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Mediation Matters!

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University of Strathclyde Mediation Clinic

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Mediation Clinic
at University of Strathclyde

Editorial



Patrick Scott

This issue of *Mediation Matters!* features a strong element of culture and communication. How mediators deal with impasse, what style mediators should adopt and how to deal with cultural differences. Gordon Murray refers to *The Making of a Mediator* by Michael Lang and Alison Taylor. Referring to communication and culture, they sum up the situation nicely (at p167):

> *Communication that is clear, constructive, and direct contributes to better interaction during the mediation. We believe this is true because it is culturally consistent and because it reduces ambiguity. Other cultures value different modes of communication. Culture shapes the nature, form, purpose, and language of communication. When mediating with people from cultures that value other communication qualities, mediators should consider what forms of communication will best serve the disputants and the mediation process.*

In ***From the Director…***, Charlie Irvine discusses ***The Impasse Dilemma*** and how mediators can deal with an impasse when it arises. Charlie points out the various options available, from doing nothing to applying pressure on the parties, and sets out the manner in which each of these options can be explored.

Halena Gauntlett explores culture and its effect on perspectives, with specific reference to Children's Hearings Scotland. This inspires her to reflect upon her perceptions and perspectives, and continually develop cultural awareness to understand better the cognisance between herself and others, and this will hopefully have the same impact on our readers.

In ***Practicalities in Cross-cultural Mediations***, Fergus Wong explores how mediators can strive to deal with cultural differences between parties to a mediation. He considers the identification of cultural elements in a dispute, possible sources of misunderstanding, the implications of cultural practices in a mediation and what mediators can do to try to deal with these differences.

Regardless of settlement, how did the parties experience the mediation? Vitalii Diakov explores quality control in what is essentially a form of mandatory mediation, and considers ways in which data may be obtained to measure and control the quality of mediations.

Ivor Heyman considers the new Mandatory Mediation Protocol which has been introduced in the province of Gauteng in South Africa and

assesses this development by way of comparison with the Italian mediation regime.

Sharon O'Loan discusses her Master's dissertation in which she explores *Reflective Practice in Mediation: A qualitative study of mediator narratives and the development of a theory of practice – with implications for supporting reflective practice in the Mediation Clinic*, which she completed last year. Sharon also wrote an article in the previous issue of *Mediation Matters!*, entitled *The Reflective Mediator: From Experience to a Personal Theory of Practice*.

In ***Mediation Mulligans***, Alan Jeffrey confronts the vexing question of what to say to parties at the end of a difficult and unsuccessful mediation. What do you say to the parties? Is there anything that can soften the harsh reality that the mediation has failed, relationships are strained and the parties are emotionally drained? Maybe the thing to say is that you acknowledge that the matter has not resolved and that it has been emotionally draining for the parties and invite them to reflect on the matter and, if there is anything further that they want to raise, to do so through you.

Clinic News returns to the newsletter after an absence from the last couple of issues, and Pauline McKay updates us on what is happening in the Mediation Clinic.

I ponder **Perceptions** in **Patrick's Ponderings**. What happens when parties jump to conclusions, both of which are incorrect? Anger, disappointment and dismay result in court proceedings that should never have been necessary.

And finally, thank you to our outgoing Chair of the Mediation Clinic, Sneha Bonomally, for her contribution to the newsletter. Sneha has led the Clinic as Chair for two years whilst at the same time completing her PhD, and Sneha has done a sterling job in seeing the Clinic through a wonderful period of growth. I wish her well in her future mediation endeavours.

My thanks once again to Adrienne, our assistant editor, for all her hard work in helping to compile this newsletter. I hope that you enjoy this issue.

Patrick Scott
Editor

From the Director…..



Charlie Irvine

The Impasse Dilemma

A common question from mediators is what to do about an impasse. It's a familiar situation: after a carefully supported negotiation, perhaps identifying needs and interests or their surrogate, financial demands, the parties appear to hit a roadblock. Sometimes it's more like a roundabout where they keep looping around the same questions with the same answers. Either way, each one is saying the equivalent of: "This far but no further."

At this point mediators face a dilemma. What, if anything, should they do? I'm not suggesting any magic bullets. Rather, I'd like to list some of the mediator moves available to us in ascending order of risk. Whether they work or not depends on many things: which parties, which mediators, in which dispute, in which setting, on which day.

1) Nothing

This often-overlooked approach has the benefit of handing the dilemma back to the people it belongs to, the parties. Total silence is probably too extreme for me, though some mediators are more comfortable than others with this tactic. A variant is to say: "It looks like we're stuck here. Any suggestions?" Or, "I'm stuck/stumped/I've run out of ideas – have you any?"

Impasses often come to light in breakouts,[1] and this minimalist approach can work in private sessions. A more theatrical variant is to add: "I'm going to bring us back together and see where we are." Joint sessions have their own dynamics, not least the presence of the other party.

I can recall one case (back in pre-history when we met in person) involving a complaint against a lawyer. The complainer's absolute bottom-line was £1,000; the solicitor would not contemplate offering more than £500. Feeling indeed stumped, I reconvened a joint session, really just to wrap up on a reasonable note. The two individuals faced each other across the table, and I left a moment's silence after explaining that I felt we'd gone as far as we could. Suddenly the complainer rose out of his seat, offered his hand, and said "We're both professionals and we've got better things to do than argue over 500 quid. Meet me halfway and shake on £750." The solicitor made a visibly snap decision and accepted.

Notice where the pressure came from. Not the mediator. There was quite enough in the situation, the setting, the potential consequences of not settling, the time taken out of their day, and the work already done to narrow the gap. If they hadn't found their own way to bridge that gap, I risked… what? An unsuccessful case? A failure? Admitting the limits of my skills? One of the important lessons of impasse is that not all mediations can or should settle. Otherwise, party self-determination is illusory.

[1] See my last Director's Thoughts for more on the downsides of private sessions.

2) Ask more

The next, probably obvious, intervention is simply to ask more questions.

- Map it forward: what's going to happen now? What are the implications of no resolution being found today?
- Or map it outwards: tell me a little more about how it came to this, who else it has touched, how long it's been going on, implications for your business.
- Map it internally: can you explain a bit more about your thinking before today? What's changed? If nothing (and here's one of my favourite questions) what needs to change if we're to get around this impasse?
- Map out neglected options: is there anything other than money that might tempt you/them? Should anyone else be involved? Or (even simpler): have I missed something?
- A useful list of potential questions can be found **here**.

3) Recap

Turning the ratchet a little in the direction of mediator input, impasse presents a useful opportunity to re-trace our steps. All memory is fallible and partial, so it can be useful to offer our take on what we've heard, and our understanding of the parties' thinking in reaching this point. At worst, we underline the impasse. At best, we find out we got it wrong, and that our understanding of their chain of logic isn't the same as theirs. That opens up the chance to revisit some of the steps involved.

A practical aside here. In this later stage of mediation, the mediator often has to pep up their energy level. If the other party's words come up, and they often do, this presents an opportunity to rekindle some dialogue. Say: "They're here. D'you mind if I run that past them and make sure that's what they meant to say?" Or: "I'm not sure that's how I remember it. I'm going to bring you back together, just on that point, to check we're all on the same page." Move fast; convey forward motion.

4) Pressure

This ought to be our last resort. Most people hate it. They're not stupid and can usually see what we're up to. Having said that, I have to concede that a large chunk of the mediation profession uses techniques often termed 'evaluative' or 'directive.' Rather than reopening old debates about the wisdom of this approach, I prefer to frame this on a much broader spectrum.

One of the important lessons of impasse is that not all mediations can or should settle. Otherwise, party self-determination is illusory.

Let's acknowledge that we all bring some degree of pressure. There is pressure in the situation; in Simple Procedure cases the sheriff often orders parties to contact the Mediation Clinic. There's pressure in our being there; I learned in my doctoral study that parties generally want to be seen as fair by the mediators. Then, once we start asking questions, those questions themselves imply a preference for resolution. We may select particular aspects of the situation for attention – even the gentlest of steers applies some pressure to focus on this and not that.

What I find less palatable is an overt attempt to shame or manipulate someone into doing something they're resisting. Questions like "How do you think you'll feel tonight if you've finally put this thing behind you?" convey not-so-subtle psychological pressure to appease the mediator by offering a

concession. It may work, but surveys, studies and very occasional complaints tell us that most people dislike it, and some say so in post-mediation feedback.

Another source of pressure comes from invoking the court. I'm not totally against this. It seems pretty reasonable to ask people if they've thought about what happens next. We may choose to share information about how the court process works: that's a form of pressure, and it can be constructive to fast forward to the sort of pressures people will face if they have to present their case before a sheriff.

But this requires care, for two reasons. One is that we must not stray beyond our knowledge. It's fine to explain that the sheriff may ask for an expert report; not so wise to predict how they'll interpret it. We can't know. The other reason for care when discussing litigation is the risk of undermining mediation's distinctiveness. It's not court. It's not arbitration. It's a unique process that lets people devise their own solutions; constantly bringing people back to what might happen in court narrows the options and more deeply etches the 'shadow of the law.'[2]

Conclusion

I imagined this would be a brief piece sharing a few practical tips, but each of the sections above has raised more questions than answers. I've probably managed to reveal more about my own views than any wider principles. I hope it's useful. I'd like to finish with a simple idea (I'm sure not original) that came to me early in my mediation practice. Mediation is "judo not karate." In other words, we do well to harness the parties' own momentum in the service of problem-solving. Sometimes that's not possible, and I've offered a brief spectrum of moves in increasing order of risk: do nothing – ask more – recap – apply pressure. Above all, let's remember it's not our dispute and if people don't want to reach a resolution, they won't.

Charlie Irvine
Director, Mediation Clinic

Dr Charlie Irvine is the Director of Strathclyde Mediation Clinic. He is an experienced mediator specialising in organisational and workplace disputes. Charlie's academic work focuses on mediation in the justice system, and he was awarded his Doctorate for his PhD research into mediation participants and their reasons for settling.

[2] A phrase borrowed from a very famous law article: R H Mnookin & L Kornhauser 'Bargaining in the Shadow of the Law: The Case of Divorce' (1979) Yale Law Journal 88 950–997.

Perspectives with Purpose
by Halena Gauntlett



Halena Gauntlett

Children's Hearings Scotland[1] is recruiting for voluntary positions of Children's Panel Members[2] and Panel Practice Advisors[3] which has led me to consider the skills and qualities that make a person effective in those roles, and what insight mediators and conflict practitioners might contribute.

In Scotland, there is a unique way of helping children and young people who might need extra care or protection. Children's Hearings Scotland is one of several dedicated organisations that work as part of the Children's Hearings System. It is an alternative to court-based decision making for children and young people and is supported by a community of about 2,300 volunteers, known as the Children's Panel.

A Chairperson and three panel members take part in each hearing, which can be held in person or online. The panel members must ensure that the attending child or young person is at the heart of their hearing, and that they are supported in sharing their thoughts, feelings, and what matters to them, to enable them to be helped and supported. Together with family members and/or carers, and others who are involved with the child or young person, they discuss what is happening in their life, contributing to a decision which is then made in their best interests.

A Children's Reporter (from the Scottish Children's Reporter Administration) also attends the hearing to ensure it follows a fair process, but they have no influence on the panel members' final legally binding decision, for which panel members must share their reasons openly at the hearing.

This is a complex task with a profound purpose. Children, young people, their families and/or carers, panel members and professionals come from diverse communities. In a Children's Hearing, many views and emotions can be expressed, and personal experiences, beliefs and opinions may be shared. This requires listening and reflecting-back, suspending judgement, being alert to bias and listening for, and observing, the unspoken. These are skills we apply as

[1] Children's hearings were first introduced in 1971, and the Children's Hearings (Scotland) Act 2011 created Children's Hearings Scotland (CHS) as a public body to help the National Convener carry out their legal functions. CHS recruits, trains and supports volunteer Panel Members who make legal decisions in children's hearings, and which is also referred to as the Children's Panel.

[2] Panel Members are appointed for a three-year period. They are expected to commit to two hearing sessions a month. This will also include preparing for each hearing which will involve reading reports (e.g. from social work, education etc). Comprehensive training, support and monitoring is provided to volunteers.

[3] Panel Practice Advisers (PPAs) play a key role in providing quality assurance observations during hearings, offering independent insight into practice. Drawing on National Standards, PPAs reflect with Panel Members on what went well and identify opportunities for further development. Working closely with regional teams, Panel Practice Advisers also support the recruitment and reappointment process for Panel Members.

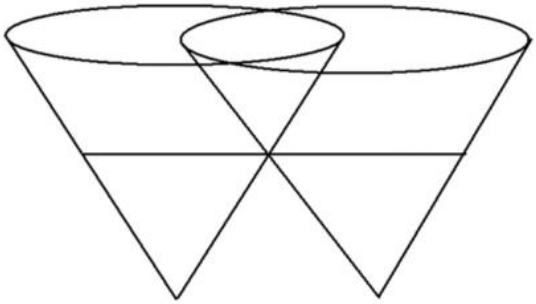
mediators as we encourage others to share and navigate complex emotions to support decision-making approaches.

Within this setting, it is important to consider the connection between the individual and the wider system. This requires self-awareness, cultural understanding, ethical sensitivity and knowledge of legal principles to bring people with different backgrounds together to uphold the fundamental rights enshrined in the United Nations Convention on the Rights of the Child (UNCRC).[4]

Besides being well-intentioned, panel members also need to be well-informed, which requires an understanding of issues facing those attending hearings, where adults are empathic, do not jump to conclusions and are committed to wellbeing. It calls upon the ability to see the task and the issue from different perspectives with interdisciplinary understanding.

Fox[5] offers insight to cultivate a practitioner's *"capacity to notice, understand and work with the complex, dynamic and multi-layered nature of conflict from a range of perspectives,"*[6] offering three strong metaphorical descriptors of conflict and six broad perspectives for gaining insight into conflict.[7]

Perspective, as a term, is applied to "*mean the various deeper internal ways that one orients toward, notices (and doesn't notice), and makes sense of events and experiences in the world around them – the 'schemas', or frameworks one uses to guide their enquiry and thinking.*"[8] Fox visualises perspectives using intersecting cones where wider sections overlap creating touchpoints, while narrower points indicate increasing divergence towards the tip.



Fox introduces a simple cone concept providing a useful metaphor for visualising points of connection, overlap and notable difference to explain the different perspectives of a solicitor and a psychologist who may share a common understanding of a situation, applying their respective professional language. With different training and context, they may also ascribe different meanings or interpretations to theories and frames of reference that are distinct to each profession.

The space between the narrower tips of the cone, represent significant differences in underlying assumptions, beliefs, language and deeper frames of reference that distinguish between how the different professional roles might interact and influence their understanding of conflict, people and their social world, further impacted by language and construction of meaning.

Expansion of the concept, with further cones, could be applicable to Children's Hearings with the introduction of further perspectives – one

[4] The United Nations Convention on the Rights of the Child (UNCRC) was fully incorporated into Scots Law on July 16, 2024, legally requiring public bodies like Children's Hearings Scotland and the Scottish Children's Reporter Administration (SCRA) to ensure that children's rights are at the heart of all decisions.

[5] Kenneth H. Fox, *Perspectives on Conflict: Insights for Professional and Personal Practice* (Bloomsbury, New York, 2026).

[6] ibid 9.

[7] ibid 15.

[8] ibid 10.

for the child or young person, another for their family or carers, a third cone for the panel and more cones for further professional insights, for example, social work, health, education, justice or housing – where each individual perspective brings distinct insights and different world views. Visualising the cones may enhance our ability to develop deeper frames of reference for understanding people and their different perspectives.

Fox encourages practitioners to consciously develop their awareness of the bigger picture; the situational, symbolic and social context of conflict, combined with awareness of the emotional and cognitive dimensions that help us to be more self-aware within conflict work.

Mesquita journeys through cultural variations in emotions, establishing that *"cultural differences in emotions have a logic; they become understandable once we know what people in these different contexts care about."*[9] Mesquita considers concepts of emotion across cultures including gender, class, ethnicity and race, that deepen our understanding of difference and perspectives, and opines that language, physical responses, words and reactions are not universal. Imagining our emotions as dance steps, *"if emotions are tied to our cultural contexts, then moving to another context involves learning a different way of 'doing emotions' in interactions."*[10] A further consideration is the context-switching[11] that is required by those in attendance at Children's Hearings and the acknowledgement of different emotional understandings, expressions and strategies between close relationships which will be different with strangers.

Both Fox and Mesquita use the metaphor of mosaic, noticing the individual pieces that make up the image, thereby promoting an acceptance and expectation of difference, which helps us to keep an open mind and begin bridging cultures and finding common ground. This is essential in working with disparate groups of individuals to harness each contributor's different perspectives, who are by intention mutually committed to wellbeing, that uphold the values of Children's Hearings Scotland; challenging, child-centred, creative, respectful, fair and open.

Fox encourages practitioners to consciously develop their awareness of the bigger picture; the situational, symbolic and social context of conflict, combined with awareness of the emotional and cognitive dimensions that help us to be more self-aware within conflict work.

Having an open mind is easy to say, but harder to achieve, and even with a shared goal, it is realistic to consider that people interpret the meaning of the work differently.

Butters[12] explores cultural values and promotes cultural intelligence, recognising that a shared goal can still bring clashes between beliefs and political differences. Butters, like Fox, offers approaches to creating bridges to help us relate to others where there will be many ethical positions that bring complexity, calling upon the ability to carry out

[9] Batja Mesquita, *Between Us: How Cultures Create Emotions*, (W.W. Norton, New York, 2024) 21.
[10] ibid 167.
[11] ibid 187.
[12] Lucy Butters, *Cultural Intelligence in Practice,* (Right Book Press, 2025) 194-5.

the goal while being respectful and holding very different perspectives.

> *"Developing your cultural sensitivity will help you to recognise the diversity of people's values, perceptions and attitudes, and then actively harness this diversity to find creative solutions, in cross-cultural encounters as well as within your own cultural environment. Thus, cultural sensitivity can also contribute to resolving supposedly irreconcilable viewpoints or positions."*[13]

Kowalski[14] approaches this as a journey through the stages of our individual discovery with chapters entitled React, Recognise, Realise, Relate and Reach out, throughout which she considers several published models to explain the importance of the inner team within a cross-cultural context. By considering our own cultural background, we may be better placed to recognise similarities and differences, how motives and needs influence our actions with a bearing on the effectiveness of collaboration. Kowalski provides a framework[15] for analysing interactions that begins with observing our feelings where interpretation is based on our personal ideas about other people, and where our unique cultural and personal background influences our own thoughts.

Within the context of a Children's Hearing, bridging cultural differences in emotions requires that we do not project our own emotions, or impose our own perspective, but instead find out what is important to the child or young person, and to find out what the situation means to them. Mesquita proposes that individuals and organisations learn to accommodate different understandings of emotions, especially within the context of a multicultural world, to promote equity and humility.

Kowalski explains the phenomenon of culture,[16] and how we adopt the values, attitudes and beliefs of the groups that we live in. Kowalski reminds us that we may believe we see things clearly, while our norms, rules and beliefs that we use to interpret what we see are less visible and our assumptions, values, feelings and expectations and our automatisms (which we may not ever be fully aware of) can create challenges in intercultural communication. Denying difference or applying stereotypical ideas can lead to prejudice and discrimination, exclusion or disadvantage. This could apply to perceptions or assumptions of, or by, any person.

Within the context of a Children's Hearing, bridging cultural differences in emotions requires that we do not project our own emotions, or impose our own perspective, but instead find out what is important to the child or young person, and to find out what the situation means to them.

Each text inspires me to reflect upon my perceptions and perspectives and continually develop cultural awareness to understand better the cognisance between myself and others, especially, the less visible aspects, to

[13] Susan Kowalski, *Cultural Sensitivity Training: Developing the Basis for Effective Intercultural Communication,* (e.concise, 2023) 1.
[14] ibid.
[15] ibid, ch4 Relate, 97-139.
[16] Kowalski (n15) 12.

support psychological safety[17] individually and within group settings, which we see acutely within this example, in service to vulnerable children and young people.

I hope that the selected texts provide a bridge to further understanding and inspire approaches, which others may also find useful within our individual and shared intercultural journeys.

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Halena is also a Senior Safeguarding Advisor in Higher Education undertaking safeguarding research, policy development, case management and review conducted across diverse operational areas (local, national and global). With over 25 years of collaborative and inclusive practice within diverse education and creative industry sectors, Halena is a Senior Fellow of the Higher Education Academy and Chair of One Parent Families Scotland.

[17] Amy Edmonson, *'Psychological safety and learning behavior in work teams'* (June 1999) Administrative Science Quarterly, Sage Publications 44 2.

Practicalities in Cross-cultural Mediations

by Fergus Wong



Fergus Wong

The UK has long been a melting pot of people with different cultures. In melting pots, chemicals interact with each other, sometimes neutralising each other, sometimes mixing with each other and forming a new chemical, and sometimes exploding and creating a huge mess. We mediators are like metalsmiths working at the foundry. With the correct ingredients added to the pot, we can make sure that accidents do not happen. In other words, mediation is a vital instrument in tackling conflicts in a multicultural society as long as the proper techniques are applied. What, however, should mediators do when dealing with a matter where there is a significant cultural element to the nature of the conflict?

Identifying the cultural element in disputes

Many disputes arise as a result of a different interpretation of the contract or what is accepted as proper behaviour by a party. While family upbringing and socio-economic status are major triggers of conflict in a homogeneous society, disputes in multicultural societies are often caused by a misunderstanding of each other's implicit social norms, cultural practices or religious beliefs.[1] Regardless of your position on the political spectrum, immigration plays a significant role in shaping the contemporary world and there is no denying that conflicts with cultural components will remain commonplace.

In this article, I provide a brief analysis from the perspectives of mediators working in the English-speaking world. Readers might suspect that I have resorted to Anglocentrism. However, a ready-made subject of comparison with adequate reference points is required so that I do not end up writing a 100,000-word dissertation. More importantly, the English language is the medium that mediations in Scotland are conducted in and it has major ramifications on our paradigms, thus dominating how we mediators and parties might view disputes differently. Linguistic differences coupled with disparate lifestyles can also create enough of a variance for a conflict to be considered as 'cultural'.

Sources of misunderstanding

Lifestyle differences have always been a major impetus to cultural conflicts. For example, different perceptions towards physical spaces might bring about a dispute over the use of the communal areas in a tenement. Different expectations of what a plumber should do might cause an unnecessary termination of a contract or different levels of acceptance

[1] M Brigg, *The New Politics of Conflict Resolution. Rethinking Peace and Conflict Studies* (Palgrave Macmillan, London 2008) https://doi.org/10.1057/9780230583375. Brigg has provided a detailed analysis of the challenges faced in the field of conflict resolution under the backdrop of the contemporary world order.

towards the quality of a product might result in a consumer dispute. These are by no means conflicts unique to multicultural societies. But cultural misunderstandings are very effective catalysts in exacerbating such conflicts.

There are also other things that might be less obvious to mediators when trying to understand a conflict. While most mediators are usually competent in analysing the styles of communication among parties, there are certain aspects of a conflict that might require some cultural awareness in order for this to be understood more clearly.

If you speak more than one language, the phonology of your mother tongue often has some effect on the way you speak and comprehend your second language. For non-native English speakers who speak with intonations or vocal features (for example glottal or nasal noises) that are unfamiliar to the average native English speaker, what might be said with the best intentions could possibly be perceived as rude simply because of how words are pronounced in an unfamiliar way.[2] Accent differences do not cause conflicts, but our brains might interpret that as a justification for our false beliefs that the other party is not acting in good faith, especially when under stress and time constraints.[3]

Closely linked to linguistic differences is the use of figurative speech. Figurative speech and idioms often require a good grasp of certain cultural contexts.[4] For parties who grew up with different cultural backgrounds, speaking figuratively may cause unnecessary confusion that leads to avoidable conflicts. Such confusion might not cause the conflict but may hinder negotiations if one of the parties has limited proficiency in English.

Implications of cultural practices during mediations

Cultural practices would often shape how a party chooses to deal with conflicts. During mediation, parties from a more collectivist culture may choose to compromise in the earlier stages of a mediation as they are used to sacrificing oneself for the common good, whereas parties from cultures that encourage competition might negotiate more aggressively.[5] In addition, parties from cultures that tend to downplay disagreements might adopt a more non-confrontational or indirect way of speaking, which could provide a false sense of willingness to compromise. This can unintentionally create an imbalance of power that might give parties from an individualistic cultural background an advantage when negotiating a financial settlement.

Propriety might also play a role in creating more friction during the mediation, especially when settling implies the admission of fault in front of someone who is of a lower perceived social status. In many East Asian cultures, people with higher seniority are often

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[2] H C Triandis, 'Culture and Conflict'. (2000) International Journal of Psychology 35, 145-152. https://doi.org/10.1080/002075900399448. Triandis explored how tones and gestures might override the content of conversation when parties from different cultural backgrounds communicate.

[3] M Lin, N Ramírez-Esparz, & J M Chen, 'Accent Attitudes: A Review Through Affective, Behavioral, and Cognitive Perspectives' (2026) Psychological Reports 129(4), 2707-2758. https://doi.org/10.1177/00332941241280250. Accent differences can have 'real-world outcomes in the workplace, trust behaviors, and legal perceptions'.

[4] I Goshkheteliani, 'Idioms in Cross-cultural Communication' in *Research on Phraseology Across Continents* (University of Bialystok Publishing House Bialystok 2013) 2, 19-35. Goshkheteliani provided an explanation for the requirement of common cultural knowledge for cross-cultural communication to take place effectively.

[5] D Cai & E Fink, 'Conflict style differences between individualists and collectivists' (2002) *Communication Monographs 69*(1), 67–87. https://doi.org/10.1080/03637750216536

regarded as higher up on the social hierarchy, making it challenging for an older person to offer an apology because of their self-esteem and perceived social hierarchy. Parties who grew up in cultures where the practice of 'face-saving'[6] is prevalent might also find it hard to reconcile with the other party, as compromising may imply weakness or shame.[7] In some cultures, people may see less significance in promises and might even be more likely to break them if abidance implies undermining their positions in their workplace or community.[8] For parties from certain cultures where gender inequality persists, mediation might be even more challenging because of the power dynamics involved. Parties who grew up in the Anglosphere might struggle to comprehend these ideas, yet these are very prevalent ways of thinking in other parts of the world.

What mediators could do

Do mediators need to understand every single culture that exists? Obviously not. However, it is good for us to know how to tackle a dispute when it is partly caused by cultural differences. Whenever there is a significant difference in the practice of social norms between the parties, one can safely say that there is a cultural element to the dispute. While maintaining some basic values, in particular equality amongst parties regardless of their ethnicity, age, or gender, mediators can then find an anchor point that all parties would be happy to work with. For disputes involving disagreement on religious beliefs, however, this anchor point would likely be leaning towards secular values.[9] In other words, mediators need to establish some principles that the parties would mutually agree with, regardless of their world view.

The intake stage is the first phase for mediators to identity potential cultural elements in the conflict. In simpler terms, it is for mediators to understand the narratives of the parties. One always needs to be careful not to let cultural stereotypes impede our judgement. That said, it could be helpful for mediators to identify certain cultural differences by asking the two parties to elaborate on their concerns at the pre-mediation stage.

As the parties engage in mediation, it is not necessary for mediators to give a verdict and conclude prematurely that the conflict stems from a cultural misunderstanding. Nor is it necessary to suggest to the parties that there are cultural differences amongst them at the outset. Like any other mediations, mediators could simply highlight the fact that the other party meant no harm and emphasise the gestures of goodwill from the other side.

In breakout rooms, mediators could suggest to the parties that the dispute might have been caused by cultural differences. When looking at perspectives, mediators could try offering their

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[6] While the term "face-saving" finds its roots in the Chinese language, similar cultural concepts are found in many places beyond East Asia, most notably in Arab cultures

[7] See A Kirchner-Häusler, A K Uskul, M J Wohl, V L Vignoles, S E Cross, R Rodriguez-Bailón, M Gezici-Yalçın, C Harb, S Husnu, K Kafetsios, E Kateri, J Matamoros-Lima, R Miniesy, J Na, S Pagliaro, C Psaltis, D Rabie, M Teresi & Y Uchida 'The role of apology beliefs for apology tendencies across cultures with varying honor norms' (2025) Current Research in Ecological and Social Psychology 9 100230. https://doi.org/10.1016/j.cresp.2025.100230

[8] R Friedman, Y Hong, T Simons, S Chi, S Oh, & M Lachowicz, 'The Impact of Culture on Reactions to Promise Breaches: Differences Between East and West in Behavioral Integrity Perceptions' (2018) Group & Organization Management 43(2) 273-315. https://doi.org/10.1177/1059601116678101

[9] Haque Khondker (2006) had prompted discussion on how to find a common ground between different cultures and religions. See Haque Khondker, 'Cultural Conflicts, Fundamentalisms, and Globalization' (2006) Globalizations, 3(4) 441–448. https://doi.org/10.1080/14747730601045694

understanding of the other party's narrative and enquire how that affects their thinking. This is no doubt a challenging process. If not successful, mediators should continue stressing the signs of good faith from the other party and deal with the situation as with any other dispute.

If a party has a unique set of values or social norms that the other party is unlikely to accept, it is important for the mediators to realise that changing a person's world view in a 3-hour session is simply impractical. Inviting parties to explain their social norms is more challenging than, for example, explaining industry norms to the parties in a consumer dispute. Mediators might want to make good use of private sessions to convey that reaching a settlement does not mean giving up one's principles.

For disputes involving parties with limited proficiency in English, mediators should speak slowly and avoid the use of overly complicated words. As mentioned above, it is also wise to use less figurative speech and idioms since parties who do not speak English as their first language might end up spending unnecessary time processing what has been said. If an interpreter is present, it is also a good idea to thank both parties for being patient with the process as extra time is bound to be required.

In conclusion, conflicts with cultural aspects are sometimes created by a clash of different sets of values. Mediators should not focus on convincing a particular party to accept certain values or world views. Instead, it might be preferable to have the party acknowledge that they could reach a settlement, albeit they might not agree on certain principles. In an ideal world, parties would have all the time and resources they need to debate their views on virtues and morality. However, in reality, parties engaged in mediation would most certainly need to agree to disagree on certain things. One should never subscribe to cultural stereotypes, but a keen eye for detail is always a plus when dealing with parties from different cultural backgrounds.

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Mandatory Mediation: Substance, procedure and the Gauteng model
by Ivor Heyman



Ivor Heyman

The introduction of the Gauteng[1] Mandatory Mediation Protocol has moved mediation considerably closer to the centre of the litigation process. While Rule 41A of the Uniform Rules of Court already requires parties to consider mediation, the Gauteng Protocol goes substantially further by prescribing what the parties must address before mediation takes place and what must be recorded afterwards.

Comparisons with foreign legal systems provide a useful lens through which to assess this development. The Italian mediation regime is particularly instructive. Like the Gauteng system, it integrates mediation into the administration of civil justice. But the two systems differ significantly in the extent to which they regulate the process by which parties demonstrate that they have genuinely engaged with mediation.

The Rule 41A Notice (South Africa)

Rule 41A(2) of the Uniform Rules of Court requires every plaintiff or applicant, when commencing proceedings, and every defendant or respondent, when delivering a plea or answering affidavit, to serve a notice indicating whether the party agrees to or opposes referral of the dispute to mediation. The notice must state the reasons for the party's belief that the dispute is, or is not, capable of being mediated.

The requirement to give reasons means that the notice must reflect genuine consideration of mediation rather than merely record an election for or against it. In *Koetsioe and Others v Minister of Defence and Military Veterans and Others* [2021] ZAGPPHC 203 — decided before the Gauteng Mediation Protocol and therefore applying only Rule 41A — Davis J held that a party must have considered mediation "earnestly prior to exercising its election", as demonstrated by the requirement to state reasons for the position adopted. The applicants had disregarded the Rule 41A notice requirement altogether, an approach the Court later characterised as a "blunt refusal" even to consider mediation.

The principle emerging from *Koetsioe* is therefore straightforward: Rule 41A requires genuine consideration of mediation, not mechanical compliance with a procedural formality.

The Gauteng Protocol Ups the Ante

The Gauteng Mediation Protocol which only applies to high court matters in Gauteng province goes considerably further than Uniform Rule 41A. Protocol paragraph 4.6.2 introduces the concept of an Amplified Rule 41A notice to address common cause and disputed issues, admissions which may

[1] Gauteng is one of the nine provinces in South Africa. The court system in South Africa is divided into divisions, with each division presided over by a Judge President. The provincial divisions of the High Court of South Africa have general jurisdiction over their defined areas.

facilitate mediation, the treatment of expert evidence, the proposed mediator and the arrangements for the mediation. The notice must therefore go further than considering mediation. It must engage with the prospects of settlement and the narrowing of the issues.

In *Malebane v Road Accident Fund* [2025] ZAGPPHC 1253, Farrell AJ held that the matters prescribed by paragraph 4.6.2 are substantive requirements, "not optional embellishments". The Amplified Rule 41A notice must be "structured to meaningfully initiate" mediation rather than constitute a "perfunctory gesture", and the required analysis cannot simply be left to the pleadings or expert notices.

The progression from *Koetsioe* to *Malebane* is significant. Rule 41A requires the parties seriously to consider whether their dispute is capable of mediation. The Gauteng Protocol requires considerably more: the parties must begin analysing and structuring the dispute for the mediation itself.

The Consequences of Non-Compliance with Rule 41A and the Gauteng Mediation Protocol

The courts have also demonstrated that failure to comply with Rule 41A, and now the Gauteng Mediation Protocol, may carry costs consequences.

In *Koetsioe*, Davis J ordered each party to pay its own costs because of the applicants' failure to serve any Rule 41A notice at all. The Court relied on the then Rule 41A(9)(b), which permitted consideration of the parties' conduct in relation to mediation when determining costs. Although that provision was omitted in July 2025, the new Rule 67A(2)(a) similarly permits the court, when awarding costs, to have regard to "the provisions of rule 41A." A successful litigant who fails properly to engage with Rule 41A therefore risks being deprived of some, or all, of its costs.

Malebane illustrates the consequences of non-compliance under the Gauteng Protocol itself. Because the applicant's own notice did not comply substantively with Protocol paragraph 4.6.2, the Court dismissed her application to compel the Road Accident Fund[2] to deliver its responding Amplified Rule 41A notice and ordered the applicant to pay the costs, while granting her leave to deliver a fresh compliant notice. A party seeking to require its opponent to participate in the Protocol process must therefore first ensure that its own compliance is substantive rather than merely formal.

A Comparison with Italy

The Italian system provides an interesting contrast because it also treats mediation as an integral part of civil justice but regulates that process differently. Mediation in Italy is governed by Legislative Decree No. 28 of 2010. Article 5(1-bis) requires mediation in specified categories of disputes — including property, inheritance, leases and banking matters — before the matter may proceed in court. In disputes falling outside those categories, mediation is not necessarily required at the outset, but Article 5(2) empowers the court to direct the parties to attempt mediation once the matter is before it, typically as part of case management before the matter proceeds to a hearing.

The legitimacy of the Italian system was recently considered by the Regional

[2] The Road Accident Fund (RAF) is a South African state-owned insurer that provides compulsory cover for people injured or killed in motor-vehicle accidents caused by negligent driving within South Africa, paying compensation for bodily injury or death but not property damage.

Administrative Tribunal for Lazio (Rome) in *Codacons v Ministero della Giustizia and others*, TAR Lazio, Sezione I, 17 March 2025, No. 5489. The applicants challenged the requirement that parties pay a mediation fee to an accredited mediation body in order for mediation to take place, contending that this created a barrier to access to court. The court rejected the challenge, holding that the fee did not prevent a party from proceeding to court and was not disproportionate. Significantly, it considered the payment requirement a means of ensuring that mediation is taken seriously rather than treated as a mere formality.

There is therefore a striking similarity in underlying principle. Both the South African and Italian systems reject mediation performed merely for the purpose of ticking a procedural box. The difference lies in how the two systems seek to achieve genuine engagement.

Form Versus Substance

The Italian framework requires a party, in disputes subject to mandatory mediation, to commence mediation before the litigation may proceed. Once an application for mediation has been filed with an accredited mediation body, a mediator is appointed and a first meeting is convened, ordinarily between 20 and 40 days after the application is filed. The parties participate in the mediation with the assistance of their lawyers where required. At the first meeting, the mediator explains the function and procedure of mediation and endeavours to assist the parties to reach an agreement. Article 8 of Legislative Decree No. 28 of 2010 requires the parties and their lawyers to cooperate in good faith so as to achieve an effective discussion of the disputed issues. The mediator records the meeting in a written report. If the first meeting concludes without settlement, the mandatory mediation requirement has been satisfied and the litigation may proceed.

The Italian framework therefore requires an actual attempt at mediation and substantive engagement with the dispute but does not impose the same degree of procedural formality surrounding that attempt as the Gauteng Protocol. In Gauteng, the parties must comply with a series of prescribed steps before the mediation takes place, including Rule 41A notices and Amplified Rule 41A notices addressing matters such as the common-cause and disputed issues, possible admissions, expert evidence, the proposed mediator and the arrangements for the mediation. The process is further formalised through the Agreement to Mediate and the reporting and joint-minute requirements following mediation.

The distinction between the two systems principally lies in the mechanism used to achieve that objective. Italy places comparatively greater emphasis on requiring the parties to actually enter the mediation process itself and make a genuine attempt to mediate. The Gauteng Protocol seeks to secure meaningful mediation through considerably more detailed procedural architecture surrounding the mediation itself.

How Much Procedure Does Mediation Need?

Comparison of the two systems raises a broader question about the developing South African approach to court-annexed mediation. The question is how much procedural regulation is necessary to achieve the objective of genuine engagement with mediation. The Gauteng Protocol represents an interventionist answer. It seeks to make mediation effective by requiring the parties to jump through various procedural hoops. Italy adopts a lighter procedural touch, while

nevertheless insisting that mediation itself constitutes a genuine step in the administration of justice.

The experience of both systems points towards the same underlying principle: mediation should require meaningful participation rather than ritual compliance. The question for Gauteng is whether its detailed procedural requirements make mediation more effective or achieve the opposite result by making the mediation process more formal and complex.

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Beyond Settlement: Measuring quality in Court-connected Mediation

by Vitalii Diakov



Vitalii Diakov

In this article, I reflect on three years of work and learning with the Lothian and Borders Sheriff Court Mediation Service, together with my dissertation research on quality assurance in court-connected mediation. I hope that it contributes to discussion about how we evaluate mediation services as part of the civil justice system.

About seven in ten mediated cases in the Lothian and Borders Sheriff Courts reach some form of resolution. Similar settlement rates have been reported by other court-connected mediation services in Scotland. These are encouraging figures. But what do they actually tell us about the quality of mediation experienced by the people using the service?

Settlement is one of the most reported measures of mediation success. It is easy to understand and communicate to the courts, the funders and the public. But mediators know that it does not tell the whole story. One case may settle while one party leaves the mediation feeling unheard, pressured or dissatisfied. Another may not settle, but mediation may still clarify issues, narrow the dispute or improve communication between the parties. If we want to understand quality, we need to look beyond the final agreement.

Looking beyond settlement

Before deciding how mediation success should be measured, it is useful to consider why it is measured at all. Ross[1] identifies three reasons. Mediation organisations may use evaluation to assess mediator performance; disputants evaluate their experience when deciding whether they would use or recommend mediation again; and mediation services need evidence of effectiveness compared with other ways of resolving disputes. In court-connected mediation, these purposes also matter to courts, funders and policymakers. Feedback also supports reflection on practice.

Ross challenges the tendency to treat settlement as the prevailing measure of success and proposes a decision-tree approach. Where agreement is reached, evaluation should consider not only the fact of settlement but also the nature of the agreement, the parties' satisfaction with it and whether it is implemented.

Where no agreement is reached, different measures become relevant depending on whether mediation focused mainly on resolving issues or improving the relationship. Issue-related outcomes include clarification and partial resolution of issues, movement in concessions and expansion of the options available. Relationship-related outcomes include changes in trust and hostility, attention to power issues, and movement from a

[1] W H Ross, 'Measuring success in Mediation' (2000) The Mediation Journal 11, 1–16.

competitive towards a more cooperative orientation.

This matters because recording every unsettled case simply as a failure leaves useful information behind. Mediation may still have narrowed the dispute, clarified positions or changed how the parties understand the problem. A statistical record of 'not settled' may therefore describe the outcome without saying much about what happened during the process.

Measuring the outcome and mediation pathway

Ross and Bain[2] evaluated the Glasgow and Aberdeen in-court mediation pilots and considered process fairness, outcome reasonableness and outcome favourability as separate aspects of participants' experience because these are not necessarily the same measure of the outcome.

Clark[3], in his review of court-connected mediation in Scotland, also drew attention to settlement, implementation, user satisfaction and the relatively small proportion of cases actually reaching mediation. His analysis shows the tension between positive evidence about mediation outcomes and a fragmented and inconsistent system of provision and referral.

This leads to a more basic measurement problem: what is the denominator of success? Referral to mediation, participation in mediation, settlement and implementation are all different stages of the process, and each produces a different set of figures.

The pool of cases referred to mediation will generally be wider than the number actually mediated. In the Scottish context, referrals are made through the Sheriff Court, so the number of referrals reflects an institutional pathway into mediation rather than consumer demand. It may show how often mediation is considered appropriate within the court process, but it does not tell us how many parties choose to engage and proceed to mediation.

A high settlement rate among mediated cases may therefore say relatively little about the wider referral pathway. Some referred cases may not proceed because they are unsuitable for mediation, one or both parties do not wish to participate, the service is unable to establish contact with the parties, or the claim is withdrawn. Each stage narrows the pool of cases. Referral, participation, settlement and implementation should therefore be recorded separately. This would show how many original court cases reach mediation, how many proceed through it, and what happens afterwards.

Implementation raises a further question. Mediators are not responsible for ensuring that parties perform an agreement, but implementation can tell us something about the durability of mediated outcomes. Should it be treated as an indicator of mediation quality, or primarily as an outcome to monitor separately? It also has a practical role in the relationship with the court, because once an agreement has been performed the service can report this and the court case can be brought to an end.

Scottish court-connected mediation has developed through different local models, which also makes comparison difficult where services collect and report data differently. A

[2] M Ross and D Bain, *In-court Mediation Pilot Projects: Report on Evaluation of In Court Mediation Schemes in Glasgow and Aberdeen Sheriff Courts*, Edinburgh: Scottish Government (2010).
[3] B Clark, 'Not so simple? Court connected mediation in Scotland' (2020) Civil Justice Quarterly 39 1 23–46.

basic common dataset across services would provide a clearer basis for understanding the use of mediation within the court system.

Irvine's[4] doctoral research adds another layer by examining how unrepresented parties understood the fairness and justice of mediated outcomes. Based on qualitative interviews with 24 participants in Scottish simple procedure mediation, it was found that participants drew on different considerations, including being heard, payment, closure, accountability and compromise. Their responses show that settlement, satisfaction, fairness and justice are connected, but they do not necessarily describe the same experience.

At the same time, the research shows the difficulty of turning fairness and justice into measures. Participants could discuss whether an outcome felt fair or just, but their reasoning is complex and does not fit easily into a single survey response. Routine evaluation can ask about specific aspects of fairness and outcome experience, while deeper questions about justice may require more qualitative exploration.

Mediation as user experience

As mediation becomes more closely integrated into civil justice, it can also be viewed as a public service. If civil justice moves from an adjudication-centred model towards a more resolution- and user-centred system, we also need to know whether those resolution pathways work for the people who use them.

Referral, settlement and implementation tell courts and mediation services what happens to cases. They do not tell us whether the service worked well for its users. Users need the service to be accessible, provide clear information and appropriate support, respond effectively, and deliver a consistent standard of service.

From this perspective, mediation is one part of a wider journey through civil justice. If a case does not settle in mediation, the question is not simply whether mediation succeeded or failed. We can also ask what happened to the case afterwards, whether mediation helped move it towards resolution, and how the parties experienced that part of the process.

The SERVQUAL[5] framework was originally developed to assess customer-oriented services and has also been applied in public-service settings. I found it useful in my research because it offers a way of examining service through different dimensions: reliability, assurance, tangibles, empathy and responsiveness. These dimensions provide a structure for looking at how people experience the service around the mediation, rather than judging quality only through the final outcome.

Looking at mediation as a service brings attention to practical aspects that are easy to overlook. Online mediation depends on devices, internet connection, digital skills and often access to a private space. Pre- and post-mediation engagement may take place through email or telephone, with users expected to understand information and sign documents electronically. These moments can determine whether someone is able to engage effectively. The same applies to face-to-face mediation, where suitable and accessible spaces are available.

[4] C Irvine, *Does Mediation Deliver Justice? The Perspective of Unrepresented Parties*. PhD thesis, Queen Margaret University (2024).

[5] The SERVQUAL framework is a service quality measurement model that compares customer expectations with their perceptions across five dimensions: reliability, assurance, tangibles, empathy, and responsiveness.

Responsiveness also extends beyond the mediation session. The promptness of email correspondence, the clarity of the initial call, the simplicity of the agreement to mediate process, and the value of follow-up communication can all shape how the service is experienced. Assurance and empathy bring the focus back to trust, respect and confidence in the mediator and the process.

Another useful feature of the service-quality approach is its focus on expectations and the gaps between different parts of service delivery. SERVQUAL compares what users expect with how they perceive the service they actually receive, while the wider model also considers whether the service understands those expectations, translates them into appropriate standards and delivers those standards consistently. Donnelly et al[6], applying SERVQUAL to Strathclyde Police, demonstrated how this approach can be adapted to a Scottish public service context.

In court-connected mediation, this could help identify gaps between what users expect, what the mediation service understands those expectations to be, and what the service actually provides. It also suggests why different stakeholders should be involved in developing the service, not only those who support mediation in principle, but those whose work will be affected by how it is integrated into the justice system. Courts, mediation services, solicitors, professional bodies and advice organisations may each have different expectations of what the service should achieve and how its quality should be assessed.

SERVQUAL cannot simply be transferred into mediation unchanged. The original instrument requires users to assess both expectations and perceptions across a substantial number of questions, while its application to Strathclyde Police also raised questions about whether the five dimensions operate in the same way in a public service context. Its value for court-connected mediation may therefore lie more in identifying aspects of service quality than in using the original questionnaire itself.

Evaluation also needs to be realistic. A feedback system that is too demanding may be difficult to use consistently where staff time and resources are limited. Better quality assurance does not necessarily mean collecting more information after every mediation. A shorter routine survey may therefore be more practical, supported by occasional deeper evaluation where there is a need to explore accessibility, expectations or particular aspects of service quality.

Instead of conclusion

The settlement rate should not be replaced by another single measure. Different information tells us different things. Case data tell us whether mediation was used and what happened to the dispute. User feedback can tell us more about whether people understood the process, could participate effectively and how they experienced the service and its outcome.

This also means looking beyond the mediation itself. The experience starts with the first contact with the service and continues after mediation. These aspects may appear secondary when the main focus is whether a case settled, but they can directly affect a

[6] M Donnelly, N J Kerr, R Rimmer and E M Shiu, 'Assessing the quality of police services using SERVQUAL' (2006) Policing: An International Journal of Police Strategies & Management 29 1 92–105.

person's ability to participate in mediation, overall satisfaction and perception of the service. These dimensions also form the public perception of it.

Taken together a fuller evaluation of court-connected mediation should look at several different dimensions:

1. **Access and clarity:** whether people could access the service and understood what mediation involved.
2. **Participation and voice:** whether parties had sufficient opportunity to explain what mattered to them and participate effectively.
3. **Service quality:** whether communication, support, responsiveness and the organisation of the service worked well.
4. **Case progression:** what happened from referral through participation, settlement, implementation or return to court.
5. **Fairness and impartiality:** how parties experienced the mediator and the mediation process.
6. **Outcome and wider value:** what was achieved, including settlement, clarification or narrowing of issues, and how parties experienced the outcome.

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Mediation and Style
by Gordon Murray



Gordon Murray

A mediator has to have style. Parties to a mediation expect the mediator to be both confident and optimistic about the mediation about to take place – they will want to feel that they are in safe hands. That is not to say the mediator should dominate the conversation. They will be directing the process but, as we all recognise, it is the parties who are mediating – it is not the mediator's mediation.

What is style? This isn't something that can be tied down but is a mosaic of presentation, dress, body language, tone of voice and the like. The parties will already have had contact with each other, but when the mediator enters the lists, the parties must size them up in the very short time available before the mediation starts. As this usually takes place in the pre-mediation meeting, the parties are reaching a view as to whether their first impressions of the mediator are positive or negative.

What can we as mediators do to make ourselves acceptable to the parties, at least at first sight? We don't have much time but must ensure we are seen as authentic and sincere.

The way we look is important and thought must be given as to the parties and the setting of the dispute. There are societal norms we must be aware of i.e. parties in the third sector are likely to be more liberal and less concerned about the mediator's form of dress. In a business environment, however, there may well be an expectation of a more conservative dress style. Again, sticking to my point about being authentic, I came to mediation late in my career so I'm 'old school' and usually wear a collar and tie. I do however regularly co-mediate with others who are casually dressed. The chosen 'uniform' really doesn't seem to matter but it's important for the individual mediator to be comfortable in their own skin. Ultimately, it will be the words we use and the manner in which we deliver them that will be more important.

Style however is more than simple visual impact. It must also be how you string words together and on that, I can strongly recommend Lang and Taylor's *The Making of a Mediator: Developing Artistry in Practice*[1] which identifies the perfect state of where communication is flowing with constructive ideas passing between the parties to create a distinct forward-looking momentum. The mediator has set the scene, briefed the parties informally pre-mediation, guided them as to the ideas they ought to be considering, all whilst stressing this will be their mediation and not the mediator's.

To continue the artistic analogy, the mediator has a role to play. They have to deliver a performance which allows the mediation to flow and yet be ready to nudge the parties to

[1] Michael D Lang and Alison Taylor, *The Making of a Mediator: Developing Artistry in Practice* (Jossey-Bass 2000)

consider other possible ideas. We have to achieve a rhythm of conversation which, while informal in nature, recognises the gravity of the issues being discussed. In nearly all cases, this will be the first time one or more parties have been involved in what they will see as a quasi-legal forum. While the mediator will stress its confidential nature and its informal structure, the parties will still feel there is an element of formality which they may not be wholly comfortable with.

In this performance role, mediators are of necessity optimists, an attitude they will seek to instil quickly in any dispute. That positivity can be a revelation for disputing parties especially coming from an experienced mediator who has seen many seemingly irreconcilable disputes resolved.

Turning now to the form of mediation skills an individual wishes to practice. Charlie Irvine led an interesting CPD session in September this year focusing on the perceived differences of a facilitative approach and an evaluative approach to mediation. We will all have our own views as where we as individuals fit into that discussion but the more I have read and the more I have seen in practice, it is very difficult to pigeonhole a particular mediation as fitting into one of these categories. This is the point Charlie raised in referring to Leonard Riskin's grid analysis[2] and on that, I fully accept Riskin's view that labels and categories are indicative of where you may go from time to time during a particular mediation. It does, however, all depend on the nature of the mediation you are undertaking as to which techniques you might wish to bring to bear. Again, there has to be a style element of how this is all managed.

What I have just said however is probably still too restrictive in the way a mediator ought to think. We have to stay light on our feet at all times, listening intently to what is being said, and picking up on the nuances of comments made. I have written before about the value of co-mediating with a colleague which introduces a different voice and style. The interplay between co-mediators is invaluable in establishing the chemistry between the mediators and the disputing parties. It allows for nuances of interpretation and presentation all directed at making the contentious issues more transparent and hopefully creating an opportunity for the parties to see the possibility of new perceptions of the issues at stake.

We have all read books and papers which list pro forma questions which might be used in mediations. While they're useful in stimulating ideas, the style of each mediator will determine how they want to manage the mediation. Variations of those questions can be useful if used judiciously and in the right circumstances. Again, I come back to the concepts of confidence and fluency and the way a mediator presents themselves. Mediators have to simply be themselves, be true to themselves, and be 'simpatico'.

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[2] Leonard L Riskin, 'Understanding Mediators' Orientations, Strategies, and Techniques: A Grid for the Perplexed' (1996) Harvard Negotiation Law Review 1:7 1

Research Reflections
Sharon O'Loan reflects on her LLM dissertation



Sharon O'Loan

In this series of articles, Adrienne Watson has asked some of our former students to reflect on their Master's dissertations. Our students have shared the lessons they learned, the impacts of their research and their advice for future students.

In this issue, Sharon O'Loan reflects on her LLM dissertation, *Reflective Practice in Mediation: A qualitative study of mediator narratives and the development of a theory of practice – with implications for supporting reflective practice in the Mediation Clinic*, which she completed in 2025.

How would you summarise your dissertation's key aims and outcomes?

My dissertation explored how reflective practice shapes mediators' learning, professional identity and personal theories of practice. Drawing on the reflections of Strathclyde Mediation Clinic's mediators and interviews, it aimed to highlight the value of supportive peer dialogue, barriers to deeper reflection, and proposed practical ways to strengthen the Clinic's reflective culture.

What particularly interested you about the area you were researching?

I was particularly interested in how mediators learn from experience: whether reflection challenges assumptions and changes practice, or is at risk of becoming a routine 'admin' exercise. I wanted to explore how it helps mediators develop their own approach, and how the Clinic can support meaningful reflection among both new and experienced practitioners. I was also curious about the relationship between theory and instinct and how ideas learned in mediator training and self-directed study become part of everyday judgement, and whether reflection helps mediators make that knowledge more explicit.

Which research methods did you use – why did you choose these methods?

I used qualitative thematic analysis of 52 anonymised Clinic reflection forms and four semi-structured interviews with mediators of differing experience. This combined written accounts with deeper conversations, allowing me to identify patterns and explore mediators' reasoning, emotions and learning in greater depth than forms alone could provide. The semi-structured format provided consistent questions while leaving room for unexpected insights. Comparing the two sources helped to reveal differences between what mediators recorded and how they explained their practice. I chose this approach to understand experiences and meanings, rather than to measure effectiveness.

Did you develop any new skills during the dissertation. If so, what were they?

I developed skills in designing and conducting semi-structured interviews, analysing qualitative data and identifying themes across written reflections and interview accounts. I also strengthened my research ethics awareness, critical engagement with literature, and ability to question how my own assumptions as a mediator influenced my interpretation of the findings. Learning to distinguish description from interpretation was particularly valuable, as was recognising that a theme can matter because of its significance, not simply how often it appears. The process also strengthened my ability to organise complex material into a clear, evidence-based argument.

What aspects of your dissertation were particularly challenging? How did you overcome the challenges?

Balancing my roles as mediator and researcher was challenging, particularly recognising how my assumptions might influence interpretation. Comparing brief written reflections with richer interview accounts also required care. I addressed these challenges through systematic coding, repeated reading, reflexive questioning and grounding my interpretations in participants' own words. Coding was a new skill and a challenge in itself.

Another challenge was deciding how much could reasonably be concluded from a small interview sample and from forms which had not originally been designed for this research. I acknowledged these limitations and distinguished participants' accounts of learning from evidence of actual changes in behaviour or outcomes.

Possibly, the greatest challenge was adhering to the word count!

What aspects of your dissertation are you most proud of?

I'm most proud of bringing mediators' experiences into dialogue with theory, and translating the findings into practical suggestions for the Clinic. I also valued highlighting the importance of trust, supportive conversations and willingness to question assumptions in making reflection meaningful. Suggestions included clearer prompts that encourage questioning of assumptions, space for private reflection alongside shared accounts, and opportunities for ongoing practice groups. I wanted these ideas to be useful and proportionate, building on the Clinic's existing reflective culture without creating unnecessary administrative work.

If you were to do your dissertation now, with the benefit of hindsight, would you change anything about your dissertation? If so, what?

With hindsight, I would narrow the research questions earlier to allow deeper exploration within the word limit. In a follow-up study, I would also seek parties' perspectives and follow mediators over time, to explore whether the learning they described translated into changes in practice and participants' experiences. These would be substantial extensions, rather than additions I could realistically have fitted into the original project. I would retain the combination of written reflections and interviews, which offered complementary perspectives.

Was your dissertation helpful in shaping your mediation practice? If so, how?

Yes. It encouraged me to move beyond asking what went well or badly, to examining why I made particular choices and which

assumptions shaped them and how they may have shifted as a result

I now place greater value on reflective conversations with colleagues, questioning familiar habits and considering how parties experience my approach. It also highlighted the value of revisiting a difficult mediation after emotions have settled, when a different perspective may emerge. For me, a useful reflection should lead to a question to explore or something to try in practice, while remaining open to further learning.

What advice would you give to students who will be working on their dissertations in the future?

Choose a question that interests you and keep its scope manageable. Allow time for ethics approval, recruitment and analysis. Keep notes on your decisions and assumptions, stay open to unexpected findings, and use supervision well. Aim for depth and clarity rather than trying to cover everything. If you are researching your own field of practice, pay attention to what feels so familiar that you might overlook it. Ask what the evidence actually supports, and distinguish clearly between what participants report and what your study can demonstrate. Practical recommendations can be valuable without claiming definitive answers.

Is there anything else you would like to share with our readers?

I'm grateful to the Clinic and the mediators who shared their experiences so openly. The research reinforced that learning continues throughout a mediator's career, and that uncertainty can be a valuable starting point. I hope the dissertation encourages curiosity about how we reflect, as well as what we reflect on. Written forms can help sustain that habit, but mediators also need opportunities to explore uncertainty and disagreement to enhance competence.

I feel I was only able to scratch the surface. Even though I felt like throwing my laptop and notes out of the window at various points, I have recovered, and I'm still as fascinated with the topic, if not more so!

Sharon O'Loan is an accredited mediator with senior leadership experience in the voluntary sector and higher education. She holds an LLM in Mediation and Conflict Resolution from the University of Strathclyde and serves on Strathclyde Mediation Clinic's Advisory Board. Alongside her Clinic practice, she undertakes workplace mediations, investigations and reviews, and works as a bid writer for Family Mediation West.

From the Chair…..



Sneha Selina Bonomally

The past two years of serving as Chairperson of the Mediation Clinic have been an incredibly meaningful part of my academic and professional journey. It has been a privilege to contribute to an institution dedicated to promoting dialogue, understanding and the peaceful resolution of disputes.

This experience has offered me invaluable opportunities to lead, collaborate, mentor and engage with the practical dimensions of mediation. More importantly, it has strengthened my conviction in the transformative potential of mediation as a means of resolving conflicts and fostering meaningful communication.

As I reflect on these two years, I do so with a deep sense of gratitude. My involvement with the Mediation Clinic has also coincided with an important personal milestone: the completion of my PhD. The experience has enriched my academic journey, shaped my perspectives, and allowed me to grow both as a scholar and as a professional.

However, every meaningful chapter must eventually make way for the next.

With my doctoral journey now complete, I find myself at an exciting turning point. Having spent years immersed in academic research and institutional responsibilities, I am now eager to devote my time and energy more fully to the professional practice of mediation.

I believe that the true value of knowledge lies not only in its acquisition but also in its application. The time has come for me to take the insights, experiences and lessons gained over the years beyond the academic environment and into the wider professional world.

[Serving as Chairperson] has strengthened my conviction in the transformative potential of mediation as a means of resolving conflicts and fostering meaningful communication.

Stepping away from the position of Chairperson is therefore not simply about concluding a responsibility. It is about making a conscious choice to create space for new opportunities, professional engagement and the practical application of the work to which I have dedicated so much of my academic life.

I remain deeply grateful for the trust, support and collaboration I have received throughout my tenure. The Mediation Clinic will always remain an important part of my journey.

I leave this role with gratitude for what it has taught me, pride in what it has allowed me to contribute and enthusiasm for what lies ahead.

This is not an *adieu*, but rather an *au revoir*. While my chapter as Chairperson comes to an end, my journey with the Mediation Clinic continues. I look forward to remaining

involved as a mediator and contributing to its work in a different capacity.

Some chapters are about learning and leading. The next one, for me, is about putting that learning into practice.

Sneha Selina Bonomally
Chair, Mediation Clinic

Sneha Selina Bonomally has just completed a PhD 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

How on earth can autumn be here already! It certainly has been a quick year for the Clinic.

Firstly, I'd like to congratulate our Student Assistant, Ryan, who has successfully completed his SACRO Community Mediation Training. Mediators will now see Ryan assisting with our Simple Procedure cases. Well done, Ryan!

We are delighted to have two students working with the Clinic as part of their studies this semester.

Leah is a fourth-year BA Psychology student with a particular interest in the interactions between parties. The Clinic will be able to provide plenty of opportunities for Leah to observe mediations and speak with the parties, giving her valuable insights into the mediation process and dynamics between those involved. Leah will be based in the office on a Monday.

We are also pleased to welcome Ava, a third year LLB student, who joins us each Tuesday for Semester 1. Ava is immersing herself in all things Clinic-wise, including speaking with parties, observing mediations both online and in person at court, and assisting with the administration. Our previous students have thoroughly enjoyed their placements at the Clinic, and we are delighted to be able to share our experience and knowledge with the next generation of students.

Mediators may also see some additional observers joining us this session. Students from the LLM Construction Law programme are required to observe a mediation as part of their Mediation in Practice class.

A huge thank you to all our mediators who are happy to accommodate observers. Your willingness to share your practice and experience is hugely valuable to those learning about mediation.

It has been a busy year for the Clinic since our new tranche of funding was released in April. We have already received nearly 300 referrals from courts across Scotland putting us on track to exceed the referrals we received last year.

Opportunities for in-person mediation at Falkirk Sheriff Court and Glasgow continue to grow. We hope to have information about further opportunities at Glasgow in the next issue.

Our peer support sessions are up and running and we encourage all our mediators to sign up to at least one session throughout the year. They really are a valuable safe space to talk through a case or issue and a good opportunity to connect with fellow mediators.

And finally, looking a little further ahead, we hope to have details by the next issue of *Mediation Matters!* about the next International Mediation Clinic Network Online Conference which we are aiming to hold in February 2027, so watch this space.

In the meantime, have a wonderful Autumn everyone, and thank you as always to all of our mediators and supporters for everything you do for the Clinic.

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 – Perceptions! Or jumping to conclusions!

by Patrick Scott



Patrick Scott

Jumping to conclusions! That probably best describes this ponder.

What happens when two parties each jump to conclusions, yet neither conclusion is the correct one? They may end up in court when neither of them should be there. Sometimes a person says something, and another person receives the information conveyed in a way different to what was intended. They put their own spin on it and react. The reaction is then perceived by the first person to be different to what was intended, and the exchange of information becomes a spiral of misinformation evolving into a vortex of dispute, with a resultant alienation of the parties towards each other and, sometimes, legal proceedings. Let me tell you about Trevor and the Triumph TR3.

Trevor had always aspired to own a Triumph TR3, particularly one that was in good condition and was reasonably priced. These vehicles did not come on to the market very often and, when one did, Trevor responded immediately. He sent a text message to Andrew, the owner of the car, and asked for more details. The price was £15,000 and, according to Andrew, the vehicle was in very good condition. A few more emails were exchanged and Trevor then said that he would purchase the car for £15,000. He believed that it was worth at least £3,000 more. The parties agreed that Trevor would fetch the car the following Wednesday, at 2pm. This was to allow Trevor time to get there as Trevor lived in Glasgow and Andrew in Birmingham.

Trevor was excited about buying the car and became impatient waiting for Wednesday. He decided to get the train to Birmingham the previous day so that he could collect the car early on Wednesday morning. Unfortunately, he did not tell Andrew of his plans, booked a hotel in Birmingham for the night and set off by train to collect his new acquisition. With most of the journey completed, Trevor received a text message from Andrew saying that he had changed his mind and no longer wanted to sell the car. Trevor was both angry and disappointed. He messaged Andrew back, informing him that he was on his way to collect the vehicle and not far from Birmingham. Andrew was not prepared to go ahead, and Trevor had to return home without his Triumph.

Trevor was angry and disappointed. He had incurred the cost of a hotel room and a train ticket. He messaged Andrew to inform him of that and said that he was looking to be reimbursed £200. Andrew was surprised that Trevor had not stuck with the arrangement to collect the car at 2pm on the Wednesday and believed that he was fully entitled to change his mind as he did not believe that they had concluded a contract. He refused any reimbursement. And things then went awry!

Trevor decided to sue Andrew, not just for the £200 for accommodation and travel, but also for a loss of value of £3,000, premised on the assumption that, if the deal had gone ahead,

Trevor would have paid £15,000 for a Triumph TR3 worth £18,000. Trevor believed that Andrew had changed his mind due to the fact that he wanted to sell the car at a higher price, whilst Andrew believed that Trevor was snatching at a bargain, to onsell the vehicle at a profit. Two very entrenched parties commenced the mediation…

During the course of an hour or two, these two parties slowly started to realise that they had formed a view of the other party's intentions, creating a certain perception which led them to a conclusion that, during the course of the discussion, they discovered was incorrect.

Trevor believed that Andrew had cancelled the sale and had breached the contract as he had realised that the vehicle was worth more than what Trevor was paying. This made him angry, particularly since Andrew showed no remorse and refused to reimburse Trevor's travelling and accommodation costs.

Andrew was disappointed and dismayed that Trevor was buying the vehicle to make a profit on it. During the mediation, the true picture emerged…

Andrew had been given the car years ago by his late wife as an anniversary present. He was emotionally very attached to the vehicle. Due to his advancing years and his declining health, Andrew found it increasingly difficult to get in and out of the vehicle. With deep regret, he decided to place it on the market. As Wednesday drew near, Andrew didn't have the heart to continue with the sale and, with great reluctance, messaged Trevor to tell him the news. He believed that he was entitled to change his mind and that there would be no inconvenience to Trevor as he was only collecting the car the following day. Andrew was initially comfortable selling the vehicle to Trevor as he believed that Trevor would cherish the car as he had done. When he received the court papers and saw the claim for loss of value, he immediately jumped to the conclusion that Trevor had deceived him and was only buying the vehicle so that he could sell it at a profit.

Trevor had always wanted a Triumph TR3. And when he saw Andrew's car advertised, it was a dream come true. The vehicle had clearly been well looked after over the years and was in better condition than any other Triumph TR3 that he had seen. And the price was affordable to him. When Andrew sent him the message cancelling the sale, he was not only disappointed but believed that Andrew had realised that he was selling the vehicle at less than its true value and wanted to sell it at a higher price. Trevor was out of pocket by about £200 but threw in a loss of value claim as a result of his anger, believing that that would teach Andrew a lesson.

When the true picture unfolded, and each party realised that what they had initially perceived the position to be was incorrect, a settlement followed easily. Would this prevent these parties from jumping to conclusions in the future? Maybe, or maybe not, but they at least saved spending a day in court.

Patrick Scott completed the LLM in Mediation and Conflict Resolution course at the University of Strathclyde 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 Scottish Legal Complaints Commission (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.

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!

The statistics tell us that most mediation sessions result in a settlement being agreed, which we generally consider a positive thing. After months, sometimes years, of sleepless nights, stress and worry, the parties have come to some sort of resolution, which in many cases can put an end to negative and draining emotions.

A consequence of this is that we as mediators get a lot of practice at debriefing 'successful' mediations. Many of us will recognise the often metaphorical sigh of relief as the parties understand that the situation has resolved. They may not have got everything they wanted… but it's over. Catharsis clears the clouds. Postures relax, smiles return to faces, humour re-enters the space; the guards are let down, and emotionally weighty masks are removed.

The mediator thanks the parties for their good-faith behaviour in the session. They compliment their ability to navigate the challenges that conflict brings, praising the empathy and reasonableness on display. We acknowledge the difficulty in attending the session in the first place, highlighting how it was all worth it in the end, pointing to the agreed resolution as evidence.

This happens without effort. None is required because the mediator is feeling positive about the situation, and that positivity is being reflected back by grateful parties. This, I would argue, is the most common culmination of a mediation session, and so we get to practise, time and time again, letting everyone leave the space with some sense of hope and happiness.

What, however, if the mediation was not successful? What if it was a painful experience that did not result in settlement, where hope is in short supply? How should we end a mediation session where everyone feels terrible?

This is not a hypothetical question. I would really like to know.

I recently had a mediation between an adult child and their estranged parent. It was extremely challenging. Whilst I had been led to believe the mediation was intended to rebuild a strained relationship; this did not seem to be the priority within the session itself. It quickly became an exchange of insults, ad hominem attacks and deeply personal accusations. There was a lot of history in the room, and very little willingness to put it to one side. It felt more like an opportunity to have one final and

devastating say, rather than rebuilding a relationship.

I managed the mediation as best I could. I am not particularly critical of how I facilitated the session itself, doing the best I could to encourage more constructive dialogue in what was a situation marked by history and deep-rooted emotion. My self-critique comes into play when I consider how the session was ended.

Left alone with one of the parties, I found myself desperately searching for positive things to say, emulating my typical ending to a mediation. I wanted to leave them with something positive. Some recognition of the effort they had made. Some sense that their decision to attend had been worthwhile. Some hope that things could be different.

But I couldn't honestly say that.

There had been no breakthrough. There was no agreement. The relationship hadn't been repaired. In fact, it felt considerably more damaged than it had been at the beginning of the day – if that was possible.

And yet, I found myself reaching for the same language I would normally use. I was trying to find the positive because that is what I am used to doing at the end of a mediation. I wanted to reassure them that they had done well, that they had made progress, that something good had come from the experience. As I went to say these things, the words didn't come out.

I remained silent for a long time; as did they. This wasn't the strategic silence that mediators often deploy, I really didn't know what to say. The weight of the situation hung oppressively over the room.

After several minutes of quiet I chose to say the only thing that made sense to me at that time.

"That seemed really difficult."

"Yes, it was, thank you." came the response, before they exited the space; crying.

Was that the right thing to say? I'm not sure.

Perhaps the most important thing is to recognise that how we end a mediation matters, regardless of the outcome. I'm still figuring out what that looks like in practice, and I would be interested to hear how other mediators approach these moments, particularly when a mediation has been emotionally demanding and no agreement has been reached. So please let me know!

Alan Jeffrey is the senior mediator at Cyrenians Mediation and Whole Family Support service with over a decade of experience in the area of conflict resolution. As a graduate of the MSc in Mediation and Conflict Resolution, Alan maintains a relationship with the University of Strathclyde in his role as one of the lead mediators with Strathclyde Mediation Clinic.

Mediation Clinic at University of Strathclyde

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