@ukr.net

A bit about Hanna

- lawyer
- graduate of the "Tomorrow`s Lawyer" Canadian-American program
- mediator
- family mediator with both the League and Association of family mediators in Ukraine
- Mediator of Odesa Private School and Lyceum
- trainer on communica-

- tion skills and emotional intelligence
- author and co-author of educational courses, programs and trainings
- graduate of the program of the German Civil Service for Peace (forum ZFD) "Effective communications based on non-violent communication"
- expert of the NGO "Poruch" and the pro-



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The course is **now open to anyone within the University** or from the **wider community**. To register or find out more, please email **mediation@st-andrews.ac.uk**



www.st-andrews.ac.uk/mediation



Mediation option can be best for solving disputes

Bob McIntosh

This time of year is understandably quiet for the Tenant Farming Commissioner as everyone is flat out with harvest, but it does give me time to reflect on how to best help tenants and landlords to navigate the situations they sometimes find themselves in.

Any misunderstanding or poor communication can be frustrating, but some of the most stressful disputes are those that have built up over many years, creating considerable bad feeling.

I have, thankfully, only been involved in a handful of cases where parties have reached a stalemate and where I felt the situation couldn't be aided by the Tenant Farming Commissioner's role.

Of course the parties could resort to the Land Court, but I felt there was more than legalities to be resolved in these cases and a ruling on legal rights alone would do little to help future landlord/tenant relationships. I therefore decided to investigate alternative forms of dispute resolution.

Mediation can address family concerns. After researching the merits of arbitration, expert determination, and mediation, I decided that the ability of mediation to address legal and non-legal issues – particularly its ability to handle rebuilding of relationships between the parties – made it particularly suitable.

I was drawn to mediation as an extended form of negotiation that has the potential to address family concerns and long-standing business relationships. A key advantage of mediation over arbitration is that the mediators do not make decisions; that's not their role.

They simply help participants to reach agreement between themselves.

Tenant farming commissioner Bob McIntosh. Recognising that mediation was little tested within the farming sector, the Scottish Land Commission decided to fund a pilot mediation service and has recently published a report on the lessons learned.

The pilot disputes presented a range of issues, including resolving landlord-tenant obligations, negotiating rent reviews, agreeing compensation for improvements and resumption, negotiating land sale/purchases, agreeing a lease, and establishing communication arrangements for the future.

Each mediation included several of these aspects – if not at the beginning, at least by



the end of the day, as it was not uncommon for new matters to be raised and receive consideration during the process. I'm pleased to say that settlements were reached in all of the pilot mediations, dealing with several matters which were already being litigated or where litigation had been threatened.

As you might expect, there was tough talking and some uncompromising bargaining; the initial stances and behaviours drew on a history of disagreeable relationships between the parties, sometimes going back generations.

Mediation option can be best for solving disputes

Bob McIntosh

Changed attitudes

However, the mediation process allowed attitudes to change, and dialogue became more respectful and constructive.

As the outcomes had the potential to affect the prospects of their descendants in the future, mediation provided opportunities for engaging the parties in long-term thinking about resolving the dispute for the benefit of posterity on both sides.

In mediation, both parties are heavily engaged in the process and take responsibility for actively trying to resolve their dispute. This can be a daunting prospect for landlord and tenant parties, particularly those who are starting from the basis of an acrimonious relationship.

I spent some time with parties explaining



Photo by [Stijn te Strake](#) on [Unsplash](#)

the process, encouraging them to take part and providing reassurance in mediation as a worthwhile approach. I explained that either party can walk away at any point during the mediation process if they feel an outcome cannot be reached.

If this happens, the discussions held in a mediation are without prejudice – meaning they cannot be referred to in litigation or other dispute resolution processes to follow. For this reason, I encourage parties to give it a real go: there is little to be lost in trying mediation, but potentially a lot to be gained. If a settlement can't be reached, any time

spent in mediation is not wasted: more often than not, the discussions lead to a greater understanding of where the other party is coming from and help to narrow down the issues to be determined by a court or other form of dispute resolution.

I was pleased to find that the timescales for mediation are significantly less than litigation timescales, which can tie up the parties, their advisers, and the courts in many days of preparing evidence and attending hearings.

In a similar vein, the costs of mediation for each party may be put at a few thousand pounds, whereas the costs of litigation may cost a few tens of thousands of pounds – even more if one party has to meet the other party's costs. For some of the pilot participants, engaging the Land Court was not a realistic or a preferred option – mainly due to the cost – so the mediation provided equal access to a fair basis for dispute resolution where no party had an advantage over another.

Willingness encouraging

What is most encouraging is a spirit of willingness by both parties to build on the improvement in relationships made during the mediation day and participants have noted that relationships have generally improved.

If you would like to find out more about the pilot mediations and read what some of the participants thought, please have a look at our new report on Mediation in the Tenant Farming Sector – Lessons and Feedback from a Pilot Scheme, available on the Scottish Land Commission's website.

Further information on our current mediation scheme can also be found on the website along with a TFC Guide to Alternative Dispute Resolution, which explains some of the ways in which you can resolve disputes without going to court.

Bob McIntosh is the Tenant Farming Commissioner.



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.

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- A thorough introduction to the academic study of mediation
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- **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
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- 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.

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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.



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 t: 0141 444 8600

CalMac ferries contract and mediation

John Sturrock

CalMac ferries contract and mediation: Did personal animosity between key players cost taxpayer a fortune?

The Auditor General's recent report on the construction of two CalMac ferries identified various failures.

One critical aspect was the breakdown of relationships between two of the main protagonists, CMAL, the Scottish Government-owned ferry purchasers, and FMEL, the ferry builders, alongside a failure to implement the available dispute resolution mechanisms.

An earlier report by the Scottish Parliament's Rural Economy and Connectivity Committee found evidence of tension, poor communication and, when there were spiralling cost overruns and delays, a deteriorating relationship between the key players which eventually broke down completely.

It heard that people could not sit in the same room to have a constructive discussion or sign off on agreed contractual changes, so "things just came to a complete standstill".

The committee reported "complete hostility and intransigence" and the suggestion "the failure to achieve sign-off of the basic design of the vessels during the construction phase of the contract and consequently to make proper progress with the construction of the vessels was a direct result of the poor relationship between CMAL and FMEL".

These are exactly the circumstances in which experienced mediators around the

world assist disputing parties to resolve seemingly intractable differences. It seems a shame, with a potentially huge cost to the taxpayer, that mediation was not tried here. The committee thought so and expressed the view that "a process of mediation should have been pursued much earlier and more proactively by CMAL and the Scottish Government, given both the strength of



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their concerns and their respective responsibilities as contract owner and project sponsor".

More generally, the committee was concerned the various dispute resolution mechanisms available under the contract "were not exhaustively utilised". It called for stronger provisions on the application and enforcement of such mechanisms to be incorporated as a priority into any future contracts of this nature, including an appropriate mechanism for a mediator to be appointed.

One hopes these provisions have been introduced in the latest, nationalised,

CalMac ferries contract and mediation

John Sturrock

stage of construction.

It is instructive to explore this further. The Auditor General's report said that, for various reasons, CMAL and FMEL did not use the dispute resolution mechanisms available to them.

"The contract included a three-stage contract dispute resolution mechanism: Mediation, Expert Determination, and the Court of Session in Edinburgh. In August 2017, FMEL requested that CMAL and FMEL enter mediation. Over the next few months, CMAL and FMEL agreed the draft terms of mediation and identified a preferred mediator. But, in February 2018, both parties abandoned the mediation attempts after failing to agree the terms of reference," it said.

This itself is a curious situation and suggests that the parties were approaching mediation as they would the more formal process of arbitration.

The report added that the "Scottish Government and CMAL requested on several occasions that FMEL pursue its claim in court. FMEL stated it was not practical to do so as this would have stopped work on the vessels and led to substantial redundancies".

The fact that parties would insist on going straight to court, with all the delay and expense this entails, suggests reluctance to engage in negotiation. Mediation, which is essentially assisted negotiation, does not preclude court action but it does offer the opportunity to avoid its associated delay and expense by informally exploring options, alternatives, costs and realistic outcomes, along with addressing relationship issues. All of this can be done relatively quickly.

We obtain a fuller understanding of what

was going on in the Rural Economy and Connectivity Committee's report, which revealed that, in CMAL's view, the size of the claim for additional costs was such that "the only reasonable mechanism for resolving the matter was through the courts".

The committee was told that CMAL was

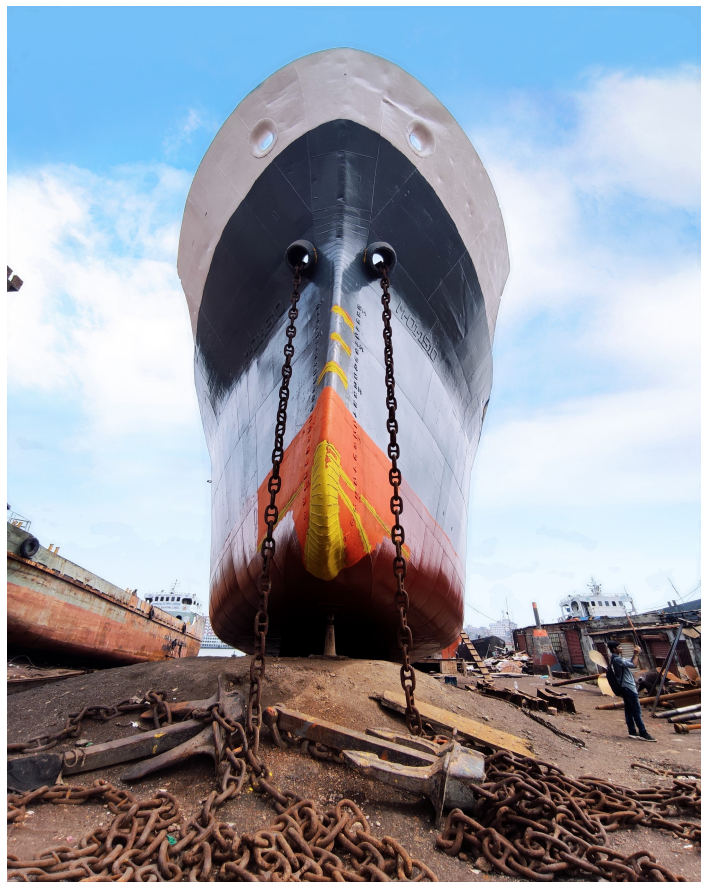


Photo by [Farhana Nidra](#) on [Unsplash](#)

"unwilling to engage in a negotiated settlement of the dispute between it and FMEL" and that such an approach to resolve matters had been "completely rejected by CMAL".

If so, that appears an expensive approach to adopt. With more constructive engagement, all of this just might have been resolved years ago.

A question arises: has such an approach

CalMac ferries contract and mediation

John Sturrock

been taken more widely in public sector contractual disputes in Scotland in recent years? This could suggest lack of understanding of, or perhaps resistance to, what can be achieved through negotiation with or without the assistance of a mediator.

Indeed, it has been observed that some public sector officials would prefer that a third party such as a judge or arbitrator rules on a dispute, rather than assume the responsibility themselves for making

should be explored further.

Looking at this broadly, one of the lessons to be learned about public sector procurement in Scotland is the need to have and use robust processes at an early stage to try to resolve the disputes which inevitably arise in complicated contracts. Nip it in the bud.

Around the world, constructive dispute management, involving independent mediators to assist negotiations, regularly saves disputing contractors tens, sometimes hundreds, of millions of pounds of unnecessary expenditure in major projects. It has done so in Scotland in the past.

That could have been the case with these ferries. This issue deserves serious consideration by the Scottish Government and by all with a stake in such large contracts in Scotland, especially where significant amounts of taxpayers' money are involved.

This should be a core aspect of good contracting, risk management and effective governance. Indeed, this could be a missing and yet crucial piece in the latest National Economic Strategy for Scotland.

Cut the cost of disputes, prevent them from escalating and you turn wasteful expenditure into productive investment. And dealing with disagreements and disputes quickly and efficiently is also an environmentally friendly choice. It fits with building a greener economy and with aspirations to meet sustainable development goals. It might even have delivered two ferries before now.

This article was originally published in The Scotsman on 23 April 2022.



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decisions, for fear that they may subsequently be criticised, even if that means the resulting process and outcome is more costly. Perhaps this

Scottish Mediation News

Trauma and Mediation CPD

This half day CPD workshop aims to provide frontline staff with additional knowledge and skills in becoming trauma informed.

The workshop will be presented by Andy Gray. Andy is the Company Director of ACT Counselling Services Ltd and a retired Psychotherapist. He has over 25 years of experience in the helping professions. His specialisms include trauma, addiction, and personality disorders.

Please note you do not have to have attended Part one to attend this Masterclass. You are welcome to choose

a ticket type which allows you to access a recording of the first session.

For further details click [here](#).

Welcome to Scottish Mediation

Scottish Mediation are delighted to welcome Hanna Dushkova and Ralph Strang who join as practitioner members.

Mark Barlow, Fiona Gray, Margaret Downie and Sarah Ross join as individual 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](#).

Rowan Consultancy is 25 years old. We're celebrating with four free online seminars!

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How to build your resilience: adapting to adversity. 31st Oct

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An Introduction to working with animals in the counselling room. 10 Nov

Visit our website for details:
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Mediation and Justice - A Perfect Fit

Graham Boyack

Most people would not necessarily agree with the statement above however I have been thinking about this a lot recently and I am coming more to the view that a whilst maybe not, it is a very good fit and when compared to other ways of resolving disputes disappointingly underused.

I have been reading about a planned introduction of mediation in the English and Welsh courts in Small Claims (under £10,000) cases. Lord Bellamy QC author of the Ministry of Justice Consultation states

'The time has come for it to adapt to the needs and priorities of the modern age. This involves not only facilitating swift, online access to the courts, but also providing the encouragement and opportunity for people to resolve their disputes consensually wherever possible. Where the civil justice system can support people to do this, helping them to avoid the time, cost, and stress of an adversarial court battle, I believe it has a duty to do so.'

In the consultation, views are sought on the automatic referral to mediation, possible exemptions, and the regulatory framework for those providing mediation services.

In Scotland we have been developing proposals that would be similar in a number of respects and whilst the pace of that development is sometimes frustratingly slow, I believe that we are well placed to make significant changes. In 2019 Scottish Mediation published *Bringing Mediation into the Mainstream*. It was the result of a significant amount of work and drew on an expert group from across the wider civil justice system. Since then we have been working with the Scottish Government on how best to implement its recommendations and very much welcomed the current governments commitment to the development of mediation when elected to office in 2021.

A key feature of Scottish Mediation's proposals in Scotland is that there should be coordinated access to mediation available in every Sheriffdom in Scotland. Currently people's ability to access mediation is very much based on where they live. Along side the ability to access mediation people should also be able to access advice about their case and the best way for them to proceed. Robust standards for mediators have been developed and should things go wrong a new complaints process is being developed. In our plan people would be able to access mediation at the point they submit their case to the court and for Simple Procedure cases they would not need to pay any more than the registration fee. For other cases such as ordinary cause we would make mediation available through panels of mediators offering fixed price services helping to ensure that resolving a case doesn't cost more than the value being claimed.

During the peak of the Covid pandemic two big things happened. The first was that all mediation moved online and to many people's surprise worked very effectively. The second was that a large backlog of cases built up in the courts.

Our proposals would seek to make online the preferred method of mediation (with arrangements for those unable to do so) and in doing so this would help reduce the backlog and for future help get the cases that are best heard in court in a timely manner.

I have been in a number of meetings with English and Welsh colleagues over the past few weeks in order to better understand what is proposed for England and Wales. In those discussions I have become more convinced about the proposals we've developed in Scotland and why they would not only work well but why they would be a significant improvement on what we have just now. As someone else said recently it's now time to Deliver, Deliver, Deliver.

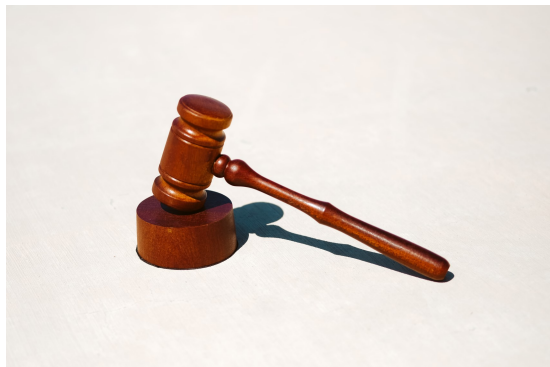


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