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Issue 11

Mediation Matters!

The quarterly newsletter of the
University of Strathclyde Mediation Clinic

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Editorial



Patrick Scott

Welcome to another issue of *Mediation Matters!*.

The Clinic has recently had another successful online Conference, and we intend to include those presentations in the next issue of the newsletter. Oyinkro Olobio has provided a taster, by giving us a short summary of the presentations. Turning to this issue, we have several interesting articles to share with our readers.

The Clinic promotes the principle of reflective practice and Michael Lang, whose book *The Guide to Reflective Practice in Conflict Resolution* is the authoritative guide on the topic, shares with us the value of learning through experience and why self-reflection is so important. All Clinic mediators are required to prepare a reflection post mediation, and this article stresses the importance of that practice.

Another practice followed by the Clinic is that of co-mediation. This is important to the way in which the Clinic seeks to provide experience to novice mediators and is fundamental to the training function of the Clinic. Roy Poyntz, in his article entitled *Understanding Co-mediation – Aspects of Trust*, explores some of the challenges faced by co-mediators and how to deal with them. The situation in the Clinic is perhaps less challenging in that the two mediators are a lead and an assistant.

One of our Co-chairs on the Clinic Board, Sneha Selina Bonomally, gives an insight into the role that emotional intelligence plays in helping to resolve conflict. Interestingly, Sneha points out that emotional intelligence can be cultivated through self-reflection, again emphasising the importance of that practice.

Cordelia Gayfer has tackled the important topic of how mediators should adapt their approach to accommodate autistic parties. Having done a mediation with an autistic party, I recognise some of the challenges that are faced by the mediator, as well as both parties.

In another article on reflection in this issue, Oyinkro Olobio discusses the importance of Peer Support Sessions, which are being offered more frequently by the Clinic and are receiving good support from the mediators. They are an invaluable method of reflection, where the mediator is able to get feedback from colleagues in a manner similar to that referred to by Michael Lang.

We have the usual contributions, *From the Director*, *From the Chair* and *Clinic News*. In *Patrick's Ponderings*, I discuss the role of County Court Judgments in reality testing, and Alan Jeffrey, in *Mediation Mulligans*, contemplates the mediator's response to the outcome of a mediation. He

raises some interesting points. I recently had a mediation not dissimilar to the one discussed by Alan, with regard to the mediator's approach to the outcome. The parties were happy with the outcome but the organisation that had referred the case to mediation was not. In those circumstances one cannot but ask the question – was the mediation a success?

My thanks again to Adrienne, our assistant editor, for all her hard work in helping to compile this newsletter. I hope that you enjoy this issue and look out for the next one at the end of July.

Patrick Scott

Editor

From the Director.....



Charlie Irvine

It's lovely to see the spring arrive each year; it lifts the spirits and restores our energy. For much of the last decade the arrival of April also meant it was time to return to my PhD. In what I can only describe as binge writing, I did almost all of the work in the summer months. So, as we enter another summer writing season, 18 months on from submission, it feels like a good moment to share some of the insights I gained.

First, I'd like to thank the twenty-four people who took the time to speak to me. All had been through mediation, either with the Mediation Clinic or with Edinburgh Sheriff Court Mediation Service. Sixteen had settled, eight had not. Twelve were individuals, ten were from businesses and two turned out to be lawyers. They patiently answered my questions about their mediations, the court, the mediators, the other party and, most importantly, whether or not they got justice.

Why did I ask that? I've been reading academic literature on mediation for over twenty years and one persistent worry is that mediation will cause injustice. Put simply, numerous critics (especially from a law background) assume that, without a judge to impose legal norms,

the strong will bully the weak. Often this is expressed in a form of 'straw man' argument: big, bad, remorseless companies up against disadvantaged individuals without legal representation. In this scenario the hapless mediator colludes as companies force individuals to accept much less than they could have obtained in court. Ellen Waldman's quote gives a flavour: "Darwinian encounters at the negotiating table."¹

The thesis was motivated by the nagging feeling that this is too simplistic; it patronises mediation participants by assuming they'll allow themselves to be duped (not to mention flattening out complex groups of people into 'strong' and 'weak'). My experience of real mediation clients, which I'm sure most Clinic mediators share, is of a wide range of feisty, indignant and often angry individuals and small businesses desperate NOT to be a pushover. So, I felt it was time to bring some of their voices into the debate. In a funny way, 'straw man' arguments are highly vulnerable to contradiction. All I need to show is some nuance: not all individuals are feeble, not all business people think only of the bottom line.

And what did I find? Well, too much for a single piece, and anyone with time on their hands can find the whole thesis [here](#). For this issue of *Mediation Matters!* I'll keep it to the first of my findings: proportionality. When I coded my participants' responses, I found a number of statements pointing to quite sophisticated reasoning as they decided whether, and for how much, to settle. One of these was proportionality, the idea that the amounts at stake are fairly modest so it's important to think about how much time and

¹ Waldman, E. (2004) The Concept of Justice in Mediation: A Psychobiography. 6 *Cardozo Journal of Conflict Resolution*, 247–271, p. 261.

resources they, and the courts, should be spending.

One relatively well-off pensioner in a dispute over turf delivery put it like this:

If it was going to be mediation, I should make some offer, otherwise really, em, some slight offer... otherwise, you know, we're gonna take up court time... A little bit in the back of my mind that this was – we could go to court and then that's gonna be another appearance and another load of expense and so on. Em, does society need it?

The representative of a UK-wide furniture chain said:

I think we're seeing a very interesting situation with regard to sort of civil claims and it's almost like – I mean, this is my personal view and this is very anecdotal – is that the courts do not have the resources for me and the other party to argue the toss over a reclining chair.

Another individual said:

The telephone mediation was fine cos – for the amount of time that it – it depends what, you know, the amount of time that's taken up of your time.

In the thesis I've noted a couple of thoughts about these responses. First, they illustrate that people engaged in disputes are weighing up a range of considerations beyond simply "what can I get away with?" At the time of the interviews, in 2016-18, 'austerity' had been a major political theme for several years; it's perhaps not surprising that concerns about

efficiency and public expenditure permeated parties' thinking. Most small claimants are taxpayers too, so why shouldn't they reflect these concerns?

...people engaged in disputes are weighing up a range of considerations beyond simply "what can I get away with?"

Second, from a legal point of view, it is fascinating to see what the courts call a 'public policy' issue influencing non-lawyers' reasoning. One of the principles behind the Scottish Civil Courts Review in 2009 was that the justice system: "...should make effective and efficient use of its resources, allocating them to cases proportionately to the importance and value of the issues at stake."² These interviewees appeared capable of applying the same principle when it came to resolving their own disputes.

And finally, they're 'no daft.' Someone running a joinery or double-glazing company has to be conscious of the hours of wage-earning time lost through court hearings. Quite apart from public policy, on a personal level, not every case is a 'matter of principle.' Many parties are looking for a pragmatic resolution that lets them get on with the rest of their lives.

I noted in the thesis the striking contrast with earlier US studies. These suggested that most litigants in small claims felt cheated and even patronised when the matter went to mediation, preferring their 'day in court.'³ I wondered (and still do) whether this

² Scottish Civil Courts Review (2009) *Report of the Scottish Civil Courts Review*. Available at: <https://www.scotcourts.gov.uk/docs/default-source/civil-courts-reform/report-of-the-scottish-civil-courts-review-vol-2-chapt-10---15.pdf?sfvrsn=4> (Accessed: 1 February 2022), p. 2.

³ See, for example, Engle-Merry, S. (1990) *Getting Justice and Getting Even: Legal Consciousness among Working-Class Americans*. Chicago: University of Chicago Press.

represents a contrast between the two cultures, or between the 1980s and the 2010s. Either way, it seems clear that most of my interviewees wanted to portray themselves as people who thought carefully about their settlement figures.

I'll write more about my findings in future. Other themes from parties' reasoning include: compromise, balance of risk, philosophy of justice, point of principle and 'it shouldn't happen to anyone else.' For those of us dealing with Simple Procedure cases in 2025, I think it's reassuring to know that the people we work with are three-dimensional, complex and capable of thinking carefully about what to offer and what to accept.

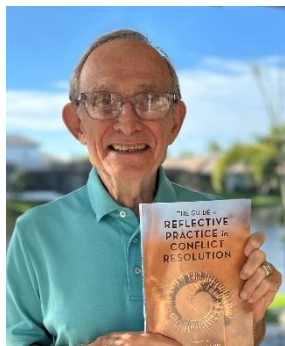
Charlie Irvine

Director, Mediation Clinic

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We don't Learn through Experience, We Learn from Reflecting on Experience

by Michael Lang, Colin Bourne, Beibhinn Byrne and Nancy Radford



Michael Lang

During a conference workshop about reflective practice and supervision, in a role-play demonstration involving a mediation between siblings who disagreed about their elderly parent's care, the volunteer mediator interrupted the parties and asked to meet privately with each of them, explaining, "I sense that emotional tensions are escalating and I am concerned you won't be able to think clearly and make good decisions." This intervention occurred within the first 5-6 minutes of the role-play. The presenter, making use of this moment to demonstrate reflective practice methods and principles, asked the mediator a series of questions.

Presenter: As you were considering the decision to halt the mediation and separate the parties, what were you thinking?

Mediator: In mediation training we were taught that intense emotions can interfere with the parties' ability to think logically, speak clearly and make effective decisions. I wanted to interrupt the escalation of emotion and meet separately with the parties, give them a chance to cool down, and help them focus on the problem they want to solve.

Presenter: What told you that in this situation the parties might be losing their ability to be thoughtful and constructive?

Mediator: The tone of their voices was rising, and they started gesturing at one another.

Presenter: What do you know about the parties?

Mediator: They are sister and brother. They are adults. They disagree strongly about what's best for their parent.

Presenter: In your mediation training, did you learn about the idea of self-determination?

Mediator: Of course. We were taught to respect parties and their opportunity to make choices for themselves.

Presenter: Does self-determination apply to the mediation process as well? Should parties have a role in decisions about the shape of the process?

Mediator: I suppose so. That makes sense, though I usually think about self-determination with regard to the outcome.

Presenter: You've identified two beliefs, about emotions and about self-determination. Is it possible to apply them in this situation?

[The mediator sat thinking for about 2 minutes as the 20 other attendees and presenter waited for her response.]

Mediator (grinning): I think I know what I could do. I was worried that the mediation could quickly get out of hand, so I stopped the parties when they became emotional. But maybe it's normal for them. Maybe this is how they always talk when they're upset. I don't know. So, I could just ask them.

What do you notice about the conversation between the presenter and mediator? For example:

- Were you considering what advice to offer? Or perhaps you were thinking of how you would have handled the siblings?
- Were you remembering when you received role-play feedback? Is this method familiar?
- Were you aware that the presenter only used questions? Did you notice that the presenter never told the mediator how to act? Do you wonder why?

The conversation between the mediator and the presenter demonstrates the nature of and benefits from reflective practice. Donald Schön¹ defines reflective practice as “a dialogue of thinking and doing through which I become more skilful.” We learn by means of the interaction between critical self-reflection and our professional activities. We learn through and from practice. In our example, learning begins with the mediator’s decision to separate the parties. The presenter then guides the mediator through a process of reflection, using questions to encourage self-exploration. Through this exchange, the mediator answers the question: “How do I address my concern with the escalation of emotions while respecting the parties’ self-determination?” Crucially, the answer has emerged from self-discovery. Not advice from the presenter or the attendees.

You might wonder, what difference does it make if the answer is offered or if the mediator uncovers the answer for herself? If the answer is the same, what’s the point of the question-and-answer bit? Offering advice would be quicker and more direct.

The simple answer is that there is a difference between knowledge and learning. Knowledge is the instruction to be mindful of emotional tension because it might affect the parties’ ability to think and act effectively. Learning is the ability to apply knowledge: (1) to distinguish when emotional behaviour is natural and normal and when it may be troublesome, and (2) to choose a strategy suited to the circumstances. Offering advice is imparting knowledge. The result of self-discovery is learning.

Experience - and our standards of practice - tell us that the best solutions to conflicts are those discovered by the parties. These solutions are more likely to reflect the parties’ needs, values, concerns, and aspirations, which strengthens the likelihood of them being honoured, implemented and lasting. Offering advice may be gratifying in the short term for the recipient as well as the proposer, however, ownership of the solution through self-discovery has even greater benefits.

We know from adult learning principles and from those who have studied reflective practice methods, that a deeper and indelible type of learning occurs when the learner identifies a puzzling practice situation, struggles with the problem, and discovers a solution that is particular to the learner. Lessons gained from this process are relevant, responsive, practical, and durable.

What does this mean for us as conflict intervenors who want to improve the quality of our practice, who want to be resourceful and responsive, and who want to have a positive and meaningful effect on our clients? How do we implement Dewey’s instruction to “learn from reflecting on experience.”? What does it mean to reflect on our work?

¹ Schön, D. (1983). *The Reflective Practitioner*. New York.

... the best solutions to conflicts are those discovered by the parties. These solutions are more likely to reflect the parties' needs, values, concerns, and aspirations, which strengthens the likelihood of them being honoured, implemented and lasting.

First, we don't merely reflect on our experience, as if we were gazing in a mirror or merely replaying events as if watching a movie version of the engagement. Thinking about practice moments or reviewing those moments with colleagues has undeniable value. "Reflective practice is more than a self-awareness process in which we pause and think back after something has happened"². We are not objective observers of those events; we are contributors to them. We are participants with an active role - influencing and being influenced by what occurs. Research on cognitive processing and expertise confirms that reflection may be an excellent method to help mediators be more purposeful in their work and maintain a good link between their intentions and practice. Therefore, if we want to become more skilful, we need to engage actively, critically, and purposefully in a determined effort to learn from our experiences.

Second, as you observed in the conversation between the mediator and presenter, learning rather than the accumulation of knowledge is the goal, and the pathway to excellence in practice. "The key to reflection is learning how to take perspective on one's own actions and experience - in other words, to examine that experience rather than just living it"³. It's certainly possible to engage in this level of

critical self-reflection and some of us have the requisite discipline and dedication. Some mediation programs use feedback forms and a few even provide opportunities for interactive feedback and mentoring. In our experience, these methods have limited value because they tend towards knowledge accumulation or clinical assessment and do not provide the sort of interactive learning demonstrated by the mediator and presenter.

Third, not all of us have the discipline and resolve required for sustained individual reflection, and solitary reflection may result in a circular process of self-referential introspection. Moreover, setting aside time for reflection is often in conflict with a busy professional schedule and personal activities. Joining a reflective practice learning group helps overcome our isolation and reinforces our commitment to engage in genuine learning. Research studies support the notion that the shared participation in group reflection provides a rich, enduring and unique means for learning from and through our practice experiences.

We are leaders of reflective practice groups (RPGs), with members from more than a dozen countries, who are mediators, arbitrators, conflict coaches and ombuds, with practices that include mediation of community, small claims, family, construction, workplace, organizational and commercial disputes, and who subscribe to evaluative, facilitative, narrative, insight, and transformative models. In other words, RPGs are supportive, helpful learning opportunities for any conflict practitioner.

An RPG is a structured learning group, guided by the principles of reflective practice.

² https://www.researchgate.net/publication/380696020_Reflective_Practice

³ <https://communityscience.com/wp-content/uploads/2021/05/What-is-Reflective-Practice.pdf>

Members present and describe puzzling practice situations and making use of Reflective Debrief® (essentially the explorative and encouraging questioning and conversation between the mediator and presenter), facilitators along with group members help the presenter:

- reflect on a puzzling moment or situation;
- examine the origin and impact on the intervention and the practitioner; and
- gain insight into, and solutions for, their practice dilemmas.

The principal objective is to enhance the quality and effectiveness of practitioner interventions by finding practical solutions to puzzling practice situations. By means of self-exploration, critical self-assessment and self-discovery we become more adept, resourceful, confident, and effective practitioners. This lifelong learning occurs when the learner identifies a surprising practice situation, struggles with the problem, and discovers a solution uniquely suited to that learner.

A central quality of RPGs is the emphasis on individualized learning based on actual practice situations. In RPGs, practitioners grapple with real-life dilemmas, not simulations. They discover solutions to troubling incidents and practice dilemmas. Insights gained and lessons learned are practical, relevant, and responsive to the practitioner's unique concerns. A notable feature of RPGs is that the 'debrief' offers a level of personal attention unavailable in any other professional development activity. At the same time, every group member benefits by discovering knowledge and insights for themselves.

A key attribute of an RPG is that group members assist one another to investigate and

reflect on their experiences, even when self-examination may be unsettling and confusing. For example, group members help the presenter resist the unconscious urge to focus on the details of the story rather than the nature of and likely reason for the surprising incident. Many of us are more comfortable talking about what happened, telling a story about the intervention than reflecting on the experience and its impact on us as practitioners. Of course, to understand the practitioner's dilemma, we need a context and some reference points, but we do not need to hear a recap of the entire intervention. Any recap, however conscientious, will be partial and consist only of things the practitioner noticed at the time. Group members can ask questions which may cause the practitioner to recall things he/she did not recognize as significant at the time, but, on reflection, provide insight as to how or why things took the surprising turn. Only the practitioner can see this because the group members weren't there. Further, we may be tempted to turn to others for solutions. It can be unsettling to dig into the confounding circumstances of our dilemma and to examine our experiences and explore answers. Asking for advice or recommendations is less complicated and demanding than engaging in self-examination. Group members may be tempted to ease the presenting person's discomfort by offering advice. Nevertheless, the leader and group members hold tightly to the belief that the most useful, meaningful, relevant, and durable solutions are ones discovered by those facing the dilemma. RPG participants learn that self-exploration will yield results, that helpful questions will lead to self-discovery.

In our experience, few practitioners stop, observe, wonder and reflect. More often, they minimize, disregard or ignore situations when

something surprising and unsettling occurs. Yet, these are exactly the moments rich with boundless possibilities for learning, for professional growth and evolution. To learn from experience, we must pay attention to moments of surprise, puzzlement and confusion. An ideal and effective means of reflecting on those puzzling experiences is through participation in an RPG.

We, and our colleagues at the Reflective Practice Institute International, currently facilitate nine monthly reflective practice groups for mediators in 11 countries. Participants are mediators, arbitrators, conflict coaches and ombuds, and they work in the areas of education, commercial, civil, family and community mediation disputes.

[Learn more about RPGs or register for one of the monthly groups](#) or [learn about our certificate course for RPG group leaders](#) or write to mlang@mediate.com.

Michael Lang has mediated family, workplace and organizational disputes for over 40 years. In addition to numerous published articles, Michael authored The Practitioners Guide to Reflective Practice in Conflict Resolution (2019), and a second edition published in 2024, and co-authored The Making of a Mediator: Developing Artistry in Practice, (2000). With Susanne Terry, he founded and is co-director of The Reflective Practice Institute International. Michael received the John Haynes Distinguished Mediator Award from ACR in 2012 and was named Outstanding Professional Family Mediator for 2020 by the Academy of Professional Family Mediators.

Colin Bourne has been an accredited mediator since 2000 after many years' practice at the Bar of England and Wales. As well as his commercial mediation practice, Colin leads training in mediation skills for officers and prisoners in UK prisons.

Beibhinn Byrne is an Irish, EU and internationally accredited mediator, a qualified Child Inclusive Mediator (UK FMA) with Trauma Awareness and Resistance Training. She practises in family, couples, community and multicultural, cross border conflict resolutions.

Nancy Radford is accredited in Civil & Commercial, Workplace & Employment, SEND, Community and Restorative Justice mediations. She has been lead mediator in countless mediations over the past ten years and provides conflict management training and coaching.

Understanding Co-mediation: Aspects of Trust

by Roy Poyntz



Roy Poyntz

Our lead mediators are experienced practitioners... They're responsible for the overall conduct of the session and provide mentoring and supervision to our student mediators... Our assistant mediators...¹

If - as a mediator - you started in the field of community (neighbour) mediation, you will probably have trained and practiced as a co-mediator. If your entry was in the commercial mediation field you may well have encountered the role of an assistant mediator. Both approaches aim to provide mutual support and opportunities to learn by pairing an experienced with a less experienced mediator. Co-mediation, however, is integral to community mediation reflecting a distinctive relational view of mediation; co-mediation is the norm for practice in this field. In contrast, assistant mediators are expected to graduate to become lead mediators with the confidence and capability to practise solo.

Some fields of mediation favour co-mediation, some don't and in others, practice differs. My study² of inhouse workplace mediators in British universities found a sharp divide. Universities utilising a co-mediator model were strongly supportive, believing co-mediation offers mutual support and the opportunity to learn from each other. This was seen as particularly important when a new or less experienced mediator was participating. On the other hand, the one university operating a solo mediator model explained this approach as a means of making the parties feel more comfortable in facing just one rather than two mediators; to have mediation feel more informal and less like approaching a tribunal bench. Whilst this set of mediators speculated that co-mediation might be useful in some circumstances - for instance when working with groups - they emphasised the merits of performing their role solo, free of the need to coordinate with a partner.

Two mediators working together are expected to combine their skills and experience and make the most of their differences and similarities. This requires an element of intuition, good preparation, and openness to one another. There are risks to co-mediating as well, particularly if mediators seem to contradict rather than complement one another or are somehow not in tune.³

¹ Strathclyde Mediation Clinic website – <https://www.strath.ac.uk/humanities/lawschool/mediationclinic/>

² Poyntz, Roy (2018) *The enactment of workplace mediation in British Universities: A study of mediator meta-theory and the integration of practice*. PhD thesis, University of Sheffield. This study can be accessed at <http://etheses.whiterose.ac.uk/21604/>. This text provides further details on co-mediation, relational approaches in mediation, and professional development.

³ Mediation UK Training Manual in Community Mediation Skills.

Co-mediating skilfully is no trivial task. At the heart of the challenge is building trust between the paired mediators. This is not only vital for the partnership but critical in evoking trust from the parties in both the mediation process and the mediators. Parties typically have limited knowledge of mediation. Mediation becomes what is enacted for them by the mediators working with them.

Co-mediating skilfully is no trivial task. At the heart of the challenge is building trust between the paired mediators.

The academic literature concerning co-mediation is scant and focuses on establishing similarities. Mediating with divergent processes is viewed as problematic.⁴ Consequently, mediators are advised to choose a partner with a similar vision of mediation's goal and compatible strategies.⁵ At one level, such advice is straightforward to enact. Time spent preparing for mediation, assigning tasks, and agreeing a process are all helpful in creating *role trust*. I imagine most of us will have trained in the facilitative model and might assume this creates sufficient commonality for effective practice. However, the formal model represents only one element in understanding how mediators practice; personal schema and implicit theory also need to be taken into account.⁶

Those university mediators spoke of simple measures they used to coordinate activities

within their pairings such as the allocation of tasks in advance. Tasks were readily divided for the initial structured phase of mediation where, say, one mediator would take notes and the other implemented ground rules. Thereafter, as the interaction becomes more fluid, mediators recognised the task of coordination becomes more complex. Mediators relied on formulation, an analysis of the interaction and a decision on a strategy to follow. However, formulation is the cognition of the individual mediator and not necessarily shared by their partner. Structure, an expression of personal style, was viewed as a potential point of conflict since mediators have different dispositions towards structure and a range of comfort in allowing the parties to interact with greater or lesser control from the mediator. To surmount these challenges of coordination, mediators relied both on *role and relational trust*.

Managing - or more positively exploiting - difference well requires the development of relational trust. Such trust between mediators has a particular significance in co-mediation as it underpins a relational approach to mediation. In my research, mediators spoke of modelling behaviour and attitudes in their partnership. In effect, they perform or enact co-mediation before an audience of the parties, an echo of Goffman's dramaturgy,⁷ inviting the parties to interact collaboratively and openly. Where relational trust is high, mediators spoke of vulnerability - a willingness to be open with each other in front of the

⁴ Charkoudian, L. and Ritis, C. (2009) 'Mediation by any other name would smell as sweet—or would it? The struggle to define mediation and its various approaches', *Conflict Resolution Quarterly*, 26(3).

⁵ Love, L. and Stulberg, J. (1996) 'Practice guidelines for co-mediation: Making certain that "two heads are better than one"', *Conflict Resolution Quarterly*, 13(3), pp. 179–189.

⁶ Kressel, K. (2013) 'How do Mediators Decide What to Do? Implicit Schemas of Practice and Mediator Decision making', *Ohio State Journal on Dispute Resolution*, 28(3), pp. 709–35.

⁷ Smith, G. (2006) *Erving Goffman*. Routledge; Jarrett, B. (2012) 'Making Mediation Work: A Sociological View of Human Interaction', *Studies in Symbolic Interaction*, 40, pp. 1–26.

parties. This is consonant with research into effective teamwork in other high stress situations.⁸ The performance of vulnerability provides an empathic connection with the parties' own sense of vulnerability in entering the mediation space. Being open before the parties, articulating formulations, expressing doubts as to the next intervention is a relational approach, an antidote to the individual mediator acting on their own intuitions. Relational trust enables mediators to recognise and work with difference.

In writing this article I was reminded of many occasions where co-mediation was particularly helpful. A recent community mediation where, simply put, my partner had a background that resonated with one of the parties in ways that enabled progress whereas solo I was clearly struggling. My novice days in community mediation where more experienced hands steered me gently back on track. Clinic cases where I was about to close before my partner encouraged me to continue to a successful

conclusion. Co-mediation can offer something more than solo mediation, but it is resource hungry and may not work effectively for the parties where there is a deficit in role or relational trust. The challenge of building these elements of trust falls firstly with the mediating pair. However, I suggest the mediation community deploying them has an important responsibility to foster such learning and development within their own community of practice.

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⁸ Moldjord, C. and Iversen, A. (2015) 'Developing vulnerability trust in temporary high performance teams', *Team Performance Management*, 21(5/6), pp. 231–246.

The Power of Emotional Intelligence in Mediation: How EI Helps Resolve Conflict

by Sneha Selina Bonomally



**Sneha Selina
Bonomally**

Conflict is a natural part of human interaction. Whether in workplaces, families, or legal disputes, disagreements often arise from differences in values, interests, and communication styles. Mediation provides a valuable alternative to litigation, fostering dialogue and guiding disputing parties towards resolution. However, successful mediation requires more than structured negotiation, it demands an understanding of human emotions and behaviours. This is where Emotional Intelligence (EI) becomes an essential tool.

Popularised by psychologist Daniel Goleman,¹ EI refers to the ability to recognise, understand, and manage one's own emotions while effectively navigating and influencing the emotions of others. Scholars such as Roger Fisher and William Ury,² and Bush and Folger,³ have emphasised the importance of emotional awareness and communication in successful conflict resolution. In the mediation context, EI enables mediators to build trust, regulate

emotions, and steer disputants towards constructive dialogue. This article explores the role of EI in mediation, how skilled mediators use it effectively, and strategies to enhance emotional intelligence for better conflict resolution.

The Role of Emotional Intelligence in Mediation

Emotional Intelligence is often described through five key components.

1. Self-awareness allows mediators to recognise their own emotional triggers and biases, preventing these from interfering in the mediation process.
2. Self-regulation is essential for maintaining composure and ensuring that emotions do not escalate conflicts.
3. Motivation drives mediators to persist in challenging discussions, encouraging resolution even when tensions rise.
4. Empathy enables mediators to understand the emotions and perspectives of the disputing parties, fostering trust and cooperation.
5. Lastly, social skills help mediators facilitate communication and navigate complex interpersonal dynamics.

Each of these elements plays a crucial role in mediation. Conflict often brings intense emotions, including anger, frustration and defensiveness. A skilled mediator with high EI can de-escalate tension by recognising these

¹ Goleman, D., 1996. Emotional intelligence. Why it can matter more than IQ. *Learning*, 24(6), pp.49-50.

² Fisher, R., Ury, W. and Patton, B. (2011) *Getting to yes: negotiating agreement without giving in*. 3rd ed., rev. ed. New York: Penguin.

³ Bush, R.A.B. and Folger, J.P. (2005) *The promise of mediation: the transformative approach to conflict*. Rev. ed. San Francisco: Jossey-Bass.

emotions and responding appropriately. Instead of reacting impulsively to hostility, an emotionally intelligent mediator remains calm, acknowledges the feelings of the disputants, and shifts the conversation towards constructive problem-solving.

Maintaining neutrality is another challenge in mediation. A mediator with strong self-awareness and self-regulation can prevent personal biases or emotional reactions from interfering, ensuring that all parties feel heard and validated without a perception of favouritism. Trust is fundamental in mediation, and mediators with high EI foster an environment where participants feel respected and understood, making them more open to dialogue and compromise.

Techniques Used by Emotionally Intelligent Mediators

One of the most valuable skills in emotionally intelligent mediation is active listening; fully engaging with what is being said rather than merely preparing a response. This involves paraphrasing to ensure understanding, acknowledging emotions to validate feelings, and using open-ended questions to encourage deeper reflection.

Another key technique is reframing accusatory statements. Disputants often make emotionally charged accusations that escalate conflicts. A mediator with high EI can transform such statements into constructive dialogue. For example, rather than allowing a statement like "You never listen to me!" to fuel hostility, the mediator might guide the speaker towards a more productive framing: "It sounds like you feel unheard. Can you share what you would like the other person to understand?" This reduces defensiveness and fosters mutual understanding.

Conflict can also trigger deep-seated emotional responses, making it essential for mediators to help disputants recognise and manage their emotional triggers. Techniques such as encouraging a brief pause when emotions run high, helping parties reflect on how their emotions influence behaviour, and guiding them through mindfulness exercises can help maintain composure and focus on resolution.

Additionally, mediators can encourage empathy by prompting parties to see the situation from the other's perspective. Exercises such as perspective-taking - asking each party to articulate what they believe the other side is feeling - help reduce hostility and promote a problem-solving mindset. Using 'I' statements instead of 'you' accusations further contribute to a more constructive conversation.

Mediation Success Through Emotional Intelligence

Consider a workplace dispute between two colleagues, Sarah and James. Sarah felt that James was constantly undermining her in meetings, while James believed Sarah was overly sensitive to feedback. A mediator with high EI approached the situation by listening to both sides without judgment, acknowledging emotions, reframing the issue from blame to problem-solving, and encouraging each party to express their needs moving forward.

By facilitating open communication and helping both parties recognise the impact of their actions, the mediator enabled Sarah and James to develop clearer communication strategies. As a result, misunderstandings were reduced, and workplace tension significantly improved.

Developing Emotional Intelligence as a Mediator

Emotional intelligence is not an innate trait but a skill that can be cultivated. Mediators can enhance their EI through self-reflection, regularly evaluating their emotional responses and biases. Developing mindfulness techniques, such as meditation and deep-breathing exercises, can improve emotional regulation and resilience. Seeking feedback from peers or mentors provides valuable insights into areas for improvement, while continuous learning through studying psychology, communication strategies and conflict resolution methodologies helps refine mediation skills.

Scholars like Morton Deutsch⁴ and Kenneth Cloke⁵ have explored the deep psychological underpinnings of conflict, reinforcing the idea that EI is not just a beneficial tool but a fundamental aspect of effective mediation. Mediators who invest in developing their emotional intelligence ultimately enhance their ability to manage complex disputes and create sustainable resolutions.

Emotional Intelligence lies at the heart of effective mediation. By recognising and

managing emotions - both their own and those of disputing parties - mediators create an environment conducive to resolution. Through active listening, empathy and reframing techniques, emotionally intelligent mediators help individuals move past emotional barriers and towards common ground. As conflicts grow increasingly complex, EI becomes an indispensable asset, transforming disputes into opportunities for growth and understanding. By investing in Emotional Intelligence, mediators not only enhance their effectiveness but also contribute to more harmonious and constructive conflict resolution across all areas of life.

Sneha Selina Bonomally is currently a PhD candidate in Environmental and Planning Law at the University of Strathclyde, focusing specifically on the use of mediation as an alternative dispute resolution mechanism. She is a registered practitioner with Scottish Mediation, actively contributing to Strathclyde Mediation Clinic as a lead mediator, primarily handling Simple Procedure cases. In addition to her mediation work, Sneha is also a qualified architect by profession.

⁴ Deutsch, M. (1973) *The resolution of conflict: constructive and destructive processes*. New Haven: Yale University Press.

⁵ Cloke, K. (2001) *Mediating dangerously: The frontiers of conflict resolution*. John Wiley & Sons.

Autism in Mediation

by Cordelia Gayfer



Cordelia Gayfer

It is important for mediators to be aware of the diversity of the autism community and focus on the individual they are supporting rather than relying on any stereotypes of autism.

Introduction

This article seeks to set out the key aspects of autism as they relate to parties in mediation. Consideration is given to appropriate terminology. The creation of the necessary 'safety' for individuals with autism to share information with their mediator is examined. Some of the potential challenges for individuals with autism in mediation are then identified. Potential adjustments for individuals with autism in mediation are then considered. Finally, the pros and cons of disclosing an autistic condition to the other party are examined. This article is written with the aim of supporting discussion amongst the mediator community on this topic and further engagement is very much welcomed.

Autism

Scottish Autism says that "Autism is a lifelong neurodevelopmental difference in the way a person communicates, interacts and processes the world around them."¹ They also explain

that 1% of the Scottish population is estimated to be autistic and that areas often impacted for individuals with autism are social communication, social interaction, social imagination and flexible thinking. The Scottish Autism website also has a useful section on diversity of the autism community and the different preferences for language within that community. Some individuals on the autism spectrum do not consider that to be an impairment and highlight that it can give them a unique world view, assets and skills.

Whilst medical professionals refer to autism as Autistic Spectrum Disorder (ASD), many non-medics prefer to refer to Autistic Spectrum Condition (ASC) as this is considered to have fewer negative associations.² It is important to remember that individuals with autism will have different aspects of the condition and at different levels, therefore there is no 'one size fits all' approach. As Dr Stephen Shore says, "If you've met one autistic person, you've met

¹ Scottish Autism Website, <<https://www.scottishautism.org/about-autism/about-autism/language-terminology>> Accessed on 30th March 2025

² Beacon School Support Newsletter, <<https://beaconschoolsupport.co.uk/newsletters/difference-between-autism-asd-asc-and-aspergers>> Accessed on 30th March 2025

one autistic person.”³ For that reason, it is important to focus on the person in front of you when supporting them in mediation.

Creating a safe space to share

If a party feels safe enough to inform the mediator that they are an individual with autism, the mediator will have the opportunity to discuss their challenges with them and determine what adjustments are required to support them in the mediation. However, an individual with autism may have experienced discrimination in their life to date and may, therefore, be wary of sharing this information. There are a number of factors that may help individuals with autism feel safe to share their condition with their mediator. Having prominent role models who disclose their own disabilities can help other individuals feel able to share this aspect of their lives.⁴ Training in awareness around diversity and inclusion for mediators may help mediators to create an environment where individuals with autism are more likely to share their condition with them.⁵ Mediators assessing their practices for potential barriers and asking for feedback may result in individuals with autism sharing their situation with them.⁶

Potential challenges for individuals with autism in mediation

Rebekah Doley has written a helpful article setting out some of the challenges individuals with autism may experience and how that may

relate to mediation.⁷ She highlights that individuals with autism may experience challenges in executive functioning, social behaviour and non-verbal communication. She explains theory of mind. This involves understanding one’s own internal world, the experience of another and then using this to make sense of the world. This allows people to understand and predict behaviour. Individuals with autism often struggle to distinguish the literal from the figurative, for example, they may not pick up sarcasm and metaphors. Other areas they may struggle with are deception, empathy, self-consciousness and the use of persuasion. These challenges may make it difficult for individuals with autism to recognise the feelings and motivations of others. This may impact their ability to participate in understanding the interests of the other party in mediation.

Challenges people with autism may experience with predictive thinking⁸

Predictive and sequential thinking can be problematic for those with a diagnosis on the autism spectrum. We are required to use predictive thinking in a whole range of situations. This can range from thinking about how someone is going to react to something we have done or something we are going to say, to planning and organising what you need to take in your schoolbag or when you pack a case for your holidays. Difficulties in predictive thinking impact on a person’s ability to

³ Autism Inked Website, <<https://autisminked.com/12-quotes-on-autism-from-dr-stephen-shore/>> Accessed on 31st March 2025.

⁴ Laurie Henneborn, ‘Make it Safe for Employees to Disclose their Disabilities’ (2021) Harvard Business Review <<https://hbr.org/2021/06/make-it-safe-for-employees-to-disclose-their-disabilities>> Accessed 31 March 2025.

⁵ Ibid.

⁶ Ibid.

⁷ Rebekah Doley, ‘Working in ADR with disputants on the Autism Spectrum’ (2016) Australasian Dispute Resolution Journal 150.

<https://pure.bond.edu.au/ws/portalfiles/portal/11009535/Working_in_ADR_with_disputants_on_the_Autism_Spectrum.pdf> Accessed 28 March 2025.

⁸ According to Scottish Autism website (see Footnote 1).

organise, acquire self-help skills, to be independent or to fully anticipate the likely consequences of their actions. Predictive thinking is also important in coping with and accommodating change.⁹

The nature of mediation is that each one is unique and will have a reactive element. This may be very difficult for some individuals with autism.

Potential adjustments for individuals with autism in mediation

Amanda Bucklow of IPOS Mediation has written a helpful article that includes recommendations on potential adjustments that may help with neurodivergent parties.¹⁰ She recommends the following:

- Find out participant's communication preferences and potential stress triggers during pre-mediation
- Consider adjusting pace and structure of mediation to allow for processing time and breaks
- Use clear language and visual aids
- Be aware of sensory overload in the environment

A mediator may find themselves mediating a party who either has not shared their diagnosis or who has no diagnosis or possibly even no awareness of their autistic traits. The mediator should *not* ask that party whether they are autistic. Instead, they should simply focus on working with the party to identify their challenges and supporting them.

To disclose to the other party or not?

When one party has shared with their mediator that they are autistic there is a consideration as to whether or not it may benefit the party and the mediation to share that information with the other party. It should be emphasised that this must *never* be done without the consent of the person with autism. This decision is a double-edged sword. In some mediations sharing this information with the other party may allow them to understand aspects of the person with autism's behaviour and this understanding may lead to a breakthrough in rapport between the parties. However, it is also possible that the information may be used against the person with autism by the other party. It is for the person with autism to consider the situation in its entirety and come to a decision as to how they would like to proceed.

Conclusion

Individuals with autism make up approximately 1% of the Scottish population, so mediators should give consideration to how they will support them in their practice. It is important for mediators to be aware of the diversity of the autism community and focus on the individual they are supporting rather than relying on any stereotypes of autism. Individuals with autism can be supported to share information with their mediator by visible role models, mediator awareness training and assessing their practices for potential barriers. Individuals with autism may struggle to distinguish literal from figurative language and to use predictive thinking. These struggles may present barriers to them in mediation. Mediators can support individuals

⁹ Scottish Autism Website, <<https://www.scottishautism.org/about-autism/about-autism/language-terminology>> Accessed 30 March 2025.

¹⁰ Amanda Bucklow, 'Mediation and Neurodiversity' (2022) IPOS Mediation < <https://mediate.co.uk/blog/mediation-and-neurodiversity/>> Accessed 31 March 2025.

with autism during mediation by identifying their communication preference and stress triggers, adjusting the pace of mediation, using clear language and being alert to sensory overload in the environment. And, finally, the fact that one party is autistic should not be disclosed to the other party without the former's consent.

Cordelia Gayfer is a student on the University of Strathclyde's MSc/LLM in Mediation and Conflict Resolution and a Board member of Strathclyde Mediation Clinic. She is developing her experience of mediation through volunteering as an assistant mediator with Strathclyde Mediation Clinic. Prior to her studies at Strathclyde, Cordelia worked in Equality & Diversity and Human Resources in the public sector.

Growing Mediator Competence through Peer Support Sessions: My Journey by Oyinkro Olobio



Oyinkro Olobio

One may not fully appreciate how pervasive conflict is in everyday activities until jolted by a major conflict with such an impact so as to disrupt his or her daily or weekly routine. This is perhaps because we unconsciously imbibe conflict resolution principles in our routine activities and manage to resolve several of these conflicts. Nonetheless, challenges posed by the great number of unresolved conflicts before the courts and the disruptive nature of these conflicts in every facet of society justify mediation as a conflict resolution option.

Aside from normal academic activities, the Mediation and Conflict Resolution programme at the University of Strathclyde makes provision for students to participate in mediation sessions as observers or assistant mediators with Strathclyde Mediation Clinic. Mediators also have Peer Support Sessions that allow practitioners to come together in small numbers and share personal mediation experiences and take appropriate learnings from each other. Every practitioner comes to the session with a mind to learn and improve on his or her mediation competences. Although mediators have different styles of mediating, these sessions offer them the opportunity to improve on their neutrality,

confidentiality, communication skills, empathy and engagement styles.

Peer Support Sessions are veritable learning opportunities whereby mediation practitioners discuss their concerns and challenges, exposing their vulnerabilities to their colleagues, who then proffer their views on what they think perhaps could have been done differently to achieve a better outcome or alleviate a problem that arose. Each session accommodates up to six participants, with two of them being asked to share a mediation experience. The other participants then have the opportunity of asking questions and offering their comments on aspects of the mediation on which the presenter is seeking guidance. There is a tendency for mediators sharing their experiences to feel vulnerable at these times, but sessions are usually managed with sufficient sensitivity that participants feel positive about the feedback.

One is tempted to say that no two mediations are the same. The issues, though similar, might have some peculiarities. And the parties to a mediation also come with their nuances which will affect the process and outcome of the mediation.

Taking a break and asking disputants if they wish to reconvene at a later date while each party engages in some information or advice gathering, sometimes helps to resolve a dispute. The ideas and styles keep coming and the fastidious learner keeps improving his or her mediation skills.

I was involved in a mediation that broke down and eventually did not settle. Sharing my experience at a Peer Support Session, I realised I should have moved the parties to breakout

rooms when tension started brewing. I could have initiated a 'coffee break' for all parties and reconvened when the disputants had calmed down. Peer Support Sessions make room for continuous learning.

During these sessions, the identities of the parties to the mediation are not disclosed, thereby preserving confidentiality.

The number of Peer Support Sessions has increased in recent times with some months having two sessions. It shows the importance and willingness of practitioners to embrace it as a CPD event. I try to attend at least six Peer Support Sessions annually but hope to increase the number in 2025.

Peer Support Sessions also serve as quasi mentoring opportunities as they allow budding mediators to engage with experienced ones and take critical learnings from them.

Just when you assume that you have achieved some level of professional competence, you attend a Peer Support Session and listen to seasoned mediators share their frustration at not achieving a settlement in a mediation. My response: I smile internally and resolve that the journey is a long one.

Peer Support Sessions have also helped me to resolve to look after my own wellbeing. Having done necessary pre-mediation engagements and engaged as appropriate during a mediation, I leave each mediation with the required calmness regardless of the outcome. The issue of mediator wellness has been

discussed at Peer Support Sessions such that it becomes foolhardy to leave a mediation feeling guilty due to the failure of the parties to reach a settlement. The mediator is essentially a facilitator who creates a platform for disputants to engage with each other and settle their disputes. The wise mediator shies away from imposing their views or position on the parties. By implication, they do not leave the mediation bearing the guilt of non-settlement.

Taking learnings from Peer Support Sessions, I have come to embrace the saying that 'practice makes perfect'. The intentional mediator improves their practice as they continue their mediation activities with the necessary focus. As they keep at it, they tend to improve their practice. Peer Support Sessions enable them to mirror their practice and make amendments and improvements where necessary.

Oyinkro Olobio is a 2022/2023 graduate of the University of Strathclyde MSc in Mediation and Conflict Resolution Course. He is on the Board of the Mediation Clinic and a lead mediator at the Clinic. He is a co-winner of the maiden Ailie Barclay award for the student mediator who undertook the most mediation sessions in the 2022/2023 academic session. Oyinkro is also a member of Scottish Mediation and is particularly interested in Family, Workplace and Community Mediation.

From the Chair.....



Tom Scade



**Sneha Selina
Bonomally**

As spring starts to bloom around us - bringing a sense of renewal, possibility and fresh energy - it's a good moment to pause and reflect on the season of growth happening within the Mediation Clinic.

Since our last update in January, the Clinic has been a hive of activity. Charlie Irvine and Pauline McKay have continued to build strong, trusted relationships with courts across Scotland, helping expand our support for Simple Procedure Mediations - a key area of development, encouraged by the Scottish Government.

Between January and now, the Clinic has received 104 referrals from five Sheriff Courts - a clear sign that our work is gaining momentum and making an impact. That number isn't just a statistic; it represents real people seeking resolution, support and a different way forward.

So far, 26 of those cases have gone through mediation, with 16 reaching a successful settlement - a reminder of the value and potential of this process. Another 15 are scheduled to take place soon, with seven more currently being arranged. We also have 22 referrals actively being supported by Clinic mediators connected to specific courts.

Of course, not every case follows a straight path - and that's to be expected. Some are still in intake, some settled early, and a few didn't proceed for a variety of reasons. Each one offers insight, and every experience helps shape the way we continue to grow, learn and serve our communities.

We also want to give a special mention to our undergraduate students, who continue to support the Clinic through the intake process. Their commitment, professionalism, and curiosity add enormous value to the work we do - and the experience they gain will no doubt shape their future paths in powerful ways.

At the governance level, the Board has recently trialled a new approach to meetings, streamlining agendas to reduce repetition and make space for deeper, more focused conversations. With thoughtful pre-reading and more time dedicated to meaningful discussion, Board members have responded positively - and we'll be continuing in this format moving forward.

Already, this change has led to rich conversations around our 2025 Annual Plan and the longer-term Three-Year Strategic Plan. Charlie and Pauline are now bringing that vision to life.

Another important discussion has centred around neurodiversity - both in terms of how we support students and trainees, and how we create a welcoming, accessible space for mediation participants. We're exploring ways to improve our intake process, ensuring people feel safe and supported to share any needs they may have. A CPD session on neurodiversity is planned for May or June, as we continue building understanding across the Clinic.

Our sub-groups remain active and ambitious. The Training Group has been developing presentations for internal university departments and creating educational videos to introduce mediation to the wider public - these will soon be shared via social media and YouTube, and were presented at the Mediation Clinic Conference. Meanwhile, the Document Review Group has created new guidance for parties, legal representatives, and supporters involved in mediation, which will be shared during intake and pre-mediation discussions.

A highlight this quarter was our 5th Annual Mediation Clinic Conference, held online on 28th March. This online event was very well attended and undoubtedly considered a success. The event featured a compelling keynote from Michael Jacobs on *The Mediation Dilemma: Resolution or Peace?*, along with thought-provoking workshops led by Professor Jayne Bryan, Ewan Malcolm, Gordon McKinlay, Dr Roy Poyntz, Patrick Scott, Ron Inwood, Marie Young and Rhona Wilson. A huge thank-you to the Conference Planning Group and Pauline for their outstanding work in bringing it all together.

Looking ahead, we're hopeful about continued support from the Scottish Government, with Charlie and Pauline having submitted a renewed funding application. We're also preparing our entry for the Scottish Legal Awards - having previously won the Community Service Award several times, and

we were placed third last year, we're proud of the Clinic's impact and excited for what's to come.

As always, we want to thank every mediator, student, volunteer and partner who makes this work possible. Your time, your empathy, and your belief in what we're building together - that's what makes the Clinic thrive.

Here's to the months ahead - full of growth, collaboration, and meaningful conversations.

Tom Scade and Sneha Selina Bonomally
Co-chairs, Mediation Clinic

Tom Scade completed the LLM in Mediation and Conflict Resolution course at the University of Strathclyde in September 2022 and was awarded an LLM in Mediation and Conflict Resolution with Distinction. He is currently an Accredited Mediator with Scottish Mediation and volunteers as a lead mediator with Strathclyde Mediation Clinic, carrying out mainly Simple Procedure related mediations.

Sneha Selina Bonomally is currently a PhD candidate in Environmental and Planning Law at the University of Strathclyde, focusing specifically on the use of mediation as an alternative dispute resolution mechanism. She is a registered practitioner with Scottish Mediation, actively contributing to Strathclyde Mediation Clinic as a lead mediator, primarily handling Simple Procedure cases. In addition to her mediation work, Sneha is also a qualified architect by profession.

Clinic News



Pauline McKay

I hope everyone is starting to enjoy the benefit of the longer daylight. I have been making the most of it by getting up earlier in the mornings, and it is a joy to leave work when it is still light. Ever the optimist - brighter days are coming!

We have resumed our Peer Support Sessions for this semester from February to May. All our Clinic mediators are encouraged to sign up to at least one session per year. They are such valuable support and learning opportunities for mediators at every stage of their journey. Please check your inboxes for regular reminders!

A big thank you to our undergraduate intake workers who have been assisting with intakes over the past few months. They have been an enormous help to the Clinic. One student has undertaken a 5-day mediation training programme and hopes to become involved in future Clinic mediations.

We recently facilitated an online mock mediation session for students of the Strathclyde Diploma in Professional Legal Practice. The session demonstrated the dynamics of mediating with lawyers as representatives. The session was well attended, and thanks again goes to our actors for making it as realistic as possible.

Our Document Review Group has been hard at work updating and developing new guidance

for parties, lawyers and representatives of parties attending mediation. These updated information sheets will be distributed to all parties invited to mediation.

As part of our strategy, the Clinic is developing stand-alone skills programmes. The first pilot *Mediation Skills for Managers – Managing Difficult Conversations* took place at the start of March for administrative members of the Faculty of Humanities and Social Sciences. Feedback has been incredibly positive, and the Training team are currently working on a follow-up session *Managing Conflict in Teams* scheduled for June.

We are also delighted to announce the release of our new video recordings, made possible with funding from the Scottish Government. These short, informative recordings explain the mediation process and are included in our introductory emails to parties who have been referred to us. They are designed to be clear and accessible, with each recording being less than two minutes long. Special thanks must go to the main presenter, Alan Jeffrey, who did a sterling job, as well as the others who contributed: Alison Welsh, Abdul Zeeshan, Charlie Irvine, Lorna Kelly, Eunice Olatunji and Hazel Stoakes. The videos cover the following topics:

[What is Mediation?](#)

[Court referral to mediation – what happens next?](#)

[Making the most of your mediation session](#)

[What happens at a mediation session](#)

The recordings were officially launched at our 5th Annual Mediation Clinic Conference. Huge thanks also go to the Clinic Conference

Planning Group for their hard work in putting the Conference together.

Finally, we recently hosted our joint CPD event with Lothian and Borders Mediation Service in mid-March. Dr Charlie Irvine presented a session on *Back to Basics* followed by a session on *Mediating in Good Faith* by Robert Campbell. The recordings are available to those who attended.

We are looking forward to the next few months of spring/summer and cannot wait to share more updates with you soon!

Pauline McKay

Co-ordinator, Mediation Clinic

Pauline McKay completed the PG Certificate in Mediation and Conflict Resolution course at the University of Strathclyde in 2020. She is currently an Accredited Mediator with Scottish Mediation, the Clinic Co-ordinator of Strathclyde Mediation Clinic and volunteers as a lead mediator with the Clinic, Lothian and Borders Mediation Service and other Community organisations.

Patrick's Ponderings – CCJs and Reality Testing

by Patrick Scott



Patrick Scott

What is a CCJ and how can it be used in reality testing? A CCJ is the acronym for a County Court Judgment. These are known as decrees in the Scottish Courts. I am going to use the term 'CCJ' in this ponder, as that is how they are commonly referred to in practice (although technically it applies to the Courts of England and Wales. The impact on a respondent is, however, exactly the same. If a party gets a decree (or judgment) against them, it is recorded in a register and kept for six years. This affects a person's credit rating and may make it difficult for that person to get credit. This is more important to some people than others.

Mary contracted with James, a tiler, to retile her kitchen floor. He quoted £400 for the job and Mary purchased the materials. James finished the job, but Mary was not happy with a plinth that had been removed to be cut. The reason why it had to be removed and cut was that Mary wanted the tiles laid over existing tiles, thereby raising the level of the floor.

James tried to remedy the situation, but it was an old plinth and not cosmetically sound. After the work was completed, Mary made no payment until James sent a message asking for same and then she unilaterally deducted £140 from the price, which was ostensibly the cost of replacing the plinth.

James was disgruntled and sued Mary in the Simple Procedure court.

At a pre-mediation meeting with Mary, she disclosed to me that she held a prominent position in the banking world and did not want a CCJ registered against her name.

The mediation didn't go well, with principles dominating the process. Eventually it appeared that the only option was to refer the matter back to court. As a last-ditch effort to try to help the parties find a resolution, I held private sessions with them. I reminded Mary about her comment relating to a CCJ at the pre-mediation meeting. She was angry. At first, I thought that she was angry with me, but she was probably angry with the situation. Her response was that she felt threatened, and that the entire system was wrong. I explained to her that I certainly was not threatening her but felt that I had to remind her of her comment at the pre-mediation meeting. She now felt coerced into settling. And James wasn't offering any discounts. He wanted to be paid the full amount of his claim. Then I started to wonder whether there was any way around this. Could one really have your credit record tarnished over £140. From that point on it was difficult to converse meaningfully with Mary and I suggested that we adjourn the mediation for a week in order for her to get any advice that she might wish to get and then consider what she wanted to do.

After the mediation, I did some research myself and discovered that if you settle a decree of the court within a month, the CCJ is removed from your name. I sent her this information. I don't think that this altered the position for her as she did not want to have a CCJ registered against her name, even if it

could later be removed. The matter settled with Mary agreeing, most reluctantly, to pay the full amount of the claim.

I thought that it would be useful to ponder on what effect a CCJ has on a party and whether this is an effective tool in reality testing. Firstly, this obviously only affects respondents.

Secondly, there are some people who don't mind whether or not they attract a CCJ. And then there are those who are concerned about having any black mark against their name with regard to their credit worthiness. So, what can we tell parties about the effect of CCJs.

If you pay the full amount of any decree within one month, you can get the judgment removed from the register.

If you pay after one month, you can get the record of the judgment marked as 'satisfied' in the register, although it will stay on the register for 6 years but people searching the register will see that you've paid.

In both instances, you simply write to the court to say you've paid and provide proof of

payment from the person or business you owed the money to.

Where the threat of a CCJ may have an impact on a respondent, is where the respondent cannot afford to pay the full amount of the claim and needs to be afforded the option of paying in instalments. The sheriff can provide for instalments in any decree which is granted, but the respondent would not be able to have the CCJ removed from the register as payment would not have been made within one month. In those circumstances, the threat of a CCJ could be a useful tool for reality testing. Definitely something to ponder on.

Patrick Scott completed the LLM in Mediation and Conflict Resolution course at Strathclyde University in 2018 and was awarded an LLM in Mediation and Conflict Resolution with Distinction. He is currently an Accredited Mediator with Scottish Mediation, serves on the SLCC Panel of Mediators and volunteers as a lead mediator with Strathclyde Mediation Clinic. He is also on the Board of Trustees of Scottish Mediation.

Report back on the 5th Annual Mediation Clinic Conference by Oyinkro Olobio



Oyinkro Olobio

The 5th Annual Mediation Clinic Conference was held online on Friday, 28th March 2025. It was hosted by Dr Vanessa Collingridge. The theme of this year's Conference was *Growing mediation, your practice and beyond* and it was attended by 70 participants.

Professor Adelyn Wilson, Head of Strathclyde Law School, and Dr Charlie Irvine, Director of Strathclyde Mediation Clinic, welcomed participants to the Conference, highlighting the role which the Clinic and the annual conference have played in showcasing the University's LLM/MSc programme in Mediation and Conflict Resolution, and developing mediation practice in Scotland.

This was followed by a short video presentation, reminding participants of what mediation is all about and the processes followed in conducting one. There were four short video presentations throughout the day, providing an insight into mediation and the way in which the Clinic operates.

The keynote address was presented by Michael Jacobs, a seasoned family, workplace and community mediator. His presentation was titled *The Mediation Dilemma: Resolution or Peace?*. Michael opined that conflict was a part of human existence and focused on how

mediators can help build capacity in people to enable them to live with conflict. He noted: "Fundamentally, this is mediation as a peace-making process. Peace is not defined as the absence of conflict, but as the ability to step into conflict without getting infected." Dr Charlie Irvine anchored the question-and-answer session afterwards.

The Conference had a total of six workshops that were featured in two separate sessions. Presenters and facilitators at the workshops included Professor Jayne Bryan who focused on making Mediation Clinics essential within higher education, and Ewan Malcolm who reflected on his journey to becoming an artisan mediator. Rhona Wilson took participants down the route of community mediation, whilst Dr Roy Poyntz and Gordon McKinlay, two educational mediators, reflected on how their approach in their 'home' field informs their practice when undertaking Simple Procedure mediation for Strathclyde Mediation Clinic. Patrick Scott took his participants through how Strathclyde Mediation Clinic helped him grow his mediation practice, and Ron Inwood and Marie Young, both of ACAS, shared how workplace mediation is conducted in ACAS.



The Conference concluded with a roundtable session which was anchored by Victoria Harris and featured Joanna Gosling and Kelly Stricklin-Coutinho as panellists. Both Joanna and Kelly shared their experiences of their transition from their previous careers to becoming sought-after mediators. They also shared their views on the development of mediation in England.

Closing remarks on the Conference were made by Dr Charlie Irvine.

Oyinkro Olobio is a 2022/2023 graduate of the University of Strathclyde MSc in Mediation and Conflict Resolution Course. He is on the Board of the Mediation Clinic and a lead mediator at the Clinic. He is a co-winner of the maiden Ailie Barclay award for the student mediator who undertook the most mediation sessions in the 2022/2023 academic session. Oyinkro is also a member of Scottish Mediation and is particularly interested in Family, Workplace and Community Mediation.

Mediation Mulligans

by Alan Jeffrey



Alan Jeffrey

In this regular column, mediator Alan Jeffrey candidly shares examples of the mistakes, missteps, and gaffes he has encountered on his mediation journey – and, most importantly, the lessons that he has learned from them!

Last month, a chance encounter with the CEO of another organisation in the hallway set off a chain of events that, three weeks later, found me sitting in a mediation session with two warring colleagues. I work for a charity in a building shared by other charities, surrounded by charitable people for whom alternative dispute resolution is an easy sell. The reasons for this, however, require an uncomfortable acknowledgment of a variety of stereotypes that I don't feel secure enough to list.

The colleagues in question, despite both self-identifying as reasonable people, could not quite reach a resolution on their core disagreement. My strategically placed grapes and custard creams could not de-escalate the palpable tension in the room, with anger and frustration fizzing almost visibly in the air. And yet, despite the thickly oppressive atmosphere blinding my optimism, many smaller, bite-sized agreements were made collaboratively, which, in the moment, gave me - and perhaps the parties - hope that further resolution could be reached post-mediation. Sadly, that was not the case.

Having submitted a post-mediation report and tendered my invoice, I received a friendly but disappointed email from the CEO, dismayed

that a more thorough resolution could not be reached. Her words did not explicitly judge my abilities. In fact, I'm relatively confident that they didn't judge my abilities at all, explicitly or implicitly. Yet, I couldn't shake the feeling that I was supposed to get them the result they wanted, rather than the result the participants found. Of course, I am aware that if a peer, employee or student of mine were to seek my advice on a similar situation, I'd assure them that they, as the mediator, are not necessarily responsible for the outcome - and certainly not for the perception of that outcome by a non-participant, commissioner or not. And yet, as is often the case, it is hard to take your own medicine.

And so, the question is... is it a mistake for a mediator to care about the outcome of a mediation?

Lest I be accused of simply moaning about perceived judgment of a less-than-favourable outcome by a commissioning partner, this applies to seemingly positive outcomes as well. In the very same week, I received an email to thank me for group mediation work that took place about a year prior. Generously, in fact, I'd say overly so, the sender shared a substantial amount of credit with myself and my co-mediator for transformative effects

within the staff team, along with personal anecdotes of her own mediation-inspired empowerment in her role. I was, I am not ashamed to admit, beaming from ear to ear as I strutted like a peacock to share the good news with my mediation partner.

My overwhelming desire is to own at least a piece of this positive outcome. And why not? Mediation can be a tough gig - one filled with moments of vulnerability and disappointment. Surely, we must celebrate the 'wins' lest we lose hope in the whole process. What then do we have to offer our clients if hope is taken off the table?

Overall, sustaining hope in individuals after long drawn conflict will not be successful without a hope-mediator, armed with creative pathways, distinct goals and commitment to help disputants exit their conflict environment for a better life.¹

I believe that mediators instinctively understand that instilling hope in their clients is a valuable, significant and necessary part of their role. Hope that change can happen and that things can be better in the future, starting now, in this place and time. To suggest that when those changes, improvements and future successes appear, we are not to accept any of the credit - or at the very least, find some joy in our contribution to the outcome - may be to fundamentally misunderstand why many of us step into this arena in the first place, surely?

If I must accept my role in the 'hope' of mediation, must I accept my role in the 'disappointment' of mediation?

Of course, a compelling argument may be that these successes are not only present in the outcome of the process but embedded within the process itself. Recency bias may see many unable to recall recognitions and empowerment shifts that took place in the first hour of the mediation if the second hour is defined by back-and-forth bickering and a crushing lack of resolution. A protective manoeuvre for the ego-bashed mediator may be to say, "Well... they didn't get an agreement, but..." followed by a list of hastily patched successes desperately clawed back from the brink of defeat.

And yet, when in pre-mediation with our clients, reaching a positive outcome is undoubtedly near, if not at the very top, of their hopes for the session. If this desire for a positive outcome is shared by both parties, and we agree to mediate their case, how can we not feel disappointed? Perhaps we should feel disappointed that we couldn't help them get there - not because we don't see those extra 'wee magic moments' that may make it all worthwhile for us, but because they can't see them. I have sat in many Peer Support Sessions where mediators have expressed that, whilst the parties did not reach agreement, they did have a positive conversation, remained calm, and seemed to listen and understand each other better. Is it our role to point these out to the clients, so that they too might share these alternative positive outcomes?

¹ Emmy Irobi, 'Sustaining and Nurturing Hope In A Mediation Process' (Mediate, 26th January) <<https://mediate.com/sustaining-and-nurturing-hope-in-a-mediation-process/>> Accessed 7 April 2025

Maybe so... Maybe not

I am reminded of the story of the Chinese farmer:

A farmer and his son had a beloved horse who helped the family earn a living. One day, the horse ran away, and their neighbours exclaimed, 'Your horse ran away! What terrible luck!' The farmer replied, 'Maybe so, maybe not.'

A few days later, the horse returned home, leading a few wild horses back to the farm as well. The neighbours shouted out, 'Your horse has returned and brought several horses home with him! What great luck!' The farmer replied, 'Maybe so, maybe not.'²

The story continues with each event - whether good or bad fortune on the surface - being met with the simple phrase "maybe so, maybe not." Any attempt to forecast an event's long-term outcome may be foolish in and of itself when the successive events that follow are wholly unpredictable. If we allow ourselves to follow the mantra of the farmer in the parable, we can enter the mediation space less concerned about the future and more concerned about the present. Mediation as mindfulness, perhaps.

Back to the question: is it a mistake for a mediator to care about the outcome of a mediation?

Maybe so, maybe not.



Photo by [Fabian Burghardt](#) on [Unsplash](#)

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² Jay Mavani, 'Maybe so, maybe not. We'll see' (Medium, 8th September) <<https://blog.jaymavs.xyz/maybe-so-maybe-not-well-see-c35f53da68e1>> Accessed 7 April 2025.



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