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Adverts from:
University of Strathclyde, Young Mediators, Rowan Consultancy and SCCR.



New Chair for Scottish Mediation

At its recent AGM Scottish Mediation appointed Tracey Chrystal as its new Chair of the Board.

Tracey is an established Non-Exec Board Director with 7 years' experience gained on a Financial Board. Her board responsibilities extended from committee activities, chair of remuneration to ensuring a 50/50 gender split board was achieved during her tenure which she completed in December 2023.

As a member of the Institute of Directors (IOD) Tracey also has extensive Business Change experience and expertise in dealing with Senior Operational and Leadership Management including internal coaching at all levels. She is a trusted and inspirational business professional with over 30 years' experience.



As a qualified CIPD Fellow since 2006 and an ILM Level 7 Executive Coach with the Association of Coaches (AoC) since 2020, Tracey has worked for large UK and global businesses, SME's and small companies.

Tracey manages her own HR Consultancy based in Glasgow, where her mission is to help people create positive change. Her ethos is to support busy people thrive professionally in their careers or business ownership journeys. Her clients describe her as engaging, trustworthy, a good listener, positive, enthusiastic, supportive, encouraging and motivating.

As the new Board Chair of Scottish Mediation, Tracey's vision is to ensure the Board supports the organisation to continue to develop and grow mediation across Scotland within appropriate networks, business connections and communities.

Mediate 24

Mediate 24

Scottish Mediation are proud to host Mediate 2024 – The Power of Words.

The theme of the 2024 conference is The Power of Words. This will allow us to explore sub-themes, such as

- The language we use to describe mediation;
- The importance of the words we choose to use during mediation;
- How words can impact on people's willingness to engage in mediation;
- How words are important for diversity and inclusion;
- Is mediation a tool for individuals, for the community, or for the powerful?

Keynote 1 will look at how mediation is progressing in Ireland since the introduction of their Mediation Act in 2017 and what lessons can be learnt in Scotland. Our guest speaker is Ber Barry-Murray President of the Mediators Institute of Ireland.



Keynote 2 will examine stories from reflective practice and how the learning for mediators can have a positive impact. Our guest speaker is Michael Lang author of The Guide To Reflective Practice in Conflict Resolution.



V&A DUNDEE | 2 DECEMBER

Workshops confirmed so far include:

- Family Business Conflicts – How Mediation might be deployed
- Perspectives on Mediation and Negotiation
- Mediation and Neurodiversity
- How We live together – Words as Conflict Triggers

There will be a look ahead session for Mediation and how we can take forward aspirations at the 2026 Scottish General Election.

The conference is being held at the V&A in Dundee, a wonderful venue worth a visit in its own right.

Tickets are available at early bird rates until 11th November by clicking [here](#).

We'd like to thank our sponsors, Thorntons - Thorntons is a leading service law firm providing services to individuals, families and businesses across Scotland. Mediation and other dispute resolution alternatives are available from their specialist teams.

What is a 'Difficult Conversation'?

Mike Makin-Waite

What is 'a difficult conversation'?

Gina Martin, "No Offence, But ...": How to have difficult conversations for meaningful change, Bantam / Transworld Publishers (Penguin / Random House), London, 2023, pp 337.

Katarzyna Fleming and Fufy Demissie, editors, Nurturing 'Difficult Conversations' in Education: Empowerment, agency and social justice in the UK, Bloomsbury Academic, London, 2024, pp xxiii and 249.

It's perhaps a tricky thing for a reviewer to say and, perhaps, for some authors and publishers to hear – but many of the books and 'how to' guides about 'having difficult conversations' are not very good.

There are also some books (good and bad) which are marketed as being about how to have difficult conversations – but are actually about no such thing.



Photo by Kindel Media: <https://www.pexels.com/photo/man-scolding-his-son-8550837/>

One of the best of these is "No Offence, But ..." by Gina Martin, subtitled How to have difficult conversations for meaningful change.

What the book actually does is to set out the arguments that Martin thinks will be effective in persuading people of her position on a range of issues. It is a

confidence-building 'how to' manual for activists, packed with suggestions on the best ways to assertively promote the points that she thinks will cause other people to reconsider views which she finds disagreeable.

Martin's a well-known campaigner for gender equality, best known for leading the campaign which changed the law in England and Wales so as to establish the Voyeurism Act, making upskirting a specific sexual offence.

Her writing – and that of a range of contributors to this book – is clear and accessible. It provides a guide to arguing particular political positions, and advice on how to respond to the counter-arguments which might be made on issues from misogyny and racism to climate change and immigration.

There is, however, little evidence of curiosity on the part of Martin and her collaborators about why opponents of their views often hold those opposing views sincerely. Nor does the book communicate any sense of how registering opposing views about the issues covered in the book has been unsettling for the contributors – other than in terms of saying that those opposing views are reactionary and hurtful.

Martin states that "No Offence, But ..." is not 'about shutting down anyone and everyone with whom you disagree' and talks about the importance of 'unravelling and understanding the things they – or we – say that are harmful, distracting or untrue'. But the pattern of every chapter is to explain what to say if someone asserts 'x', 'y' or 'z' that you disagree with, concluding with 'prompts for discussion' and 'information to remember' which are clearly intended as position summaries and confirmations. On this reviewer's reading, consideration of the interests of people who hold opposing views is usually only offered where Martin is suggesting to readers who agree with her how they might effectively 'land' their points, e.g., if a climate change denier enjoys skiing holidays, they should be told that rising global temperatures will melt the

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the slopes.

Martin is alert to the psychological harm caused by oppressive social structures and behaviour – and the descriptions of how these operate make her book a useful read – but readers should not look here for insights into the concerns and complex emotional needs and defences of people who are ostensibly concerned about 'Islam oppressing women' but in fact are using statements of support for women's rights as a first step in asserting Islamophobic prejudices, or (an entirely different category of argument) health professionals who worry about the effects of some permissive 'body positive' attitudes. Nor are the arguments of those who would oppose Martin and her collaborators on such issues as trans rights or immigration set out as they would present them.

Overall, the rhythm of the text takes the form of 'if someone argues this point, here is how you should counter them'. Martin's conception of a difficult conversation is one in which you vigorously promote your own pre-existing view, and need to handle the risk that others will state their disagreement with you, perhaps in abusive terms.

It is not only some progressive liberals who use the term in this way. In an October 2024 fringe meeting hosted by The Spectator, Kemi Badenoch asserted (alongside her judgements that ten per cent of civil servants are 'very bad', and that 'too many people are living off the government'), that 'I'm prepared to have difficult conversations now, and I don't care what people say'. As she built support for her campaign to become leader of the Conservative Party, it was reported that 'she does not choose to have a fight. But if she has to have a fight, she is willing to do that. And she makes sure she wins'. Her 'I don't care' conception of 'a difficult conversation'

is even narrower than Martin's.

In my view, the term is more helpfully used to describe an exchange which is not just difficult for the person you are having the conversation with: a real 'difficult conversation' is difficult for you, too, and not simply because you are interacting with a person or a group of people who may see things otherwise.

Conversations which I feel are properly categorised as 'difficult' are those concerned with sensitive issues and / or troubled questions on which the participants may hold (sharply) divergent views and (radically contrasting) understandings: they involve exploration and listening, so that each participant learns about the feelings, interests and needs of the other.

These conversations can create space for each participant to reflect on their own



Photo by Keira Burton: <https://www.pexels.com/photo/man-and-woman-arguing-6147245/>

understandings and emotional attachments in relation to the issues: the resulting potential gains are what redeems the 'difficulty'. Such sharing is a world away from what the Danish novelist and scientist Jens Peter Jacobsen described as each person in turn 'making a speech in which problems are supposedly debated but are

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actually just postulated as solved'.

The pieces collected by Katarzyna Fleming and Fufy Demissie will not achieve as wide a readership as Martin's book: they tend towards an academic tone and structure, and are mainly concerned with teachers' professional practice.

Nevertheless, *Nurturing 'Difficult Conversations' in Education* is full of insights and suggestions which it would be good to see applied more widely. As Fleming and Demissie state, "difficult conversations" can provide an affective space where transformation in thinking and practice can take place'. In his foreword, Joshua Fortenzer characterises 'difficult conversations' as 'personally meaningful' and 'emotionally demanding', allowing 'us to interact and share in our authentic vulnerability'. He notes that even gentle, everyday, conversations 'involve risk: the risk of being misunderstood, of being

begin the process of transformation towards a more equal and just society'. Quoting Sara K. Ahmed, the editors show how 'learning how to handle "difficult conversations" in a constructive manner takes time, and effort, and often requires us to "sit in the uncomfortable" with "no quick fixes for long-term progress"'.

Demissie's chapter on her work to promote discussions on race and inequality in higher education settings using a 'Community of Philosophical Inquiry' approach includes many stimulating insights, noting for example that the 'well-established ... notion of a "safe space" is a contested concept', and quoting Brian Arao and Kristi Clemens who have warned that "safe spaces" can "conflate safety with comfort" and have questioned 'whether it is reasonable to expect safety in dialogues around social justice'.

Sean Henry's chapter on 'Free Speech, Conversation and the "Difficulty" of Academic Freedom' quickly establishes its advantages over any number of simplistic diatribes about 'cancel culture' when it notes that 'an individualistic framing of academic freedom fails to account for our shared relationships with one another'. Henry's chapter, like most of the others, explores the detail of a particular situation: such concrete attention to specific contexts is one of the many valuable qualities of the book. Henry describes how a male university student he was teaching argued that sexism is no longer a structural problem in the fields of science, technology, engineering, and mathematics, and later (as well as making sexist comments about a female student in a 'private social media group chat') provocatively proposed writing a paper on misandry in education. Henry's consideration of the issues involved in this case, and his thoughtful observations on the ways he responded and handled the situation (which he disarmingly characterises as 'inadequate') is itself an illustration of how useful learning can result from reflecting on challenging experiences. Henry proposes that we might usefully affirm 'an alternative vision of academic freedom, a freedom actualised less through



Photo by Alex Green: <https://www.pexels.com/photo/black-couple-arguing-with-each-other-at-home-5699684/>

shunned or shamed, of failing to understand or to be understood – in short, of exposure'.

The distance between this book and Badenoch's conception and wider political positions is well-illustrated by a point in the introductory chapter: 'there is an increasing awareness of the impact of structural racism and social inequalities on individuals' lives ... it seems inevitable, therefore, that challenging or difficult conversations are vital to

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a rugged, competitive, individualism (where some "win" and others "lose") and more through an attunement to our collective responsibilities, where we transform what is desired by us into what is desirable for others'.

Around half the chapters in Nurturing 'Difficult Conversations' in Education centre on situations where the authors have, for example, worked with people with 'profound intellectual and multiple disabilities', or have handled the learning needs of autistic young people. Amongst other achievements, these chapters critique the 'deficit model' which focuses on learners' supposedly 'negative' traits; illustrate how effective communication sometimes requires 'the interlocutors to enter a liminal space where their entrenched ways of being might need to be temporarily abandoned in place of a sense of uncertainty or discomfort'; and explore techniques for having worthwhile conversations with people who 'do not use

mouth words and do not have access to standardised forms of communication', so that 'the barriers faced by people seeking to have these conversations can be addressed'. These chapters confirm a truth that is too little understood in education, and in society as a whole: the practices which effective and respectful teachers and carers use with people with disabilities in so-called 'special' situations are based on principles and values which should not be the exception, but which should instead be taken as exemplary more generally. To take one example, Lorna Hughes' description of 'enriching' partnerships between Special Education Needs Coordinators and the parents and carers of children they work with as 'open, honest and transparent' is an account of 'improved ways of working' which should be celebrated as good practice in all areas of education, with lessons and applicability far beyond the SEND system.

This article was published by Process North

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Mediation's Our Goal

John Sturrock KC

It was reported recently that representatives of French footballer Kylian Mbappe had rejected a proposal that he participate in mediation to try and resolve a dispute with his former club, Paris St Germain, over claims amounting to £46.5million in unpaid bonuses and wages. They said that "mediation would be useless ...".

It may well be that Mbappe can afford to engage in arbitration or litigation to press his claims. But many people cannot afford to do so or, if they do, find that the costs can far outweigh the benefits.

Recently, I acted as mediator in a relatively straightforward dispute between neighbours. Agreement was reached between them in a day of mediation, during which we learned that each party had so far incurred over £100,000 in legal and other expenses. Ongoing litigation, including several court orders, had not provided a remedy to either party and, indeed, had probably served to harden positions. Mediation was really a last resort.



Photo by Pixabay: <https://www.pexels.com/photo/multicolored-soccer-ball-on-green-field-47730/>

So far as one could tell, at no stage had the court before which the matter was progressing encouraged the parties to try mediation. An earlier suggestion involving the solicitors had been rejected. Like Mbappe, the parties themselves may not have welcomed the suggestion of mediation. However, it seems likely that, had they been encouraged or directed by the court at

least to try mediation much sooner, they could have resolved matters earlier and saved themselves a lot of money - and avoided the stress, animosity and distraction associated with ongoing court proceedings. And bear in mind that the funds which were invested in the court process could have been used for other things, such as remedying the problem between the parties at an earlier stage.

In England and Wales, the judiciary has continued to promote mediation and, where appropriate, impose sanctions on parties who unreasonably refuse to engage in it. In addition, changes to the Civil Procedure Rules, to reflect the recent Court of Appeal case of *Churchill v Merthyl Tydfil*, came into effect on 1 October 2024. That case decided that courts can lawfully stay (sist in Scotland) proceedings for, or order parties to engage in, ADR.

Rule changes include amendments to the "overriding objective" to incorporate "promoting or using alternative dispute resolution" and provide that "the court must further the overriding objective by actively managing cases", to include "ordering or encouraging the parties to use, and facilitating the use of, alternative dispute resolution". The "overriding objective" is designed to enable courts to deal with cases justly and at proportionate cost.

It has been said that this puts ADR squarely at the heart of English courts' approach to case management, so that ADR will become even more common in disputes of all types in future. In practice, when the courts or rules mention "ADR" or "alternative dispute resolution", they are referring to mediation.

These changes reflect the increasingly supportive approach to mediation that the English courts have adopted in recent years. Indeed, the Commercial Court there no longer considers such approaches "alternative", renaming them "Negotiated Dispute Resolution".

Speaking of other jurisdictions, I recently attended an excellent symposium in Belfast hosted by the Mediators' Institute of Ireland

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at which senior judges from Dublin and Belfast spoke knowledgeably and encouragingly about the use of mediation in civil cases. In the Republic, Marguerite Bolger, a judge in the High Court of Ireland, explained that mediation is firmly embedded in her jurisdiction, lawyers have bought in to it and the courts expected it to be utilised - with costs penalties for a solicitor's failure to advise clients about the benefits of mediation or for an unreasonable refusal to engage in mediation. Interestingly, the court recognised the public interest in encouraging mediation, not just that of the client.

Mr Justice Huddleston of the High Court of Northern Ireland (who is charged with modernisation in Northern Ireland) gave a compelling argument that the still 19th century court system is simply not sustainable now, given costs and public expectations. We need to get to the nub of issues faster and mediation has a significant role to play.

Back to England and Wales, in the Churchill case, the Court added that "experience has shown that it is extremely beneficial for the parties to disputes to be able to settle their differences cheaply and quickly", and that "even with initially unwilling parties, mediation can often be successful". Applying that reasoning to my mediation experience noted above, things might have been very different.

Remarkably, it's over five years since the report of the expert group entitled Making Mediation Mainstream in Scotland was published, with its recommendations and

proposals for a strategy to normalise the use of mediation in the civil justice system in Scotland. How much of that report has been implemented? With impending changes in leadership in the Scottish judiciary, might there be a fresh look at how we do things here? Perhaps Mr Mbappe will reconsider too!

A shorter version of this article first appeared in The Scotsman newspaper. John Sturrock KC is Founder and Senior Mediator at Core Solutions.

young
mediators



Are you a university student that is interested in alternative forms of dispute resolution?

**Would you like to explore the purpose and practice of mediation?
Would you like to receive a monthly newsletter on news and upcoming training sessions?**

Then join the Young Mediators!

Young Mediators is a voluntary group dedicated to learning about and engaging with Mediation. We want to increase awareness of Mediation within Scotland, particularly at the academic and junior lawyer level. Mediation is a different, positive way of looking at, dealing with and resolving conflict. It is simple but radical. Check out our most recent newsletter [July 2024 Newsletter \(mailchi.mp\)](#).

Would you like to know more?

If you would like to join our mailing list, or learn more about Young Mediators then please visit our website: www.youngmediators.com or send us a message on LinkedIn www.linkedin.com/youngmediators.

Want to get involved?

We are always on the lookout for new volunteers to contribute to our



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- Accreditation by Scottish Mediation (as fulfilling the training requirement for the Scottish Mediation Register).

WHO WILL BENEFIT FROM THIS COURSE?

This course is designed for individuals seeking a dynamic and practical understanding of mediation. It will appeal to mediators, lawyers, managers, HR, health professionals, and anyone who deals with conflict in their work. Whether you are a seasoned professional looking to enhance your skills or a newcomer eager to explore the world of mediation, our course provides a comprehensive platform for personal and professional growth.

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.

HOW IS THIS COURSE TAUGHT?

The course is taught via a mix of in-person and online classes at the University of Strathclyde. Classes normally take place early evening, and some weekend availability will also be required.

WHAT OUR GRADUATES SAY?

"I absolutely loved my time at Strathclyde. Taking the time to think deeply, read widely and engage with others has proved to be extremely valuable".

"The opportunity provided by the Mediation Clinic is invaluable. The combination of theory provided by the lecturers, and real-world practice offered through the clinic has strengthened my practice in ways that a theory-only course never could have".

Start date: September each year

Mode of Study: Full-time and Part-Time, taught by a combination of early evening and weekend classes, in-person and online teaching. In person attendance is compulsory.

Application and Further Information can be found at:
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Scottish Mediation News

Masterclass Reluctance to Mediate?

This online masterclass looks to discuss and understand reluctance to mediate. We will examine the motivations for engagement and disengagement in mediation. What strategies can we use to overcome reluctance and engage both parties in mediation?

The Masterclass will be led by Ruth Unsworth of St. Andrews University. Ruth Unsworth is the Head of Mediation and Wellbeing at The University of St Andrews.

The event will take place on Tuesday 5th November from 10am-1pm.

To book click [here](#).

Welcome to Scottish Mediation

Scottish Mediation are delighted to welcome Roderick Macleod, Charles Mak and Penny Middleton who join as practitioner members.

Laura Allison, Caroline Kelly, Agnieszka Libera, Lisa Paris, Toryn Whitehead, Pinky Ghadiali and Jenny Shackford 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](#).

International Mediation Clinic Network Conference (online)

Wednesday 27 November at 5pm GMT

Topic: Clinical Mediator Education

The International Mediation Clinic Network was established to offer encouragement, support, and learning opportunities for these clinics. It is open to academics, practitioners, students, and anyone interested in mediator education. It creates a platform for sharing best practices, fostering collaboration, and promoting the work of Mediation Clinics within academic institutions. Mediation Clinics are increasingly emerging worldwide across a variety of settings.

The International Mediation Clinic Network invites conference proposals from educators, students, and practitioners to explore "Clinical Mediator Education" topics. Selected papers will be considered for publication.

Clinical Mediator Education is a comprehensive and multifaceted training process that prepares individuals to mediate conflicts across various settings, ensuring they have the skills, knowledge, and ethical grounding to guide parties toward resolution.

Submission of Proposal (closing date 11 November)

Please submit a 150-word proposal and submit to mediationclinic@strath.ac.uk in Word or pdf format. Form can be obtained from mediationclinic@strath.ac.uk

If selected you will be invited to present at the International Mediation Clinic Network Conference on Wednesday 27 November 2024 at 5pm – 7pm GMT (online).

Each presentation will be allocated 15 minutes to speak and 5 minutes for Q&A.

Please direct any enquiries to:

Pauline McKay, Mediation Clinic Co-ordinator, University of Strathclyde. T: 44 141 548 4510

Scottish Mediation News

Scottish Mediation held its AGM earlier this month.

The meeting received a report on SM's activities over the last year including its annual accounts.

As mentioned on page on a new Chair was elected and in addition three members have joined the Board of Trustees too. They are Ben Thomson, Laura Allison and Ralph Strang.

Ben works for CEDR (Centre for Early Dispute Resolution) and is looking to bring his marketing experience to the Board.

Laura works for the NHS and is looking to connect this experience to the work Scottish Mediation is doing in this area.

Ralph works as a freelance mediator across a number of areas including Special

Educational Needs, Commercial and Family Mediation and brings experience of all of these areas.

A copy of Scottish Mediation's Annual Review is available [here](#).

The meeting also recognised the contribution of the former Chair Alun Thomas who had served for six years. Also stepping down from the Board were Ruth Unsworth, Roseanne Cubitt and Alastair Fraser.

The meeting was addressed by Rebecca Clark immediate past Chair of the Civil Mediation Council in England and Wales. She highlighted the recent development for mediation there and touched on some of the issues being discussed as a result.



MEDIATOR AND MEDIATION SKILLS COURSE

The proceeds of this training will contribute to the work of Cyrenians, helping to reduce family conflict and relationship breakdown, while supporting best practice in mediation, conflict resolution and early intervention.

The Mediator and Mediation Skills Training is delivered over five days. As this training is newly developed, it is fully up-to-date with current mediation and conflict resolution theory and practice and is accredited by Scottish Mediation.

Course training dates: 13th January (morning – online), 15th, 22nd, 29th January (in person – all day) followed by 5th February (20 minute assessment slot will be arranged with you). **You must attend all dates.**

Venue: venue tbc, Glasgow area

The cost of five days training: one half-day (online), three full days (in person) plus one assessment session (in person), accredited by Scottish Mediation to increase individual's knowledge and skills of mediation, is as follows:

£1,200 (plus VAT) for business/professionals

£1,000 (plus vat) voluntary/students

"Excellent, comprehensive course, a fantastic opportunity to build a strong foundation in mediation skills and competencies. Extremely well presented learning and practice experience. Loved it!"
Course Participant, Jan 2024

"If you are offered the opportunity to go on this course don't hesitate do it. The trainers are excellent, professional and put you at ease. I have learned lots which will benefit me in my job."
Course Participant, Jan 2024

For more information, please email Cyrenians SCCR: sccr@cyrenians.scot
 Website: www.scottishconflictresolution.org.uk
 Website: www.cyrenians.scot



Workplace Employment Initiative Group

November 2024

Dear Scottish Mediation colleague

Our next meeting takes place on Thursday 5th
December online at 2pm.

Trade Unions and Workplace Mediation: hand in glove, or daggers drawn?

A fireside discussion around developing experience,
recent developments and good practice in interactions
between mediators/mediation and trade unions. The
panel will be Malcolm Currie, Harvey Cook and Yvonne
Stewart

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 click [here](#) if you are able to
attend.

Looking forward to meeting up,

Slainte

Linn

Linn Phipps, Chair, SMN WEIG, 07917 564440