





| In this edition of Collaborate  | Page |
|---|------|
| <b>Mediate 23</b><br>Keynotes and ticket sales open for this years conference.  | 1    |
| <b>Finding the Common Ground</b><br>Sam Tedcastle on a two year project to in the Deer Management Sector using mediators to improve relationships           | 2-3  |
| <b>Mandatory Mediation</b><br>Patrick Scott previews his newly published, highly topical book.  | 4    |
| <b>Get on Board</b><br>Graham Boyack highlights opportunities to be involved in Scottish Mediation.   | 5    |
| <b>Scottish Mediation News</b><br>News and events from Scottish Mediation.  | 6    |
| <b>A Long Read</b><br>Paul Kirkwood introduces an article by trainee solicitor Alice McCreadie. Alice reflects on what she calls the Five R's of Mediation. | 8-12 |

Adverts from:  
University of Strathclyde, Rowan Consultancy.

## Mediate 23

Mediate 23 is taking place in Edinburgh on Monday 13th November and promises to be an event well worth attending.

An opportunity to meet mediators and those interested in mediation the theme for this years conference is Exploring Our Practice.

Two keynote speakers have been announced.

Gerry O'Sullivan author of 'The Mediator's Toolkit: Formulating and Asking Questions for Successful Outcomes' is delivering a session titled 'Working with the Thoughts of a Mediation Participant: The Context, Reason, How and Results'. Her presentation will cover the communication context in which we mediators work, the reason for asking mediation questions, how to do it effectively and why it works.

John Lande has published many important articles on mediation his latest 'Real Mediation Systems to Help Parties and Mediators Achieve Their Goals' will be the focus of his presentation to the conference 'Why Do You Mediate the Way You Do?' Mediators attending this program will be guided through an exercise to become more aware of the factors leading you to mediate as you do.

There will be a programme of workshops and discussions announced soon.

If you'd like to attend the conference early bird rates are available now. Click [here](#) for more details.

# Finding Common Ground

Sam Tedcastle

Over the last two years, mediators have been working with people in the deer management sector in upland Scotland to explore how to improve relations between different stakeholders and build

may recognise that something needs to be done.

People in the Scottish Upland Deer Sector decided to respond differently, and civic mediators from Centre for Good Relations have been working with them to consider some important questions:

How do we recognise and respect the range of differences in the sector?

How do we keep people talking and working together to find solutions to these problems that challenge us all?

Conflict is inevitable, but how do we work our way through it well and not get stuck in a cycle of blame and shame?

Our 'Finding the Common Ground on Sustainable Upland Deer Management' project developed through the formation of a multi-organisation steering group, and an initial assessment involving 1:1 discussion with people from across the sector. This led to a period of field work where practitioners met stakeholders face-to-face and held conversations directly between different parties (sometimes out on estates, and sometimes online). These conversations were structured by a series of increasingly well-attended workshops,



collaboration.

People share a recognition of the crisis climate and biodiversity – but there are different views as to whether the Scottish Government's response amounts to "not acting fast enough", or "a knee jerk response" which "won't work".

Some people are feeling pressure to change and change quick, even whilst they feel they have been working away quietly and often unsupported in the background for some time trying to find better ways to manage the natural resources they are custodians of. At best they feel their efforts aren't being recognised, at worst they feel blamed.

All across rural Scotland, we are hearing of people different sectors dealing with increasing tension as they try to navigate issues around the environment and sustainability. It's likely that as the climate crisis intensifies, so will the level of conflict. In such situations, relationships between stakeholders can break down and polarise, creating barriers to forward progress or building collective solutions, even though people



# Finding Common Ground

Sam Tedcastle

(in Stirling, Dunkeld, Invergarry, and one held online).

Of course, the process has not “fixed” everything, but has led to a good basis for further positive steps...

At the final residential workshop in June 2023, fifty participants developed an emerging vision of what they would like the future to look like, and committed themselves to abide by a shared principles about how they will communicate with each other in order to set a standard for respectful behaviour throughout the sector. The workshop laid the basis for people in the deer management sector to communicate with the Scottish Government and others with a co-ordinated voice that respects fundamental differences of approach on

the environment and the economy.

For a fuller version of this article, and to read key reports on “Finding the Common Ground”, go to <http://centreforgoodrelations.com/finding-the-common-ground/>

Sam can be contacted by email: [sam@centreforgoodrelations.com](mailto:sam@centreforgoodrelations.com)





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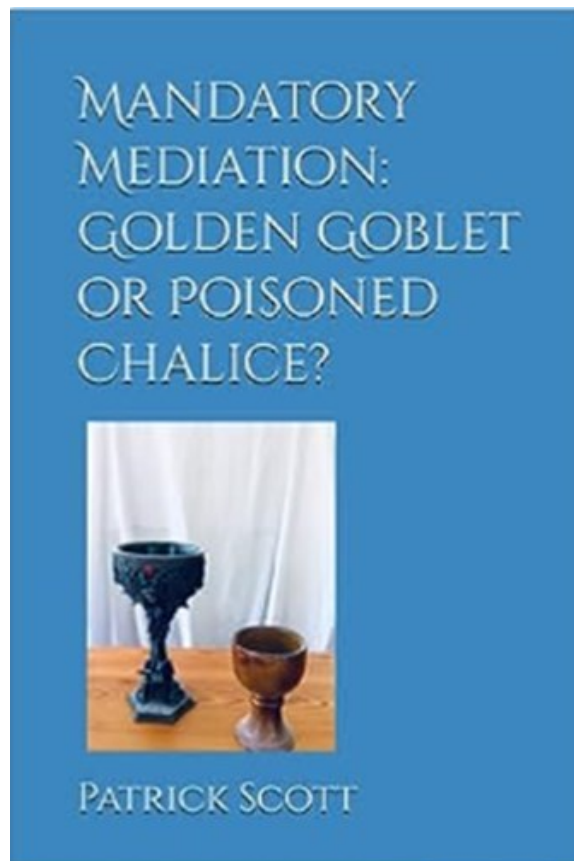
## Mandatory Mediation: Golden Goblet or Poisoned Chalice?

Patrick Scott

Patrick Scott has recently published his master's dissertation entitled "Mandatory Mediation: Golden Goblet or Poisoned Chalice?" This work considers the impact, if any, of mandatory mediation on the parties insofar as their satisfaction with the process and outcome are concerned. It considers whether mandatory mediation has the effect of extending the parties knowledge of mediation, whether they receive this positively or negatively, and whether it promotes mediation as a dispute resolution process. Both the views of the critics of mediation and empirical evidence are considered, and the conclusion is that mandatory mediation achieves its purpose with mostly positive results. The meaning of the terms "mandatory mediation" and "outcome of the process" are considered, as well as the reasons for making mediation mandatory. These are considered from a utilitarian and philanthropic perspective. The perennial problem of a lack of support for voluntary mediation is considered, as well as barriers to ADR and the "Russian experience".

The views of a number of critics of mandatory mediation are considered, and the author compares this to some empirical research of what the parties experience. The views of parties in America (Boston, Massachusetts and Ohio) are considered, as well as in Canada (Saskatchewan and Ontario), England and Scotland, The Netherlands and Malaysia. The question of why mandatory mediation is effective is discussed, as well as the importance of lawyers to the process. The book concludes with a consideration of whether mandatory mediation is a golden goblet or a poisoned chalice.

The book is available on Amazon in hardcover, paperback and Kindle formats. To buy a copy click [here](#).



*Patrick Scott practised as an advocate in South Africa for thirty years (the last seven as senior counsel), before relocating to the United Kingdom in 2017. He enrolled for a master's degree in Mediation and Conflict Resolution at the University of Strathclyde in September 2017, and graduated, with distinction, in 2019. This book is his dissertation which he completed for his master's degree. He is a registered mediator with Scottish Mediation, a lead mediator with the University of Strathclyde Mediation Clinic and serves on the mediation panel of the Scottish Legal Complaints Commission. The Mediation Clinic has a quarterly newsletter, "Mediation Matters!", of which he is the editor, and he writes a column for that newsletter, as well as for "Let's Mediate", the newsletter of Mediation in Motion Mediators in South Africa. He now lives on the Isle of Arran, with his wife, daughter and a multitude of animals.*

# Get on Board

**Graham Boyack**

## Ever thought about joining the Board of Scottish Mediation?

We are looking for Board members to join the Board and support the work of Scottish Mediation. Come and join our Board and help make mediation in Scotland easy to access with its skills embedded across the whole of Scotland.

We're working on plans to promote our award winning Peer Mediation offering in Scotland's schools, to extend the availability of mediation in our courts and to ensure that the mediation the public receives is of the highest possible standard.

## So what does it Involve?

The Board has four formal meetings a year, all online and once a year gets together in person to review strategy and make plans for the next year. This year we'll be looking to the future and developing our strategy for 2024-27.

The general areas of activities that Trustees perform are:

- Scrutinising and providing feedback on Board papers
- Participating in strategic discussions
- Highlighting key governance issues in practice and service development, member services, and financial and risk management.
- Providing guidance on new initiatives
- Other issues in which the trustee has special expertise

## What Experience is Being looked For?

We are interested in recruiting Trustees who have a broad range of skills which may have been gained across a range of sectors. Applicants may have direct mediation skills but we are also interested in applications from people who appreciate and have experience of the organisational benefits of mediation or who have experience in commissioning mediation to resolve disputes. This might include those working in local authorities, those with financial management experience and those with experience of complaints management. We are keen to ensure our Board reflects the diversity of the Scottish population.



## What Next?

If you have a base in Scotland and are interested you can find out more details [here](#).

Applications are due in by 12 noon on 15th September. If you'd like to speak about the Board and what it involves just email [graham.boyack@scottishmediation.org.uk](mailto:graham.boyack@scottishmediation.org.uk)

## Scottish Mediation News

### Practice Standards and New Registrations 2023

Thinking of joining the Scottish Mediation Register? You can become a member or registered practitioner. Attend this free online seminar to find out more about registration. What is required to be a registered mediator and what are the required standards. Find out about the many benefits and opportunities for sharing practice and learning.

The hour-long seminar will consist of a 15 minute presentation, followed by an opportunity to ask questions.

The event will take place on Wednesday 20th September from 2.30pm-3.30pm. Zoom link to be sent out nearer the time.

To book this event please click [HERE](#)

### Welcome to Scottish Mediation

Scottish Mediation are delighted to welcome Rebecca Swarbrick and Janice Lee who join as practitioner members.

Gillian Brunton, Mary Henderson, Charlene McGowan, Gordon Murray, Lynne Crawford, Robert Mackay, Eunice Olatuni, Emma Tunnard, Margaret Babalola, Amber Linney, Juliette Mullen, Sibongile Pradhan, and Stephen Walters 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](#).

### "I've forgotten more about mediation than you will ever know!"

Scottish Mediation's next CPD is on Tuesday 12th September at 10.00am online.

As our practice develops, our wealth of experience moulds us, our knowledge base grows exponentially and our comfort with the practice gives us confidence and sometimes jades us ... are we at risk of forgetting the reasons we became mediator's in the first place?

Sometimes years of complexity and "real life" pulls us further away from the simplicity inherent in the practice and the core principles of mediation.

Join family mediator Alan Jeffrey (Cyrenians Mediation & Support) online as we reconnect with the basics of mediation, including:

- The core values of mediation
- The main "styles" of mediation
- The simplicity and complexity of mediation
- When is mediation not mediation?
- When is mediation appropriate...or not?
- Are we really as impartial as we think?

As useful for the battle-weary mediator with forty years' experience as it is for the newly-trained practitioner, join us as we remind ourselves of the Who, What, When and Why of Mediation.

How much? - Members - £40, Non-Members - £80.

For more details and to book 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, 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](mailto:hass-pgt-enquiries@strath.ac.uk)  
 t: 0141 444 8600

# The Five "Rs" of Mediation

Alice McCreadie

## Recognition, Relationships v's Resolution, Resilience and Resourcefulness

By far the most imaginative, thoughtful, and original essay I have read in the last five years was written this year by Alice McCreadie who is now a trainee solicitor. Her essay, entitled "The Five Rs of Mediation" picked up on five themes she identified from her learning on the course, both in relation to theory and practice. This is not an unqualified homage to mediation-it is also critical and pointed.

Paul Kirkwood Commercial Mediator, Litigation Solicitor, Mediation Lecturer and Tutor.

### 1. Introduction

When choosing my elective courses on the Diploma, mediation was one that I was instantly drawn to. I had never studied it before and, if I'm being honest, I didn't really know very much about it. All I knew was that it is one of several forms of alternative dispute resolution ("ADR") which can be used to help clients settle matters out of court. I had decided fairly early on in my undergraduate degree that I wanted to be a court lawyer but methods of ADR had nevertheless always intrigued me, particularly in a time where the flaws of the modern day court system have never been more apparent. I felt that methods of ADR (such as mediation) encouraged us as lawyers to think outside of the box at ways of resolving matters in a less adversarial, more conversational way. Despite several critiques of the lawyer's involvement in mediation (from Len Riskin's "Mediation and Lawyers" to the later work by Bryan Clark in his chapter "Mediation and Lawyers – Does the Cap Fit"), I felt that not only could lawyers bring valuable skills to mediation but, actually, training in mediation could offer valuable skills to lawyers. This course has helped me to learn and develop those skills which I will undoubtedly take forward into my traineeship and future legal career. When considering how best to structure this reflective journal, I asked myself the



question: "What is mediation all about?". As I began to note down several themes – recognition, relationships, resolution, resilience, resourcefulness – I noticed a pattern. Most of the key themes that stood out to me began with the letter "R". And from there, I decided to reflect on what I called "The Five Rs of Mediation".

### 2. Recognition

At the beginning of the course, we learned about the importance of recognition. It is important for a mediator to recognise, firstly, how human beings generally tend to respond to conflict and, secondly, how different individuals respond to conflict in different ways. Throughout the teaching on this course, I learned that this two-part process of recognition is a crucial first step towards becoming a good mediator and also a better listener.

(a) Recognising General Responses to Conflict

In Workshop One, we discussed the importance of a mediator's ability to recognise general responses to conflict and the emotions that stem from this. I found Friedrich Glasl's Nine-Stage Model of Conflict Escalation (as helpfully summarised by Thomas Jordan) particularly interesting.



# The Five "Rs" of Mediation

Alice McCreddie

Glasl notes how a "win-win" situation beginning in simple disagreement can quickly escalate to a "lose-lose" situation whereby parties lose focus of the matter at hand and instead resort to an attempt to "destroy the enemy", with all instincts of self-preservation largely neglected. This is something which resonated with a few of us when sharing our own personal experiences of conflict in the first workshop. This led into a discussion where we considered how mediators can serve to not only recognise this pattern, but also attempt to use their knowledge of it to de-escalate conflict.



At the end of the workshop during my reflections, I thought about how the adversarial and often accusatory nature of a court setting (when contrasted with mediation) might act to facilitate an escalation of conflict, as discussed by Austin Sarat and Joel B. Grossman in "Courts and Conflict Resolution: Problems in the Mobilization of Adjudication". I then considered, if the court setting does indeed facilitate conflict, how does it respond when conflict is escalated? The short answer is that it doesn't respond well. When clients do become visibly angry in court, this is usually not received well by decision-makers, no matter how personal the context. Further, there is usually little attempt to de-escalate the conflict in constructive ways. Instead, there seems to be a tendency for the party displaying anger to be asked to "be quiet" or, in some cases, asked to leave the court. After considering the reading on this topic, I concluded that this may be due to a

fundamental misunderstanding surrounding the emotion of anger, a concept more generally discussed by Jane Boucher in "Dealing with Anger, the Misunderstood Emotion" and Carol Tarvis in "Anger: The Misunderstood Emotion". By recognising anger as a natural reaction to conflict as well as the wider associated psychological effects (including defensiveness and contempt for the other party as noted by William Wilmot and Joyce Hocker in "The Four Horsemen of the Apocalypse"), we can not only better understand conflict but we are also better placed to be able to de-escalate it and to do so productively. In this way, we should encourage parties to refrain from the reactive form of thinking from the reptilian, limbic and amygdala parts of the brain and instead focus on more rational thinking using the neocortex. To better understand the biology of this, I considered Robert Naumann et al.'s "The Reptilian Brain". Overall, I found learning about the ability to recognise general responses to and patterns of conflict a useful tool not only for the mediations that we would later conduct in the workshops but also one which could be transferred to the court setting. Recognition of this therefore allows us to not only be better mediators, but also better lawyers.

## (b) Recognising Individual Conflict Styles

In Week Two, we learned about different conflict styles. After completing the online questionnaire on the Kraybill Adult Conflict Styles Inventory, I learned that my preferred conflict style is cooperating. My report also noted that my storm shift is very low, meaning that my conflict style does not really change even where the conflict and associated emotions are escalated. This made me consider whether my results would have been different if I had approached the questions in a different way, focusing on a more personal experience of conflict, for example, rather than a professional one. I wondered if, in that case, my storm shift would have been more significant.

In Workshop Two, we also conducted a short mediation surrounding Danny, Simone and their dog, Buster. The conflict centred around who should keep the dog following

# The Five "Rs" of Mediation

Alice McCreddie

the couples' break-up. It was interesting to note my peers' conflict styles and how these played out during the mediation. I noticed that some members of the class were more directing whereas others appeared as if they wanted to avoid the problem entirely. When acting as mediator, I tried my best to firstly recognise each of the party's conflict styles and, from there, adapt what I was saying accordingly. For example, where one party was very directing, I had to take extra time to ensure that the second party had an equal opportunity to speak and that they hadn't felt forced into the resolution that they ended up agreeing on. Recognising and reacting to conflict styles in this way is a skill which I have begun to use in my personal life. I have also become more conscious of my own conflict style and how this might be perceived by others.

Overall, I found recognition (in each of the senses discussed) to be one of the most valuable skills that I learned from the mediation elective. As a result, I hope that I will be less prone to judgement and attributional biases (as discussed by Keith Allred in "Anger & Retaliation in Conflict" and John Ng in "Attribution Biases and their Impact on Mediation") going forward.

### 3. Relationships vs Resolution

A second important theme I learned from the course is the importance of balancing relationships with resolutions as they do not always go hand in hand. In Week Six of the course, we considered different models of mediation, noting that we had been focusing on facilitative mediation up until this point. During the lecture, we considered the work of Robert Bush and Joseph Folger in "The Promise of Mediation: The Transformative Approach to Conflict". I learned that transformative mediation has a different goal from facilitative mediation as its focus is less on reaching resolution but instead on helping to mend the broken relationships between the parties. As someone with a keen interest in family law, I considered how this might be a more appropriate model of mediation in family disputes, drawing on Robert Bush et al.'s "Family Court Review: Supporting Family Strength: The Use of

Transformative Mediation in a PINS Mediation Clinic". I wondered if the goal of the welfare of the child would be better met in a context focused more on repairing relationships than reaching resolution.

However, I think there are limits to the usefulness of transformative mediation. For example, one criticism of this approach is that the authors do not believe that power imbalances should be addressed during transformative mediations (as discussed by Paul Kirkwood in "Strategic versus Facilitative and Transformative Mediation – a Critical Analysis"). I think that it is essential that power imbalances are addressed. As a result, in the mediation conducted in Workshop Five between Fiona and her former employer, Bodgett and Sons, I addressed the power imbalance early on when acting as co-mediator. This is something which I think both parties benefited from and it



allowed us to reach a fairer resolution in line with the parties' respective power positions. I believe that by not addressing power imbalances, this leaves the weaker party susceptible to abuse of power from the stronger party.

Although there should be a strong focus on relationships in mediation, transformative mediation is severely limited in its approach. This is because it also largely ignores the wider power imbalances that much of society is predicated upon, for example, in terms of gender, as discussed by Carol Gilligan in "In a Different Voice:

# The Five "Rs" of Mediation

Alice McCreddie

Psychological Theory and Women's Development". Overall, although transformative mediation has its limits, I think it can nevertheless be a valuable tool in "bringing peace into the room", as stated by Daniel Bowling and David Hoffman. To be best utilised, however, I think, contrary to Bush and Folger's ideas, some of its principles ought to fit alongside those from other models of mediation (such as facilitative and strategic (a model discussed generally in the work of Kenneth Kressell)). In this way the mediator can "cherry-pick" the best parts of each model to create an environment which still has a central focus on relationships without this being the primary factor to the detriment of all other goals, most notably, reaching resolution.

## 4. Resilience

One thing which I didn't realise when I started this course was that mediations can often take several hours, or sometimes even multiple days, due to their complexity. As a result, mediators must be resilient and adaptable in their approaches. In Week Four, we considered the pros and cons of private sessions, a technique which I think is crucial in building the mediator's (and parties') resilience. On the one hand, as stated by Jennifer Beer et al. in "The Mediator's Handbook" at page 51, separate conversations can be "a place for strategizing and coaching" that can help parties decide how to speak about difficult subject. Beer et al. also note that it can provide the space for parties to be able to talk through all of the available options openly without having to think about how they appear to the other party or being tactical.

However, private sessions can also have their drawbacks. For example, during Workshop Four, we discussed the possibility of an issue arising where one party spends longer in a private session with the mediator than the other. We noted that this can lead to further tension and may also raise a question of bias on the part of the mediator if it is felt that they are not being fair. I experienced this during Workshop Four when acting as Annie Macleod's solicitor in

the dispute with Andrew Murray. The mediators asked me to leave the room for some time whilst they spoke with Andrew and my private session was comparatively shorter. This made me understand how one party might feel discouraged by this. To address this, I think it is important for mediators to convey to parties at the outset that, due to the nature of private sessions, it may be that some are longer than others and that this is perfectly normal.



As discussed by Allan Barsky in "Conflict Resolution for the Helping Professions", private sessions can also present problems for the mediator in terms of confidentiality. For example, what happens where one party shares crucial information with the mediator but refuses to allow the mediator to inform the other party of this? These are issues which Barsky notes it can be difficult to pre-empt. However, overall, I think that most of the issues surrounding private sessions can be avoided if the mediator makes clear the purpose of private sessions and the way that they will work during their introduction. By following the same pattern of "SCRAPITT" (as set out by John Sturrock of "Core Mediation"), the mediator can ensure that private sessions are conducted fairly and equally. In this way, they can be a

# The Five "Rs" of Mediation

Alice McCreddie

valuable tool in building resilience not only on the part of the mediator but also on the part of the parties by allowing them a moment to step back from the direct conflict and regather their thoughts before proceeding.

## 5. Resourcefulness

Although perhaps not to the same extent as in evaluative mediation, facilitative mediation still requires a degree of mediator input in the option generating phase. Throughout the mediations conducted in the workshops, I attempted to be as resourceful as possible and think outside of the box wherever appropriate. For example, in Workshop Five during the mediation between Fiona and Bodgett and Sons, one of the issues at hand was the language used by Rodney when he stated that they needed a "man who could be tougher with suppliers". This led into a further discussion where wider concerns surrounding Rodney's sexism within the workplace were revealed. Rodney acknowledged those and, in the option generating phase of the negotiation, I canvassed the idea of Rodney perhaps taking part in a workshop to address his sexism. This was something which he was quite open to which seemed to surprise Fiona, creating a positive turning point in the mediation. This ended up resulting in a spontaneous verbal apology from Rodney, one of the most valuable tools in mediation. From there, we were shortly able to work our way towards a full resolution, highlighting the importance of the mediator's ability to be resourceful when generating options for resolution.

In Workshop Six, I had the opportunity to further display my resourcefulness when acting as co-mediator between Louise and Karen. Louise had explained that she had felt hurt by Karen's refusal to engage with her colleagues on nights out. Karen then explained that this had been misinterpreted and that she wanted to socialise with her colleagues but, due to her family circumstances and dislike for alcohol, she did not feel comfortable joining them on these occasions. I then suggested the possibility of organised non-alcoholic social

events during lunchtime which would allow for Karen and Louise to bond in a way that suited everyone. This suggestion, again, appeared to create a turning point in the mediation as both parties were keen to take part in this. This overcame barriers, facilitated the first major point of agreement, and ultimately created motivation to reach a settlement (in line with Kendall Reed's model of "The Mediator's Triangle"). These two practical examples demonstrated to me the importance of being resourceful as a mediator.



## 6. Conclusion

I have thoroughly enjoyed the mediation elective course. It has allowed me to build my knowledge of the theoretical accounts of conflict resolution and also given me the space and confidence to develop these skills in practice during the workshops. I like to think that, as a result, I have become more open-minded and less adversarial in my approach to conflict. Not only was I able to bring my existing legal skills to the mediations we conducted, but I have also gained an invaluable set of skills which I look forward to taking forward into my future legal career. I would encourage any Diploma student, particularly those looking to build a career in court work, to choose this course and to be open-minded. After all, they might discover that there are better ways of dealing with conflict than in the courtroom.