

Mediation Matters!

The quarterly newsletter of the
University of Strathclyde Mediation Clinic

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University of
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Editorial



Patrick Scott

*Spring has sprung, the grass has ris',
I wonder where the birdie is?*

It may be a bit optimistic to say that spring is here. Perhaps one can say that spring is trying to arrive. At least the storms have passed, and the temperatures have risen.

Welcome to another issue of **Mediation Matters!**

Following our thought-provoking and very enjoyable Clinic Conference in March, this was going to be our **Conference Issue** but, due to time constraints, the Conference presentations will appear in the next issue. However, we do have a short summary of the keynote speaker's presentation and two reviews of the Conference by Alan Millar and Linda Oparah, which we hope will be a teaser for the next issue.

We have the usual contributions, with **From the Director** focusing on a very important aspect of mediation - its value to the parties and the courts. In **From the Chair**, Andrew Boyd gives an overview of the work being done by the Board, who need to be thanked for the time that they spend ensuring the smooth running of the Clinic. Pauline McKay's **Clinic News** provides an update on the work being done in the Clinic, especially the effort to promote mediation in the Sheriff Courts. Rosie McBrine, in **Rosie's Roundup**, provides some insight into the day-to-day running of the Clinic, and we hope that Rosie will continue with her Roundup in future issues.

Our assistant editor, Adrienne Watson, covers two interviews in this issue - one with Dave Pascoe on the topic of **Restorative Justice**, and the other with **Tom Scade on his dissertation**, which deals with mediation ethics and the development of a common paradigm acceptable to all mediators in the profession.

Tom Scade, who served on a sub-committee of the Clinic Board to develop a **Code of Practice and Standards for the Clinic**, provides a useful overview of the thoughts behind the Code and the methodology in developing it.

Aunt Minerva adds her usual touch of humour to the newsletter and I discuss Breaking Down Policy Barriers in **Patrick's Ponderings**. I also review a very entertaining book, **Stories Mediators Tell**.

I hope that you enjoy the content and, until next issue, happy mediating.

Patrick Scott

Editor

From the Director



Charlie Irvine

In the midst of a troubled world the Mediation Clinic's work in small claims can seem minor. And yet a well-functioning civil society is less likely to fall prey to cynicism and extremism; each time we help people resolve disputes in a non-violent, consensual way we make a valuable contribution.

Just how valuable was brought home to me as I helped prepare our second full-year's report for Scottish Government. In 2022, the Justice Directorate began funding the Clinic to provide free mediation in Simple Procedure cases, and we are pleased and relieved that this is continuing for another year. Their [Vision for Justice in Scotland Three Year Delivery Plan 2023-24 to 2025-26](#) says this:

We will work in partnership with the University of Strathclyde Mediation Clinic to expand the availability of mediation services within the civil justice system to give our citizens, businesses and organisations access to flexible, and affordable and less stressful means of settling disputes, benefitting them and saving time in court.

In a plan almost entirely devoted to criminal justice, it's pleasing to read this rare paragraph on civil disputes. All the same, I started wondering if we have any evidence for these claims.

Saving time

To start with the last point, do we know that our work saves time in court (not to mention cost)? Well, in the year to April 2024, the Clinic mediated 199 cases across 22 courts, and 132 of these settled. Sixteen more settled without mediating. This means that at least 148 Simple Procedure claims will not require an evidential hearing after being referred to the Clinic.

Some time ago, I started attempting to calculate what these reductions might mean in terms of time and money. We are woefully short of data about Scotland's courts, so the average length of an evidential hearing can only be an educated guess. Having observed a couple of hearings, I've opted for two hours (although this doesn't take account of the hours parties often spend waiting for the hearing to begin). If this is close to reality, then our work saved just under 300 hours of court time. For a system dealing with a significant backlog of criminal cases this is no small benefit.

Turning to the cost of court time, again I can find no publicly available information. The closest is research carried out by the Law Society in England and Wales for 2016/17.¹ Its "cost of a day in court" came in at £2,692. Assuming that Scotland's costs are similar, and using the Bank of England's inflation calculator, in 2024 this would come to £3,537 per day, or £1,414.80 for two hours, with the standard court day being five hours. Not all cases proceed to a hearing, so I have assumed only four out of five get that far. This would point to a saving to the Scottish Courts and Tribunal Service of (£1414.80 x 148 x 80%) = £167,512.32.

Flexible, and affordable and less stressful

Turning to the less measurable benefits of mediation, what do we know? The Clinic asks participants to complete a feedback survey after each case, although we have never asked about stress or flexibility. However, some comments touch on this; for example:

- *It was a very positive experience, the principles of which I hope to use in other areas of my life*
- *Achieved a solution quick, stress-free and easy*
- *I thought [mediator] was very friendly and welcoming, and made the overall stressful process very simple and easy to understand*
- *Both [mediators] had excellent communication skills and all of my concerns were summarised accurately. I felt they were both impartial and cautious with their advice. I felt very comfortable with the whole process which was unexpected*
- *Both mediators were extremely professional throughout the session*

We receive many more comments in the same vein. Not all are as complimentary, however, and I've included some of these to illustrate the challenges of mediating civil disputes. A good number of participants may not want to be there and find their adversary's behaviour distasteful:

- *Partial payment which I felt I had to accept. It gives the impression that the general public have the right to demand how much they want to pay for bills rather than for work received*
- *The mediation achieved [the other Party] getting money out of me which was what she wanted*

Those who did not reach a resolution were particularly unlikely to view mediation positively:

- *The mediation didn't achieve anything given the respondent was not willing to negotiate. It simply gave the respondent a platform to degrade me with no factual proof*

- *As no legal position was given we are no further forward. In fact claimant has increased his ask from final bill*

The contribution of online mediation

Despite this, an important new finding is the positive role played by remote mediation. Since the pandemic, mediators have tended to assume that, while Zoom offers some practical benefits, it will always be second best; face-to-face meetings are the 'Rolls-Royce' of mediation. A number of comments suggest the opposite:

- *Found it to be a more relaxed atmosphere being in the comfort of my own home*
- *I was very nervous and anxious. Doing Zoom from home made me feel more comfortable*
- *I felt at ease in my own home*

Some appreciated the relative safety of remote mediation:

- *It was safer*
- *Zoom was much better due to friction with the Respondents*
- *[The other party] is a very volatile person so it was less threatening to do this over zoom where I didn't have to be in the same physical room as them*

And it's little surprise that a good number cited convenience:

- *I think this worked quite well and I didn't have to travel which would have meant even more loss of earnings when I already had to lose earnings as things stand*
- *It was more convenient and you could be more open about matters*
- *We are 100 miles from Glasgow*

Concluding thoughts

These comments hint at some of the wider benefits often attributed to mediation. Although legal disputes are inherently stressful, and for some people they are simply horrible, it seems that mediation is less daunting than court. And for claims with a value of no more than £5,000, it is clearly a major advantage to remove travel time. Add to that the saving in court time and cost, and it seems reasonable to accept Scottish Government's claims for mediation. I'd like to thank all the Clinic mediators for their energy and professionalism, and look forward to the year ahead.

Charlie Irvine²

Director, Mediation Clinic

¹ <https://www.lawsociety.org.uk/topics/research/cost-of-day-in-court-new-analysis-by-law-society>

² **Charlie Irvine is the Course Leader on the University of Strathclyde's MSc/LLM in Mediation and Conflict Resolution and 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 has recently completed his PhD research into mediation participants and their reasons for settling.**

From the Chair



Andrew Boyd

With the April issue of *Mediation Matters!* now in circulation, hopes are high that the cold and damp winter weather eases and that milder, drier weather dominates. We remain hopeful! The three months since the last issue of *Mediation Matters!* has passed quickly and it has been a busy time for your Board.

We recently held our Clinic Conference, and you will read more about this elsewhere in this newsletter, and the presentations will be published in the July newsletter. Events like the Conference do not just happen, and much time is spent making the Conference the success that it was. Thanks go to all those who contributed their time to help with this event, both in organising the Conference and by helping on the day, with special thanks due to Rosie and Pauline.

All Clinic members will now have received the updated *Mediation Clinic Practice Standards and Code of Practice*. We are grateful to the Board members who have spent significant time contributing their expertise to produce it and I would urge all Clinic members to read this document, which clarifies the responsibilities for both lead and assistant mediators. Tom Scade, who served on the sub-committee tasked with preparing the document, writes about it in this newsletter.

Part of our Practice Standards is the obligation that mediators should keep up to date with current best practice. One way of helping to keep updated is to attend Peer Support Sessions. These sessions provide a forum for discussion about queries that we have, whether about mediation in general or that have arisen in relation to specific cases. The sessions are carried out in a safe space with a facilitator helping those attending to share and discuss, both what has gone well and what might have been done differently. I have found these sessions very helpful, and I would urge you to sign up.

In February, I attended our first online Coffee Morning, which I thoroughly enjoyed. It was great to chat with colleagues old and new, and to catch up on what was happening with them. The Clinic also runs in-person coffee mornings, so watch out for these events.

We are fortunate to have in the Clinic, and specifically on your Board, a truly international input of expertise. When we hold our monthly Board meetings, the Board members sign into Zoom from across the globe and we are grateful for their input, sometimes having to join meetings at unsociable hours! On the theme of our international input, the Clinic has set up the *International Mediation Clinic Network*. Meetings are held online and, as the name suggests, those attending are either already running Mediation Clinics or hope to do so, with the meetings being a great chance to share how clinics are run in different parts of the world. We have benefitted from hearing about other clinics, as they have from ourselves.

Finally, I want to touch on the Clinic's *Strategic Plan 2023-2028*. This document shapes what we do as a Clinic and how we do it. Our monthly Board meetings have recently been restructured to reflect our Strategic Plan and at our Board meetings we focus on our four objectives. Our first objective is to **Educate** students, the University, the public and the legal profession about the benefits of mediation. Secondly to **Collaborate** with all our stakeholders in a co-operative manner. Thirdly to **Strengthen** when appropriate, our relationships with the University and with the civil justice system. Our fourth objective is to **Develop** and to be prepared to be challenged and to challenge ourselves to do things differently and better, for the good of all. There is further detail contained in our Strategic Plan which in a formal way details 'How we do things round here!'.

All the best and I hope that you have a conflict free summer!

Andrew Boyd¹
Co-Chair

¹ **Andrew Boyd completed the MSc in Mediation and Conflict Resolution at Strathclyde University in 2013. Andrew has been volunteering with Strathclyde Mediation Clinic since its inception in 2011 and is currently a lead mediator and co-chairs the Strathclyde Mediation Clinic Board.**

Clinic News



Pauline McKay

Thank goodness for Spring! This season brings with it a sense of renewal, with fresh opportunities for growth and an overall feeling of positivity. The brighter mornings and evenings are also helping here in Scotland!

Our recent [Learning Through Practice Conference](#) was a

resounding success, drawing participants from across the globe including the USA, Austria, Germany, Ukraine, Nigeria, Poland and Australia! Participants should have received access to the recordings by now and I am currently catching up on the workshops I missed. I was delighted to contribute to the workshop sessions, which offered a diverse array of topics, models, and perspectives to learn from. The enthusiasm generated by the conference has ignited further interest in the *International Mediation Clinic Network*, extending our worldwide reach. Please do get in touch if you would like more information.

Closer to home, Rosie and I have been actively engaging in person with Sheriff Courts in Greenock, Paisley, Glasgow, Alloa, Stirling, Falkirk and beyond. These visits serve to introduce ourselves, promote our services, and provide valuable information to court staff and clerks. It has been a fantastic way to connect with courts who share our enthusiasm for mediation and put faces to names along the way.

We are currently piloting in-person mediation sessions for Simple Procedure at Paisley Sheriff Court from mid-April. This service was offered to courts pre-pandemic. Our mediators (lead and assistant) will attend the in-person case management hearings and the Sheriff can refer a case for on-the-spot mediation. We may have the capacity to offer this at other courts and will review this regularly. We will have more to report in the next issue.

We have also been advancing collaborations with other educational institutions across Scotland. Already, we have student mediators from other universities supporting cases, so partnerships are off to a promising start.

We are also excited to present a Clinic overview to the incoming [LLM/MSc Mediation and Conflict Resolution](#) cohort and any other interested parties. This presentation will highlight the unique benefits of our

programme at Strathclyde and the invaluable practical experience it offers. This should take place around May/June 2024. If you are interested in studying with us at Strathclyde, please contact mediationclinic@strath.ac.uk for further information.

Our intake call training continues, thanks to the dedication of our undergraduate and postgraduate volunteers. We appreciate the time you invest and hope that the experience proves enriching as you continue to grow and learn. Your assistance is invaluable.

Finally, we are gearing up for this year's Scottish Legal Awards submission. We may reach out for information, and we will keep everyone informed about our progress. Your patience and support are appreciated.

Here's hoping the spring season brings you joy, light, and purpose. Happy mediating!

Pauline McKay¹

Co-ordinator, Mediation Clinic

¹ **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.**

Rosie's Roundup

by Rosie McBrine¹



Rosie McBrine

Having read and enjoyed the previous editions of *Mediation Matters!*, I am pleased to have been invited to contribute. I started at the Mediation Clinic in November 2023, after completing my undergraduate studies in Social Policy & Education.

Whilst I had had enough of studying, I don't think I was ready to part ways with university life! I had limited knowledge of the 'World of Mediation', so I was looking forward to starting a position which allowed me to work with, and help, the wider community, and I was fascinated by what could be offered to parties in dispute.

In my first few days I began carrying out a few intake calls and getting to know the procedures of the Clinic. Whilst I have been carrying out several intakes a week since, I still find each and every one to be interesting and different. I have also been working closely alongside the mediators and observing several mediations. It has been interesting to see a variety of approaches to mediation, and it has been even better that all of the mediations I have been able to observe have settled (or at least, partially).

In addition to the day-to-day administration of the Clinic, I have enjoyed visiting courts and speaking with staff that deal with Simple Procedure, organising and attending our 4th Annual Mediation Clinic Conference (although I won't go into that as I know that there is plenty more on this throughout this issue!), taking part in distressed caller training, and finally, organising our latest get-togethers of Mediation Coffee Mornings.

As Pauline and I are the only full-time staff at the Clinic, the office is quite quiet (visitor-wise, not work-wise!)... I recently organised our first *In-Person Mediation Clinic Coffee Morning* where it was great to meet a number of mediators in person over a cuppa. There was some mediation talk, and some non-mediation talk, but it was just great to meet people in person. Whilst it is beneficial for most of our mediations to take place online, it is great for both Pauline and me to have visitors in the office.

Writing this article has really allowed me to reflect on the past few months of working in the Clinic, and understanding what I can contribute to, and what I have learned, within the Clinic.

Rosie McBrine¹
Service Delivery Administrator

¹ ***Rosie McBrine started as Service Delivery Administrator with the University of Strathclyde Mediation Clinic in November 2023. She graduated in Social Policy and Education at the University of Strathclyde in July 2023, whilst also working part-time for Aviagen UK Ltd as a Marketing Assistant alongside her studies.***

Learning from Other Practices: Restorative Justice

What can mediators learn from the practice of other professionals?

By Adrienne Watson¹



Dave Pascoe



Roy Poyntz

Restorative Justice (RJ) practitioners bring together people who are linked by a harm, which has been perpetrated by one party upon the other, in a voluntary and confidential 'conference'. Unlike mediation, RJ practitioners do not aim to find a settlement which both parties are prepared to live with, but they work with the parties to try to address the impact of the harm on the 'victim', their loved ones or the wider community.

In mediation, we may use terms such as 'claimant' or 'respondent' to describe the parties, but we try not to imply any preconceived judgment of each party's role in a dispute. However, the parties in RJ are defined according to their relationship to the harm or crime. One party is the 'offender' or 'person who has harmed', while the other party is the 'victim' or 'person who has been harmed'. As mediators, we may wonder how this explicit categorisation of the parties affects their power and behaviour within the RJ process.

Last year, Dave Pascoe² (an RJ practitioner) and Roy Poyntz³ (a mediator) found themselves discussing their approaches to risk assessment and risk management. While their approaches had similarities, they discovered some interesting differences.

Adrienne Watson met with Dave to discuss RJ practice and what it might offer mediators who are working with particularly conflicted parties. Roy Poyntz has also shared his reflections on Dave's interview.

[RJ and mediation at Restorative Solutions](#)

I joined Restorative Solutions in North Yorkshire in 2019 as an RJ practitioner. RJ cases for assaults, burglary, theft, death by dangerous driving, manslaughter and murder cases were referred to us via the police,

probation, local authority and self-referrals to name a few. Community Safety Hubs (CSHs), which are multi-agency teams dealing with a wide range of community concerns such as anti-social behaviour, littering, shoplifting, underage alcohol sales and public order around sporting events, would refer to us but issues such as neighbour disputes and conflicts would generally be referred by the CSHs to the service run by Arch Mediation.

When the directors of Arch Mediation retired, I was given oversight of all the RJ and mediation cases. The mediators began to discuss their concerns about particular cases with me. For example, if a case involved an assault or criminal damage, the mediators might be uneasy about meeting the parties face-to-face.

Some cases referred to mediation seemed to be more appropriate for RJ because a crime had been committed, whether it had been reported to the police or not.

I'm not a trained mediator so we work closely with our volunteer mediators and the parties to assess whether each case is more appropriate for RJ, mediation or, if the wider community is affected, community conferencing. Ultimately, we need to ensure that our mediators are comfortable taking on a particular case.

We find that more people are familiar with the idea of mediation than RJ, some refer to an RJ meeting as 'mediation'. I make it clear to the parties that we are not going to mediate between them, and that RJ is a completely different process.

[What Restorative Justice offers the parties](#)

Victims and their loved ones often feel isolated and vulnerable when dealing with the criminal justice system. They may be left with feelings of rage and anger, and be tormented by questions which weren't answered in court. When we offer RJ to victims, they often see it as a chance to tell the offender about the impact of their actions or to get their questions answered. For example, a mother whose son was killed in a fight needed to know exactly how her son had been behaving before the fight, and the offender was able to explain the circumstances and give her some peace of mind.

For an offender, who might be feeling ashamed and angry at themselves, we might explain that the victim/family members could benefit from a conversation. Even if the harm cannot be undone, the one good thing the offender could do is to answer their questions, allowing them some closure and to move on from the harm.

RJ risk assessments

We talk about risk assessment from our initial meetings, safeguarding the practitioner, safeguarding the parties involved, and ensuring that future offenders or victims who might hear about RJ will feel they can trust us.

We have specific Risk Assessments for harmers/offenders and those who have been harmed/victims. These detailed forms are completed with the parties before any in-person meetings. Risk assessment is an ongoing process which is reviewed regularly throughout the RJ process. If any new risks emerge, appropriate control measures will be introduced to minimise the risk of harm to everyone involved.

Some of the risks we look at in RJ overlap with the risks that mediators also face, such as meeting with people who are in conflict, where any triggers during the process can create risks to the parties and practitioners.

We assess the needs, concerns and expectations of the parties, so we can manage any conflicts which arise from these.

From the risk assessment findings, we put appropriate controls in place so we can bring the parties together safely in a face-to-face conference, where everyone can engage with the difficult issues to be confronted.

Management of the risks includes practical steps such as ensuring we have a safe breakout room, replacing the in-person conference with an online conference or a shuttle exchange of verbal information or letters. Another essential stage is preparing the parties so they know how the conference will work, they are clear about what they want to achieve and they have confidence that the practitioners will keep them safe.

Risks to practitioners and parties

Initially the risk assessment is concerned with the practitioner's first meeting with a party, which is usually in the party's home. We look at the availability of safe parking nearby, the local crime rate, anti-social behaviour issues, the presence of potentially dangerous dogs or other people in the home who might present a threat to the practitioner. When visiting an offender, we would

check whether they are still on probation or on the sex offender register. If there are concerns about visiting a home, we would arrange to meet somewhere more public, such as a library or community centre. We would also send two practitioners to the meeting and put a plan in place to keep in contact with them and to take appropriate action if we don't hear from them at an agreed time.

When we are planning the in-person RJ conference, we will assess the potential physical risks to the parties and the practitioners. We would also consider the risk of emotional harm to the parties. In particular, we would assess the risk of a victim being re-victimised by the offender's words, attitudes and behaviours.

When can RJ take place?

The timing of RJ is important. Sometimes we get a case, and the risk assessment might indicate that it is too soon after the harm for a victim to take part in a conference. In that case, we would follow up a few months later to see whether the time was right. We don't believe it is ever too late for RJ to be used, in one case we supported a victim to obtain answers from the offender, then serving a prison term, who had harmed them 30 years previously. An individual's needs are our priority, and we will work with them to assess those needs and the opportunities for those needs to be met, however long it is since the harm was committed.

The impact of language

One important element of preparation for an RJ conference is helping the parties to consider how their words will impact on the other party. We encourage them to focus on what they are hoping to achieve from the process and whether their words will help or hinder them in this.

If an offender wants to apologise to a well-spoken victim, but the offender's language is full of choice words, we might ask them whether speaking in this way is likely to help the apology being accepted or may further upset the victim. We would then support the offender in choosing language that might be less offensive to the victim.

One example I had was when a family member had many questions they wanted the offender to answer. One question was "What is it like to be a paedophile?" We explained that the offender could perceive this as a direct attack and might walk out, leaving the person's other questions unanswered.

In these circumstances, we don't try to put words into people's mouths, but we might ask "Will the wording of your question help you to meet your overall needs?". In this case, the question was rephrased as "How do you feel about having to sign the sex offender register for the rest of your life?" which is more likely to result in the offender continuing to engage with the process and providing answers to all the questions.

Initially in this case, which related to child abuse, the family member was extremely angry and there was no way we would have put her in the same room as the offender. However, over a period of 13 months we spoke regularly to help her consider what responses the offender might make and how that would affect her. We also worked through many possible scenarios using virtual conferencing, over three or four sessions. Role-playing often helps the parties to feel more prepared and less stressed when they are brought together, which is a much better starting environment for everyone.

We kept updating the risk assessment and eventually we reached a point where there were sufficient measures in place to safeguard everyone and we went ahead with a face-to-face conference.

Building trust with the parties

When I meet a party for the first time, I'm very open about who I am and what my background is. I tell them that I used to be a police officer because, if people look me up, they will quickly find out my background and may assume I was hiding my police links. I will explain exactly what my current role is and that I am there to support both the offender and the victim. I have to be open, honest and transparent with people because, if I'm not, they will find out, and then the whole process can collapse. If this happened, I would feel that I'd let the victim down.

I also share a bit about myself, such as my general family circumstances or sporting interests. This starts to build a relationship of trust between us, where the parties feel more comfortable discussing very sensitive and emotive issues with me, which is essential to the success of the conference.

Preparing for strong emotions

If we ask the parties how they are feeling shortly before a conference, a victim may say that they are anxious and angry – when we speak to the offender, they might say they are frightened, angry at themselves and ashamed. The

emotions will reflect the original offence, as well as the parties' concerns about coming to the conference where they will meet the other party.

If a victim is extremely angry and will be very vocal in the conference, I will need to prepare the offender for this. For example, with a convicted offender who had caused a road collision in which two teenagers died, I told the offender that the parents would need to unload their emotions, but that I would ensure there wouldn't be any physical or verbal abuse. I also explained that, while the offender could not bring back the young people, they could provide answers to the parents which would help them to begin grieving properly.

If the offender has been properly prepared, they might come out of the conference saying "It was tough, but I was supported throughout the process and I'm glad I did it". However, if an unprepared offender is faced with an angry victim, they might leave the meeting and return to the prison landings telling others "Don't ever do RJ". This might then be failing other victims who could have been helped if their offenders had agreed to take part in RJ.

We need to manage those emotions and support the parties in getting to a place where the important questions can be asked and answered. So, being impartial and very non-judgmental helps us to facilitate people getting the answers they need - helping an offender to answer those questions is key to the success of the whole intervention.

By building a trusting relationship with the parties prior to a conference, it is easier for us to manage difficult emotions and behaviours when they emerge. We may need to take one party to a breakout room for a private chat, where they can calm down and get a drink until they are ready to return to the meeting. Usually, the practitioner who has built the strongest relationship with an angry party will take them out of the room, while the other practitioner stays with the remaining party.

When the parties should not be in contact

We always prefer face-to-face meetings as they can be the most impactful. However, if the risk assessment finds that it is unsafe for the parties to be put together face-to-face or online, we would facilitate a shuttle (we pass information verbally) or exchange of written communications between the parties.

However, the risk assessment may indicate that the risks are too great to facilitate any contact between the parties.

In this case, we will explain the reasons to the parties and will go back to them after a couple of months to see whether the circumstances have improved.

What successful RJ can achieve

The impact of RJ can be amazing. The victim I mentioned, who met their offender 30 years after the offence, came out of the meeting saying "I felt empowered, and I took back what he took from me. For the first time in my life, I feel like I've got a future..."

The impact of RJ isn't always immediately obvious, a few months down the line someone might contact us and say "Oh my goodness! I can't believe how different I feel... My life's changed... I'm not carrying that anger and emotion that I had prior to the RJ process."

A successful RJ conference, where the parties have communicated well, and we see the victims start to move on positively from the harm, is very rewarding for us. To see offenders change their ways and embark on a law-abiding future is equally rewarding.

Roy Poyntz' reflections on Dave Pascoe's interview

Having also done some RJ volunteering – with Restorative Solutions - I echo what Dave has written. Victims often feel let down by the criminal justice system, their voice unheard, explanations unforthcoming. I've seen the potential of the conference to enable victim and offender to have a dialogue with each other; in (transformative) mediation terms to be empowered and show recognition. The labels 'victim' and 'offender' are important in addressing the potential for harm but that does not preclude the potential for both sides to benefit from the interaction, to find their own healing.

In managing the risk of harm, Dave talks about preparing each party for what the other might say and their reaction to what might be said to them. That degree of coaching is something I might do in pre-mediation – particularly in a community mediation – but only if appropriate and not automatically.

The RJ process moves at a considered but slow pace which can be a challenge for the volunteer, especially when a case dwindles to a halt. In my (main) practice as an SEN mediator, cases are prepared, done and dusted within a two-week period.

Dave mentions shuttle and written processes as a fallback position if a conference is not tenable. Are these

techniques applicable in mediation? Shuttle is certainly deployed in commercial mediation. Indeed lawyers may expect caucus (private) sessions to be used in preference to plenary (joint) sessions. I've seen shuttle used as a last ditch effort in neighbour mediation, but with limited success. Why the difference? I suggest it is a choice between a transactional or a relational approach to mediation - which is fit for purpose? Which is the mediator offering?

I would certainly recommend mediators to consider volunteering for RJ. You have the core micro-skills to function effectively, it creates a rich opportunity for reflection (on both sides), and it is a socially useful service.

¹ **Adrienne Watson trained as an Accredited Mediator in 2016. She recently completed the MSc in Mediation and Conflict Resolution at the University of Strathclyde. Adrienne is a lead mediator with Strathclyde Mediation Clinic and is Assistant Editor of the Mediation Matters! newsletter.**

² **Dave Pascoe was a police officer for 27 years following service in HM Armed Forces. Much of his career was in the Firearms Unit. On transferring to a community policing role in 2007 and undergoing RJ training, he initially considered that RJ was just a soft option for offenders. However, as Dave started using the process and witnessed RJ's positive impact on the victims of crime and the wider community, he delivered more and more interventions to support both victims and offenders. Following his retirement from the police service in 2019, he joined Restorative Solutions in North Yorkshire where he is now their Service Delivery Manager ([Home | Restorative Solutions](#)).**

³ **Roy Poyntz has been a mediator since 2006, practicing in the fields of commercial, community and Special Education Needs mediation. He completed the Strathclyde MSc in Mediation and Conflict Resolution in 2012 and a PhD examining mediation as social interaction in 2018. He has volunteered with Restorative Solutions in West and North Yorkshire since 2016.**

The Development of the Practice Standards and Code of Practice for Strathclyde Mediation Clinic

By Tom Scade¹ (in consultation with Linn Phipps)



Tom Scade

Background

I have been asked to write a short article on the process of developing a Code of Practice and Standards for the Mediation Clinic. This article was prepared at short notice, but I have consulted with Linn Phipps during its preparation to ensure accuracy.

The Mediation Clinic Board wished to formalise the Practice Standards and Code of Practice to be used by Clinic mediators. This task was allocated to a Standards Sub-committee consisting of Linn Phipps, Irene Murray and Tom Scade.

This was done because it was felt that, as part of the process of quality assurance within the Clinic, it was important to define the Code of Practice which outlines the core ethical values we operate under, and the Standards we use to maintain quality.

This was felt to be of benefit to:

- *mediators looking for advice*
- *the Mediation Clinic and Scottish Government looking for reassurance of standardised high quality mediation practice and the maintenance of the quality of that practice*
- *those being mediated.*

Methodology

1. Initial research

a. Review of other codes of Practice and Standards

We reviewed various codes of practice in use today,^{2, 3, 4} and we reviewed the debate which there has been about impartiality and neutrality in mediation especially in cases where power imbalance exists.

Our review included a limited review of the literature surrounding the preparation of Standards and Codes of Practice in Mediation. A useful book on this subject is 'A Theory of Mediators' Ethics' by Omer Shapira who conducted an extensive review of mediation standards in USA, Canada and Australia.⁵

b. Review of Scottish Mediation Standards and Code of Practice and how these might interact with practice in the Clinic.

We reviewed the current Scottish Mediation Standards and Code of Practice and noted that Scottish Mediation are in the process of updating these. The last Code of Practice was published in 2008 and the most recent standards document was published in 2021.^{6, 7}

These Standards are aligned to the European Code of Conduct for Mediators.

We decided to use these as the basis of our Code of Practice and Standards Documents as outlined below.

2. Discussions on the important issues

Our discussions centred around five topics:

a. Should we carry out this review when Scottish Mediation are in the process of undertaking their own review?

We decided to progress with our review as we know from experience that these processes move slowly, and it was felt we should create our document as a reference point, in the knowledge that future review would be required if there were significant changes to the Scottish Mediation Code of Practice and Standards. We felt a current reference point was required as the Clinic is increasingly involved in the Justice system in Scotland. We have been funded by Scottish Government to supervise the provision of mediation services, in collaboration with other centres, to the majority of Scottish courts, and it was important to define exactly how we practice for the benefit of Scottish Government and the court system.

b. Should we create a completely new document with reference to Scottish Mediation documents or should we create a document based on the template of the Standards and Code of Practice of Scottish Mediation, but tailored to our Clinic Practice?

We chose the latter as we did not feel the need to reinvent the wheel and all lead mediators within the Clinic have to be accredited by Scottish Mediation and as such have to follow Scottish Mediation's Standards and

Code of Practice. We were assisted by Scottish Mediation who gave us word templates of their documents on which we created our Clinic documents. We did add extra points pertinent to our Clinic activities.

c. Discussion of the dual function of the Clinic

The Clinic performs both an educational function in allowing students on the Mediation and Conflict Resolution Course to observe and assist in real mediations, and a practical function for Scottish Government by providing mediations in Simple Procedure cases referred by Sheriff Courts. We therefore had to tailor our document to ensure that it:

- *provided a full understanding of the Standards required by Scottish Mediation.*
- *provided a full explanation of the specific CPD required for Mediators dealing with Simple Procedure cases.*
- *clearly detailed the theoretical and practical training requirements for students, who wish to progress from being observers, through assisting in mediations, to becoming lead mediators.*

d. We discussed the debate about the insistence of neutrality and impartiality in Western mediation

Almost all mediation codes of practice in the Western world contain impartiality as a prime ethical value. However, if one looks at the literature on mediation, a significant debate on the ethical value of impartiality has been ongoing. This centres around whether mediators have a duty of care to weaker parties in mediations to protect and support them where there is power imbalance present, and whether other values such as concentrating on ensuring self-determination supported by providing fully informed consent should replace this as the prime ethical value. A useful article for those interested in this debate is by Noone and Ojelabi, *Ethical Challenges for Mediators around the World: an Australian Perspective*, which discusses various ethical issues in mediation and specifically covers the neutrality and self-determination debate.⁸

The literature suggests that, in cases of power imbalance, significant numbers of mediators at times depart from absolute impartiality to support weaker parties.

There are some mediators, such as those at the more evaluative end of the spectrum, who experience difficulty in working with a Code of Practice requiring absolute

impartiality. I have heard this point made in a Scottish Mediation discussion session.

We came to no definite conclusions on this. We accepted that we are governed as mediators by Scottish Mediation and have to follow their Code of Practice and therefore impartiality must stay in our Code of Practice. We noted in our final document that mediators will strive to remain impartial, but we also acknowledged the difficulties mediators may face in this area and suggested they are assisted in these types of situations within our Clinic, by the process of co-mediation, peer support, and writing reflections on all mediations, which are reviewed.

This made us reflect on and stress the strength of this process within our Clinic. It also made us reflect on the power of the intake/pre-mediation process to support parties in situations of power imbalance by directing them to appropriate information before mediation, and mention is made in the final document about ensuring truly informed consent and thus self-determination by this process.

e. How the Clinic can check on the continued CPD and Accreditation with Scottish Mediation of Clinic Mediators

It was decided that the Clinic Co-ordinator would contact Scottish Mediation on an annual basis to check on the status of Clinic Mediators (with their permission), and that the lead mediators' CPD submissions to Scottish Mediation will be added to their record. Since we started on this process, we found out that Scottish Mediation now provide Certificates of Accreditation on request, these should also be added to each mediator's record.

3. Draft documents were then reviewed by the main Committee

Redrafting occurred after suggestions from the Committee, and the final document was produced for dissemination to all mediators within the Clinic.

Conclusion

The time this process took from our initial meetings was surprisingly long. We started this process in December 2022 and have only now reached the stage of disseminating this document to Clinic mediators.

I feel that this type of delay is not uncommon when trying to reach agreement in Committee on such a document. I have to pay tribute to Irene Murray, who had to step back from the Sub-committee due to other commitments, and

whose skill in summarising meetings and drafting documents was invaluable, and to Linn Phipps whose wide mediation experience and common sense added immeasurably to the process.

We felt the discussion we had surrounding the difficulties of impartiality was valuable and that raising this in a gentle way in our document may be useful in stimulating a debate on this issue.

We regard this document as a start in a continuous process of review of Standards and Code of Practice and feel it might also provide a useful discussion document in the process of creating a set of Standards and Code of Practice tailored to court linked Mediation as the service expands through Scotland.

The Mediation Clinic Code of Practice December 2023 is on the following page.

¹ ***Tom Scade completed the LLM in Mediation and Conflict Resolution course at the University of Strathclyde in September 2022 and was awarded an LLM in Mediation and Conflict Resolution with Distinction. He is currently an Accredited Mediator with Scottish Mediation and volunteers as a lead mediator with Strathclyde Mediation Clinic, carrying out mainly Simple Procedure related mediations.***

² https://www.centrale-fuer-mediation.de/media/zkm_2_2004_148_172.pdf

³ <https://imimediation.org/wp-content/uploads/2022/02/IMI-Code-of-Conduct-EN.pdf>

⁴ <https://www.cedr.com/wp-content/uploads/2020/01/Code-of-Conduct-for-Third-Party-Neutrals.pdf>

⁵ Omer Shapira, A Theory of Mediators' Ethics (1 edn, Cambridge University Press 2016)

⁶ <https://www.scottishmediation.org.uk/wp-content/uploads/2016/03/Code-of-Practice-for-Mediation-in-Scotland.pdf>

⁷ <https://www.scottishmediation.org.uk/wp-content/uploads/2021/04/Practice-Standards-for-Mediators-update-2021.pdf>

⁸ Mary Anne Noone and Ojelabi, 'Ethical Challenges for Mediators around the Globe: An Australian Perspective' (2014) 45 Washington University Journal of Law & Policy 145, 165-166

University of Strathclyde Law School Mediation Clinic

Code of Practice December 2023

All Mediators are required to adhere to the Code of Practice outlined below. This Code reflects the Scottish Mediation requirements for practicing mediators and incorporates additional elements specific to the Mediation Clinic.

Definition of mediation (as outlined by Scottish Mediation)

Mediation is a process in which disputing parties seek to build agreement and/or improve understanding with the assistance of a trained mediator acting as an impartial third party. Mediation is voluntary and aims to offer the disputing parties the opportunity to be fully heard, to hear each other's perspectives and to decide how to resolve their dispute themselves.

Voluntary participation and self determination

A mediator shall recognise that mediation is based on the principle of voluntary participation and that it is the parties, rather than the mediator, who determine the outcome.

Informed consent

In order to promote a full understanding of self-determination, at the intake process and during the mediation itself, the Mediation Clinic Team and mediators will strive to provide parties with all relevant information about the process, and any other appropriate information which will ensure truly informed consent. The Mediation Clinic aspires to facilitate an informed, self-determined outcome in an independent and impartial process.

Understanding of mediation

In striving to achieve informed consent to proceed with mediation, the mediator will make the parties aware of:

- *The purpose and procedures of the mediation*
- *The importance of self-determination and what this means to the parties.*
- *The role of the parties and the mediator*
- *The obligation of confidentiality*
- *Any fee arrangement*

Impartiality, independence and neutrality

A mediator will strive to remain impartial and independent. If a mediator becomes aware of any reason which may diminish their impartiality or independence, they shall disclose this to the parties at the earliest opportunity and withdraw from the mediation unless the parties do not wish them to do so.

Additional embedded practices at the Clinic support the parties and mediators in addressing any concerns in relation

to impartiality, in particular in situations where power imbalance exists between the parties in mediations and weaker parties may require more assistance. These supportive practices include co-mediation, peer support and the completion, and review by a third party, of reflective practice documentation in every mediation.

Conflicts of interest

A mediator shall disclose all actual and potential conflicts of interest reasonably known to the mediator whether before or during a mediation and shall withdraw from the mediation unless the parties do not wish him/her to do so.

Competence

A mediator shall be responsible for undertaking sufficient training, supervision and continuing professional development to maintain necessary mediation skills. A mediator shall mediate only when she/he believes that she/he has the necessary skills to carry out the mediation.

Confidentiality

Confidentiality in mediation is important to encourage all participants to speak truthfully and candidly, and to enable a full exploration of issues in dispute. Unless compelled by law, concern that a party may come to harm, or with the consent of all the parties, a mediator shall not disclose any of the information given during the mediation process.

Advertising and solicitation

In advertising or offering services, mediators shall not guarantee settlement or promise specific results. All information provided by mediators about their education, background, mediation training and experience shall be accurate.

Gifts and favours

A mediator must not accept from or exchange any gift or favour with any party in any mediation. A mediator must use judgement that reflects the high ethical standards which mediation requires.

Discrimination

People should always be treated with respect and without discrimination.

Complaints and professional indemnity insurance

A mediator shall provide information about the process for handling any complaint made about their conduct or service, and about any professional indemnity insurance cover they may have.

Patrick's Ponderings by Patrick Scott¹

Breaking down policy barriers



Patrick Scott

Sometimes two parties are locked in a dispute, unable to find a resolution. And policy can be a barrier to that resolution. It is not that they don't want a resolution. But policy stands in the way. Policy is a bit different to principle, which is also sometimes a barrier. In some ways, policy is easier to overcome.

Jane and her husband, and their two small children, had enjoyed a lovely holiday. The children were young, and flying was a challenge. But the flight to their holiday destination had gone well. Hopefully the flight home would be the same. That was not to be. It was a long trip, with two connecting flights. On the second leg of the journey, the flight was redirected to deal with a medical emergency. This caused a delay of nearly 6 hours, with the family arriving at Heathrow near midnight. The assistance that they received from their airline at Heathrow was minimal, although it does seem that they ended up in the wrong area, and according to the airline, hotel rooms and coaches had been booked for the passengers. Due to their being in the wrong area, Jane and her family did not enjoy this luxury and eventually found a hotel at 3am. They had to order in food and other necessities, and were up at 7am to get their flight to Glasgow. As fate would have it, that too was delayed and they ended up arriving home stressed and tired, and disgruntled. They had spent about £370 on transport, hotel, and necessities, and claimed this from the airline. The response was that they would be refunded some of the expenses, but not everything. Incensed by this response, Jane sued the airline, not only for the expenses but also for a refund of the airfare of £1200. The matter was referred to mediation.

The mediation started well. Jane told her tale of woe and painted a clear picture of the inconvenience and discomfort that they had endured, without receiving any assistance from the airline. They had later been told that they would not be refunded all of their expenses. Sam, who was representing the airline, started his response with an unequivocal apology. A good move. He then said that the expenses would be refunded in full. A second good move. However, that left the refund of the airfare, the bulk of the claim. The big question was, would a court

award a refund since Jane and her family had had the benefit of the flight. My co-mediator and I explored this with her in a private session. "What do you think the Sheriff will do with that part of your claim?", we asked. "I don't think that the Sheriff will award a refund", was her response. "But I think that I am entitled to some compensation and that is what I would like to get from the mediation." Interestingly, Jane was seeing mediation as possibly being able to give her a better outcome than what she could get from the court. Could mediation live up to her expectation?

The private session with Sam did not start too well. Sam said that there was no way that the airline would refund the cost of a flight in circumstances where the passengers had actually utilised it. And there was no doubt that Jane and her family had done just that. Here was a representative, bound by the policy of his employer. This is where the mediator comes in. "You don't have to refund the flights," we say, "But you could pay her some compensation as a goodwill gesture." His eyes lit up. He had no problem with that. He offered £100 per person, making a total of £400, plus the £370 for the cost of necessities. We then pointed out that Jane would have paid £110 to raise the action in the Sheriff Court. Before we could say anything further, he said that he would offer that as well.

We brought the parties back into a joint session and we finalised the agreement. Jane thanked Sam for the offer, and he apologised to her again. A reconciliation had taken place and there was a positive vibe in the "room". Both parties were very satisfied with what had been achieved and that was because we overcame the barrier of policy.

The following matter was similar, although not really either a policy or principle barrier, but akin to both. Carlos had purchased a house in Ayrshire and he and his family were due to move in on the 23rd of December (not the best time of year to be moving house, unfortunately). Upon arriving at the house with his family, he discovered that the boiler was not working. He called first an electrician and then a plumber, but neither was able to assist him at that time of the year, of course. Fearful of not having heating in the middle of winter, he managed to extend his previous lease for a month. The plumber said that the boiler had gone to meet its maker and required replacement. Carlos had it replaced at a cost of about £6000.

Carlos said that, when he viewed the property with the agent, he was assured that the boiler was working. He regarded that as a false statement and believed that the seller should be held to account for this. After receiving no sympathy from the seller, he decided to approach the court for relief. Acknowledging that he had replaced an old boiler with a new one, he claimed half the price of the boiler, together with the extra month's rental (£650) and the cost of the callout fee of the electrician and plumber (£500).

Peter, the seller, had had a tenant in the property before it was sold and was adamant that the boiler was working when the tenant moved out. He had had the boiler decommissioned prior to Carlos purchasing the property and acknowledged that he should have had it recommissioned prior to him taking occupation of the property.

After the initial opening session, Peter offered £300, which was almost seen as an insult by Carlos. Fortunately, the matter moved forward, and Peter increased the offer to £800. Before Carlos responded to that, I suggested private sessions. I discussed the offer with Carlos. He was not happy with £800 but said that he would accept £1200. The difficulty that Peter had with the situation was disclosed by him in my private session with him. It was not so much a matter of principle, as of justification. He needed to justify any offer that he made to himself. His difficulties were that he did not believe that the boiler needed replacing and believed that the plumber had abused the situation in that Carlos had language difficulties and was an immigrant. He also didn't accept that Carlos needed to extend his lease by a month. He had no difficulty refunding the cost of the electrician and plumber, and was happy to add on £300 for inconvenience, but struggled to justify any further amount. I suggested that we discuss his travel costs if the matter proceeded to court, as he lives in England. He worked out that his travel costs would be about the difference between what Carlos wanted and what he was offering. He increased his offer to £1000, and Carlos accepted this amount.

What we see from the above is that sometimes there is a barrier that stands in the way of a settlement. If we, as mediators, can help parties to remove those barriers, it opens the door to a settlement.

¹ ***Patrick Scott completed the LLM in Mediation and Conflict Resolution course at Strathclyde University in 2018 and was awarded an LLM in Mediation and Conflict Resolution with Distinction. He is currently an Accredited Mediator with Scottish Mediation, serves on the SLCC Panel of Mediators and volunteers as a lead mediator with Strathclyde Mediation Clinic. He is also on the Board of Trustees of Scottish Mediation.***

Research conversations....

Tom Scade¹ discusses his LLM dissertation with Adrienne Watson²



Tom Scade



Adrienne Watson

This series of interviews looks at some of the research our students and established academics have undertaken. We will be discussing the lessons that have been learnt, the impacts of the research and recommendations for those who are yet to undertake their dissertations.

This month, Tom Scade is interviewed by Adrienne Watson. Tom completed his LLM dissertation, *The difficulties and possible workable solutions in the development of a paradigm of mediation ethics which is acceptable to all mediators in a profession of mediation* in 2022.

How did your interest in mediation develop?

I was a doctor for many years, working as a GP and GP trainer. Latterly, I was an occupational physician where many of the employees who I saw were suffering from workplace stress. Much of the stress was related to conflicts with their managers or other colleagues. I was confident that, by talking to each other, many work colleagues could resolve their conflicts and reduce the stress for both parties. Our reports to management often recommended that the parties should try mediation. However, I don't believe mediation ever occurred as a result of these recommendations. The organisations generally preferred to proceed with formal disciplinary processes, rather than 'wishy washy' mediation. This spurred me on to think about mediation when I retired.

What brought you to the Mediation and Conflict Resolution course at Strathclyde?

I was particularly drawn to the Strathclyde Master's because of the Mediation Clinic, where students observe real-time mediations as part of the course. The Clinic also offers students practical experience as assistant mediators, after which they can progress to becoming lead mediators. This practical experience added significantly to the very good theoretical grounding we gained on the course.

The difficulties and possible workable solutions in the development of a paradigm of mediation ethics which is acceptable to all mediators in a profession of mediation

Key findings:

- *The diversity of mediation styles is a challenge to attempts to find a paradigm of mediation ethics which all mediators would agree to.*
- *Mediation ethics are evolving but there is a lack of international leadership.*
- *For mediation to be accepted as a profession that a common paradigm should be developed. This should be basic and should include uncontroversial elements of mediation i.e. informed consent, self-determination, avoiding conflicts of interest, respect, and confidentiality acceptable to all styles of mediation, with more detailed individual paradigms being created by the different styles of mediation, for example, evaluative, facilitative, narrative and transformative, explaining their approaches to the contentious issue surrounding neutrality and impartiality which can cause difficulty for some mediators.*
- *This would avoid the problem which has existed in the past of some styles feeling excluded because of a rigid requirement of neutrality and impartiality found in most current paradigms.*
- *It would also clearly define to the parties what style the mediator was using and how the mediator would behave, allowing truly informed consent.*

Strathclyde being a few kilometres from my home was also attractive to me but, due to the Covid-19 pandemic, the whole course took place online.

How else have you been involved in the Clinic?

As well as mediating cases, I have undertaken many mediation intake calls, which have been very valuable. From this, I have discovered that pre-mediation discussions can be one of the most important parts of the process, and I get much more from the parties by building closer relationships with them early on.

I have also been on the Clinic Board for a couple of years, initially as a member and then as Treasurer. I have enjoyed helping to develop the Clinic's strategy and learning from the other Board members, who have a

wide range of professional experience. Recently, I was on the sub-group developing the new *Clinic Practice Standards and Code of Practice*.³ It is very interesting to see how much unseen work goes into running the Clinic and developing its policies.

How would you summarise your dissertation's aims?

I was trying to understand:

- *how mediation ethics has evolved since the mid-20th century.*
- *the challenges of developing mediation as a profession.*
- *the difficulties in creating a common, internationally accepted paradigm of mediation ethics, suitable for use by all mediators.*

What triggered your interest in this research area?

I attended a presentation by Rachael Field and Jonathan Crowe on neutrality and impartiality in mediation at Scottish Mediation's Mediate 2020 conference. They postulated that the concepts of neutrality and impartiality have been challenged in many areas, particularly by mediators in the United States and Australia. The concept of neutrality originated in the court system and is now entrenched in mediation teaching. However, Field and Crowe said it was very difficult for mediators to be totally neutral, especially when there are significant power imbalances between the parties. Instead, mediators might need to ask themselves whether what they are doing is going to improve the informed consent of the parties and increase the chances of achieving a self-determined outcome. Self-determination ensured by true informed consent should be the dominant ethical value in their minds. Therefore, mediators may need to move away from aiming to be completely neutral and instead concentrating on whether their actions allowed informed consent leading to a self-determined outcome.

I was fascinated by that discussion, which stimulated my thoughts in late 2020 and the dissertation formulated in my mind from that point on. My supervisor, Charlie Irvine, encouraged me to restrict my research to the topic of informed consent, which may have been a more useful area, but I thought I might not find enough literature in such a specific area.

I was particularly interested in how mediation ethics had developed, whether mediation is a profession and the different ethical values associated with each style of mediation. Facilitative mediation has tended to dominate and requires mediators to be neutral but, for example, neutrality may not be possible for an evaluative mediator who sometimes gives advice to parties.

What were the main findings of your dissertation?

I found that we are not doing a very good job of developing an accepted paradigm of mediation ethics that works for all mediators. There is a lack of central leadership internationally. The International Mediation Institute (www.imimmediation.org) is trying to bring mediators together to get some consensus on this, but more needs to be done.

If mediation wants to be seen as a profession, it needs to be cohesive and have one ethical statement. However, with the variations between the different styles of mediation, a separate ethical statement would be needed for each style.

When did you start planning your dissertation?

I wrote my dissertation over about a year. I knew early on the rough concept of what I wanted to research. I collected information on the subject for a long time, and I probably wrote for 9 months. I wasn't short of time, but I created something much bigger than was needed, which resulted in a pretty huge review and a lot of cutting back once I had reached around 25,000 words. Very early on, Charlie advised me "You might want to slim this down a bit, Tom" but I sort of ignored that!

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

My dissertation was an extensive literature review. I specifically avoided doing any primary research because I had previously completed a research-based MSc in Occupational Medicine where the data analysis took me many weeks.

I was so fascinated by Field and Crowe's presentation in 2020 that I read their book from cover to cover, and my dissertation references flowed out from that book.⁴ This led me to other key writers in this area, such as Omer Shapira and Ellen Waldman, who talked about ethical principles being flexible and contextual, rather than dogmatic and rigid, particularly when trying to protect the weaker parties.^{5,6} These, in turn, led me to many further references.

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

The major flaw in my dissertation was the broadness of the topic and the necessary volume of reading, but I enjoyed that. My dissertation had 645 references, so the literature review was very extensive.

Managing all the references was challenging. I used the reference management software, *Endnote*, which allows

you to store and retrieve references in itemised subject files, and allows storage of PDF files and citations as needed. Endnote has a 'Cite while you write' function which makes it simple to add the references as you write the text. This software was new to me, but there are good online tutorials and, when I encountered any glitches, the technical support was extremely helpful. I also created a database of my own, where I categorised the subject matter into themes such as ethical issues, informed consent, neutrality and impartiality.

Which aspects of your dissertation are you most proud of?

I am pleased that I produced a useful review on the ethics of mediation and how they have developed. I might try to publish it one day. As Patrick Scott published his dissertation last year, I might seek his advice on the process.

How much mediation have you practiced since completing the Master's course?

I don't know the total number of cases I have mediated with the Clinic but, since June 2023, I have mainly worked on 36 cases for the Sheriff courts in Airdrie and Ayr.

I have also assisted in commercial mediation, and in a fascinating workplace mediation involving a dispute within a dysfunctional team. I recently completed the Workplace Conversion Course with Scottish Mediation.

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

There is a very close link between my dissertation and my mediation practice. The research helped me to formulate my ideas about where I stand on the issue of impartiality. It also helped me to appreciate the importance of the intake process in shaping and coaching parties before they enter the mediation to create an even playing field. This is especially important if one party has a lawyer, and the other is unrepresented. I am tending towards being an activist mediator and will point parties towards sources of legal information, while trying to remain neutral.

What advice would you give to students who will be working on their dissertations this summer?

From my experience, my advice to students would be:

- Start thinking about your dissertation topic very early on, so you can start accumulating data.
- Make sure you pick a subject that is interesting to you, so you have the necessary enthusiasm to get through the process.
- As you are writing your course essays, keep all your references in "Endnote", as they might be relevant to your dissertation.

- Manage your time, especially ensuring you have enough time at the end for reading the finished document several times, redrafting and making corrections.

I thoroughly enjoyed taking on a wide-ranging piece of research, but I wouldn't recommend that others tackle such a huge topic. Looking back, I may have been wise to take my supervisor's advice to restrict the breadth of the research, but I definitely wouldn't have enjoyed it as much as I did!

¹ **Tom Scade completed the LLM in Mediation and Conflict Resolution course at the University of Strathclyde in September 2022 and was awarded an LLM in Mediation and Conflict Resolution with Distinction. He is currently an Accredited Mediator with Scottish Mediation and volunteers as a lead mediator with Strathclyde Mediation Clinic, carrying out mainly Simple Procedure related mediations.**

² **Adrienne Watson trained as an Accredited Mediator in 2016. She recently completed the MSc in Mediation and Conflict Resolution at the University of Strathclyde. Adrienne is a lead mediator with Strathclyde Mediation Clinic and is Assistant Editor of the Mediation Matters! newsletter.**

³ See article on page 12

⁴ Rachael Field and Jonathan Crowe, *Mediation Ethics: From Theory to Practice* (Cheltenham, Gloucestershire: Edward Elgar Publishing 2020)

⁵ Omer Shapira, *A Theory of Mediators' Ethics* (Cambridge University Press 2016)

⁶ Ellen Waldman (ed), *Mediation Ethics: Cases and Commentaries* (San Francisco, CA : Jossey-Bass 2011)

Aunt Minerva's Agony Column

By her earthly intermediary Alastair Sharp

Minerva is the Roman Goddess of Wisdom and Just Causes. She has agreed to share her wisdom with members of the Clinic and answer queries as to unusual or interesting cases.

This is her response to a another query from 'Concerned' of GlenSporran.

The names and some of the facts have been changed for confidentiality purposes.

Dear Aunt Minerva

Yes, it's me again. From GlenSporran, way out in the West with another wee problem that would benefit from your wisdom, Auntie. Two of our oldest working residents are facing each other in the Sheriff court, the Sheriff has paused the case for mediation, and everyone is getting their sporrans in a terrible tangle.

The basic facts are these. Jock has a small fishing vessel which he keeps moored outside his croft, just upstream of the old General Wade bridge and he plies his occupation as a small net fisherman, as he has done for many a year. Some say he is past his prime and others that he likes to celebrate the end of the day with a decent tot or three of malt as he navigates his way up the river.

On the day in question the tide was high, and Jock approached the bridge with a hold full of the day's catch and some say holding a bottle by the neck in one hand and the ship's wheel in the other. Now there is normally just room for his boat to pass under the bridge. However, as he was about to go under the centre of the arch, the boat veered to the right and collided with the side of the bridge with some force. Jock was able to regain control and moored up in one piece. He noted a chunk out of his bow and a crowd surrounding the bridge. It transpired that a number of stones had been dislodged and the local authority in its wisdom felt it had no alternative but to close the bridge to all but pedestrians for further detailed inspection by their engineer and health and safety teams. This unfortunately took some time.

For most there was little inconvenience as most traffic was pedestrian in any event and the council created a delightful but lengthy diversion for the motorised few who were mostly tourists. However, Angus who farmed on one side of the bridge, was gravely inconvenienced. The local auction mart was just the other side of the bridge and he used to regularly walk his herd to the mart on auction days and likewise return with any purchases at the end of the day. Despite arguing that cows and pedestrians were synonymous he was denied access to the bridge and had to transport his stock to

and from the mart by a cattle waggon via the diversion. This cost him a significant sum and during the 6 months that it took for the council to repair the bridge he had incurred some £3500 in extra costs. He also felt that the cattle being unused to mechanised travel did not show at their best and hence sold for less. In total he felt he had lost about £5000.

Angus considered that Jock was to blame for his troubles and sought to claim his losses from him, initially in the snug of the Hairy Sporrans where it was firmly rejected on the basis that it was the especially high tide that was the problem and a bow wave from a dredger that was entering the harbour's area, both explanations that no one had heard before. When repeated in a solicitor's letter, Jock was heard to say that it was useful in his boat's heads.

Angus was not to be deterred and took out an action in the Simple Procedure Court and, as mentioned above, the Sheriff paused the case for mediation, and it is now with me. Please can you answer my questions?

Concerned, From GlenSporran



Photo by [Caroline Hall](#) on [Unsplash](#)

The Questions

- a) Angus lives by himself and does not believe in traditional personal hygiene. He has been given his own special seat in the snug close to the door and hence is tolerated by the community by reason of his venerability. The Sheriff is known to be a fastidious man. Do I take any steps to improve Angus' condition for the mediation and if this fails for the hearing before the Sheriff?
- b) Angus wants to bring a number of his friends and colleagues to the mediation and if necessary to the proof hearing to attest as to the deteriorated condition of the cattle due to their means of transport. Should I allow this?
- c) Angus has confided to me that if he does not win his case, he proposes to loosen the bung hole on Jock's boat in the dead of night so it will gradually fill with water and sink. Should I do anything about this threat?
- d) Jock is becoming more addicted to the bottle and has threatened to attend the mediation and, if necessary, the proof hearing accompanied by his bottle. Help! What do I do?
- e) Jock has a nephew in Glasgow who is in his first year studying law and has offered to help his uncle in any way he can. Do I advise Jock to accept this kind offer and, if so, do I get involved in the advice in any way?
- f) Jock has confided in me that he has discovered a new lobster field that proliferates with the creatures. He has asked me whether a "donation" of large juicy lobsters to the President of his Burns Society, who happens to be the Sheriff, might help to oil the wheels of the case; alternatively, whether sharing the information with Angus so they could make a killing on the lobster market might persuade him to drop his claim.
- b) I wouldn't encourage this unless Jock clearly agrees, but the danger is it will clutter up the mediation. You could suggest they write statements although you might find that is not their forte. You could advise him that the best evidence as to lesser value would be sales invoices before and after the event. If it has to go before the Sheriff, the matter can be reviewed then.
- c) Yes, indeed you must! You must tell him that you assume it is a joke and that if he had any intention of doing so you cannot continue with the mediation, and you would have to consider reporting it to the police. That should cause him to think.
- d) Tell him politely, but in no uncertain terms, that alcohol and mediations, and indeed courts, don't mix. Offer to buy him a drink once it is all over if you wish but steer clear of booze until then.
- e) The nephew might help but Angus would have to agree. You would have to be careful of the extent to which the nephew took part. If he could keep Jock from any extreme behaviour, it could be of benefit. Much will depend on the nephew and Angus' reaction to him.
- f) Juicy Lobsters to the Burns Society President or indeed members definitely a 'No No' until the whole case is wrapped up and concluded. As to making a killing in a joint enterprise with Angus, that may well be worth looking at. A 'Surf and Turf' solution is the kind of outside the box approach that mediation can cater for which the courts cannot. If it looks as if this might be a possibility, approach it very carefully and if it succeeds make sure it is all tied up, preferably in writing (unless of course a handshake in GlenSporrán is still all that's needed).

Good Luck and if the Lobster solution succeeds, then I can let you know that Aunt Minerva loves a good Lobster!

I look forward to hearing what happens.

With every best wish

Aunt Minerva

Answers

- a) Bit of a tricky one. You don't want to offend him when he's tolerated by his community. Take it step by step. I suggest tolerating him yourself at the mediation and you could have a window open or a fan. If the case has to go before the Sheriff, it is out of your hands, but you could give him some kindly advice before you lose contact with him.

If readers have any other questions, please direct them to:

Aunt Minerva's Agony Column, Mediation Matters!

Book Review

Stories Mediators Tell—World Edition edited by Lela Love¹ and Glen Parker²

Review by Patrick Scott³



Patrick Scott

This is the second compilation of mediator stories, the first being limited to mediators from the United States. In this compilation, mediators from around the world share their tales. Due to the confidential nature of mediation, good mediation tales are hard to come by. This book provides an assortment of stories

from across the continents. From Scotland to South Africa, Croatia to Australia, Russia to France, the stories abound.

There are a total of twenty-six chapters, with one tale per chapter. They follow a similar format, thanks to the editors, and are of similar length. I will touch on some of them to give an insight into what to expect.

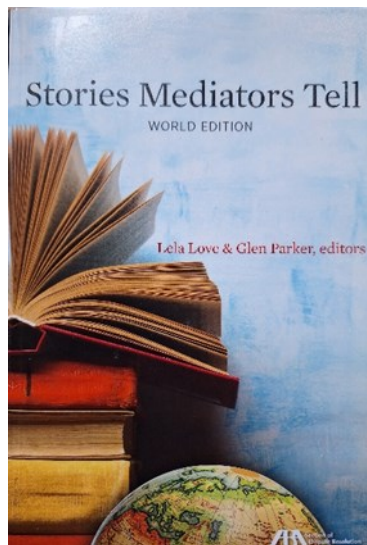
One of the chapters, entitled *A Scottish Castle and Family Ties* by Ewan A Malcolm (Scotland) involves the relationship between three siblings, the care of their mother and the management of the family castle in the Highlands, after the death of their father. In getting the parties to talk, the mediator managed to take the parties to a space where they opened up to each other, resulting in the breaking down of the barriers between them.

In another story, *Let Your Soul Be Your Pilot: A Labour Mediation*, a South African mediator tells the story of a workplace mediation before the Commission for Conciliation, Mediation and Arbitration. With mediation having failed at the first attempt and the matter being referred to the author for arbitration, he offered the parties a second bite at mediation, which they seized gratefully and with a positive result.

The book has connections to the University of Strathclyde Mediation Clinic in two of the chapters. Tony Allen, who was the keynote speaker at the 2023 Mediation Clinic Conference, tells a fascinating story of a mediation which he did in South Africa. *Healing an Unnecessarily Deep Rift* is the story of a mediation which he conducted in the shadow of Table Mountain, in Cape Town. Tony had travelled to South Africa to give two workshop seminars on medical negligence. Shortly before departing from the UK, he was asked whether he could mediate a medical negligence claim the day after his arrival. The parties were able to reach a resolution in about three hours, giving Tony the afternoon to take the cable car to the top of Table Mountain.

The second story with connections to the Clinic is told by Sherif Elnagahy, an alumnus of the University of Strathclyde, who did at least one mediation for the Clinic. He is from Egypt. He tells the story of a co-mediation that he did in the Glasgow Sheriff Court, entitled *Can't Get No Satisfaction*. The matter involved siblings in a financial dispute. The author expresses disappointment that, whilst the parties got to a resolution, they were unable to address the apparent underlying issues between them. In reflecting, he comes to the conclusion that settlement, fairness and satisfaction don't always go together.

Thierry Garby, a French mediator, managed to successfully mediate a case involving thirty-eight claims, that had made its way through the courts of Paris for twelve years, before a judge referred it to mediation. The resolution at mediation was relatively simple and comparatively inexpensive, and brought an end to a lengthy dispute. In another chapter, the same author discusses three cases where the parties were not looking for settlement, but merely wanted to achieve something else. In the one case, the party wanted a



*If you have read a good mediation-related book recently,
we would be very interested in receiving your review
to share with our readers*

reconciliation process, in the second, the restoration of self-image and, in the third, forced attention.

I will conclude this review with *A Christmastime Mediation*, as told by a Croatian mediator. Christmas was a couple of days away when the manager of Construction Heights Limited called him to schedule a mediation. Both parties wanted the matter resolved before the end of the year. The spirit of the season permeated the mediation, and the parties reached an agreement within a relatively short time.

There are many other stories that both mediators, and those who are not mediators, will enjoy. They are relatively short, an easy read and very entertaining.

¹ Lela Love is a professor of law at Benjamin N. Cardozo School of Law (NYC), where she leads the Kukin Program for Conflict Resolution. She is the founder of, and directs, Cardozo's Mediation Clinic, which was one of the first in the United States to train law students as mediators. Lela has written widely on the topic of dispute resolution, including three law school textbooks and two books about mediation.

² Glen Parker is a Principal Court Analyst at the Office of Alternative Dispute Resolution Programs in the New York State Unified Court System, where he serves on the team that supports and oversees the numerous mediation centres throughout the state. He teaches and trains in restorative justice and conflict resolution and is an adjunct professor at Cardozo School of Law, where he served as a Fellow of the Kukin Program for Conflict Resolution.

³ ***Patrick Scott completed the LLM in Mediation and Conflict Resolution course at Strathclyde University in 2018 and was awarded an LLM in Mediation and Conflict Resolution with Distinction. He is currently an Accredited Mediator with Scottish Mediation, serves on the SLCC Panel of Mediators and volunteers as a lead mediator with Strathclyde Mediation Clinic.***

The University of Strathclyde's Fourth Mediation Clinic Conference

Held on 21st March 2024

On the 21st of March, the Mediation Clinic held its fourth Conference, which was online.

Mediation Matters! was going to include a number of the presentations from the Conference in this issue of the newsletter but, due to time constraints, these will now be included in the next issue.

The keynote speaker was **Deborah Thompson Eisenberg**, whose presentation was entitled *Mediation Clinics: Clinical and Legal Education*. Rosie McBrine has prepared a short summary of the keynote, with the full version to be included in the July issue of *Mediation Matters!*.

There were also six workshop presentations, and as many of these as possible will also be included in the next issue.

These were:

Experience of the Strathclyde Mediation Clinic as recent graduates

by Oyinkro Olobio and Eunice Olatunji

The history of the University of Strathclyde Mediation Clinic

by Charlie Irvine and Pauline McKay

Lawyers in the Mediation Room

by Stuart Kelly

The rise of online mediation in teaching and practice

by Professor Bryan Clark

Establishing and Maintaining Mediation Clinics

by Professor Toby Guerin and Robyn Weinstein

Diversity in Mediation

by Silence Chihuri

The final item on the programme was a Panel Discussion, facilitated by **Dr Vanessa Collingridge**. The panelists were **Dr Maria Moscatti** (University of Sussex), **Dr Akshay Verma** (National Law University Odisha (NLUO), Cuttack, India), **Victoria Banke** (Adekunle Ajasin University Akungba-Akoko, Nigeria) and **Dr Przemysław Kubiak** (University of Lodz, Poland). Due to the nature of the presentation, there is no copy available.

What we are including in this issue is a report back from a couple of attendees at the Conference, Alan Millar and Linda Oparah.

Key takeaways from the Keynote Speaker, Deborah Thompson Eisenberg

By Rosie McBrine¹



Rosie McBrine

Deborah's keynote, entitled, *Mediation Clinics: Clinical and Legal Education*, delved into the intersection of clinical legal education and ADR at Maryland Frances King Carey School of Law. Their institution has a longstanding commitment to expanding justice by engaging law students in serving disadvantaged communities.

Deborah pointed out that while litigation follows a clear roadmap, mediation is complex and messy. Parties in conflict must reach an agreement themselves, amidst emotional turmoil and power imbalances.

The evolving landscape of legal education was emphasised, with the American Bar Association requiring skills like negotiation and ADR for law school accreditation. Mediation clinics, alongside traditional litigation, play a crucial role in addressing systematic inequalities and promoting access to justice.

Drawing on her own experience as a litigator and mediator, Deborah highlighted the challenges of mediation, particularly the absence of strict procedural rules. She stressed the importance of active listening, a skill essential for mediators, lawyers, and leaders alike. Powerful questions, often not discussed in traditional courtroom settings, guide meaningful dialogue and resolution.

For those interested in delving deeper, Deborah has recommended *America's Peacemakers: The Community Relations Service and Civil Rights* by Bertram Levine and Grande Lum, shedding light on the history and impact of mediation agencies.

In closing, Deborah emphasised the pivotal role of trained mediators in navigating conflicts, facilitating conversations, and building a more just and peaceful world. Their skills extend far beyond the courtroom, shaping future leaders across various sectors.

¹ *Rosie McBrine started as Service Delivery Administrator with the University of Strathclyde Mediation Clinic in November 2023. She graduated in Social Policy and Education at the University of Strathclyde in July 2023, whilst also working part-time for Aviagen UK Ltd as a Marketing Assistant alongside her studies.*

***Hear more from Keynote Speaker, Deborah Thompson Eisenberg,
and all the other conference presenters,
in the next issue of Mediation Matters!***

Mediation: The Digital Frontier, the Fourth Mediation Clinic Conference

By Allan Millar¹



Allan Millar

“Mediation is both an ideology (almost a religion) and a practice”.² This much I have gathered from my time studying employment mediation this semester. Now, my convert’s zeal has almost been used up since moving from pharmacy to law, but I am an enthusiastic amateur interested in mediation. Thus,

when the Clinic Conference appeared on the horizon, I booked my free student ticket post haste. Then when Patrick contacted me to write a review of the conference, I leapt at my chance to fulfil my journalistic ambitions, in the style of a prohibition-era American newsman.

This year’s conference was online. While not the same as in person, delegate inter-mingling and discussion was facilitated by break-out rooms. Having the conference online makes sense, as an increasing proportion of mediations take place via Zoom, after what Professor Susskind described as the “giant, unplanned experiment” of Covid.³ Being online it attracted attendees from as far afield as the University of Graz, Wyoming College of Law and even Hull. It also seemed appropriate to me that the conference be online, ever since coming across the term Riskin’s Grid,⁴ which always reminds me of the 1982 classic, *Tron*. Just me? Moving on.

The Conference started promptly at 11am on the 21st of March 2024. Clinic Director, Charlie Irvine, warmly welcomed the delegates, addressing the ambiguous Scottish weather. Charlie reminded delegates of the simple truth: the best way to learn to mediate is to mediate. Charlie was then followed by the Head of the University of Strathclyde’s Law School, Professor Adelyn Wilson. Professor Wilson extended a warm welcome to all delegates and expressed pleasure at the expansion of Strathclyde Mediation Clinic’s reach to the whole of Scotland in the Law School’s 60th anniversary year.

We then watched a recorded testimonial from a satisfied clinic user, which was followed by a five-minute recorded video from Siobhian Brown MSP, Minister for Victims and Community Safety. The minister extended her apologies for being unable to attend in person and reminded delegates that “a lot of work has to be done to bring mediation into the mainstream of Scottish Civil Justice”.

These introductions were followed by a choice of three workshops. At this point, my journalistic abilities were put to the test, as I flitted between workshops to give you, dear reader, a taste of each session. I firstly joined Oyinkro Olobio and Eunice Olatunji’s workshop on *Experience of the Strathclyde Mediation Clinic as recent graduates*. The workshop was very insightful to me as a later-in-life law student. Eunice and Oyinkro talked about being attracted to the University of Strathclyde, due to being able to put theory into practice in the Mediation Clinic. Strathclyde after all, is the place of useful learning. Eunice told a story which resonated with me. Eunice in her Law degree had focused purely on her academic performance, and as such did not enjoy her degree. When Eunice came to Strathclyde for her LLM in Mediation and Conflict Resolution, she let “school pass through her” by engaging in the Mediation Clinic and other extracurricular activities, which was a more enjoyable experience.

I then joined Strathclyde stalwart Stuart Kelly’s workshop on *Lawyers in the mediation room*. Stuart’s workshop drew comparisons between the Australian State of Victoria where mediation is far more integrated into the civil justice system, and Scotland where adversarialism is alive and well. Stuart made the interesting point that lessons could be learnt from the “genius”⁵ of Scotland’s Children’s Hearings system: the product of the Kilbrandon Report⁶ which, like Strathclyde Law School, is enjoying its 60th anniversary in 2024. Traditionally a lawyer free zone, in recent years lawyers are becoming frequent fixtures at children’s hearings as Strathclyde’s Porter et al have noted.⁷ However, Scottish lawyers have had to acclimatise to the less adversarial climate of Children’s Hearings much like the more mediator friendly climes of Victoria, Australia. This could be an interesting approach to fostering greater employment of mediation in Scotland.

I then managed to catch the closing third of Charlie and Pauline’s *History of the University of Strathclyde Mediation Clinic*. Having suggested that delegates subscribe to Strathclyde’s excellent *Mediation Matters!* newsletter, Charlie articulated the conference’s key theme “What’s next?”. Not just in terms of Government policy as Strathclyde’s Mediation Clinic was named in the Justice Department’s vision for the future 2023-2026, but how do we make it easier for students to take part in mediations? Charlie drew parallels with American universities – foreshadowing the keynote speaker – in which clinical

mediation education, where students receipt of credits for taking part, is prevalent. Given Strathclyde's strong clinical LLB heritage, a clinical mediation programme would be in keeping with Strathclyde's heritage. Following the presentation, there was a spirited question and answer session focusing on mediators in cultural disputes, which stimulated a fascinating debate.

After these workshops, we all returned to the main Zoom 'stage' for the keynote speaker, Professor Deborah Eisenberg of the University of Maryland Francis King Carey Law School. Professor Eisenberg was pleased to attend the conference in Strathclyde's 60th year, as the University of Maryland School of Law — the fourth oldest law school in the United States — is celebrating its 200th anniversary in 2024. Professor Eisenberg's lecture, for me, had two key themes: neutrality in mediation and clinical education for mediation. Firstly, Professor Eisenberg vividly illustrated that neutrality does not benefit the weaker party, drawing upon quotations from Archbishop Desmond Tutu, Elie Wiesel and Dante's *Inferno*. Secondly, Professor Eisenberg explained the importance of clinical education to students and the communities they aid at the University of Maryland, emphasising the empathy and creativity that is central to students. A truly inspiring keynote.

After a quick lunch, break-out rooms simulated the chat of an in-person conference. I had the pleasure of chatting with Lynne Crawford, Eunice Olatunji, Silence Chihuri and Leon Watson. I was very pleased to chat with Eunice after the morning session, telling her how much I enjoyed her presentation. Silence Chihuri, giving the afternoon session on *Diversity in mediation*, kindly gave us all a preview of his informative session. Leon discussed his work with the St. Andrews Mediation Service, handling the referrals from Kirkcaldy Sheriff Court. And also, best wishes to Lynne Crawford of Crawford Roberts, who discussed her forthcoming children's book!

For the afternoon session, I changed my journalistic tack and focused on one workshop. I attended Professor Bryan Clark's seminar on *The rise of online mediation in teaching and practice*, a germane issue. This was very informative: drawing my attention to "Zoom fatigue" (people tiring on Zoom calls earlier than in person), that purely online trained mediators are not viewed as being as effective as in-person trained mediators and the importance of Zoom body language. The seminar was followed by more stimulating questions, particularly "the absence of the water-cooler moment" in Zoom mediations.

We all arrived, "astonishingly, still on time" to Charlie's surprise, at the panel discussion chaired by Dr Vanessa Collingridge. Sadly, at this point I had to depart the conference to attend my Human Rights seminar across the street. I was pleased to register a Roman Law reference made by panel member, Dr Przemyslaw Kubiak, before my departure though. I'm sure the panel was an excellent conclusion to an excellent conference.

This is one of my final acts as a full time Strathclyde student, and it has been a real pleasure to review the Mediation Clinic Conference, and in a small way be a part of the Strathclyde Mediation Clinic Community. Thank you to all the Strathclyde Mediation Clinic members for all their hard work in preparing and running this year's excellent conference, and I look forward to attending next year.

¹ **Allan Millar is currently studying for an LLM in Criminal Justice and Penal Change. He studied at the University of Strathclyde for a Masters in Pharmacy between 2007-2011. Having been a practicing pharmacist for a decade, he returned to Strathclyde in 2020 to study for his LLB & then Diploma in Legal Practice. He was part of the winning team at the University of Strathclyde Internal Moot at the United Kingdom Supreme Court in 2022, Allan served as Co-President of the Strathclyde Mooting Society 2022-2023. Allan is currently a trainee solicitor with Miller Samuel Hill Brown Solicitors, Glasgow.**

² Carrie Menkel-Meadow (ed.), *Mediation: Theory, Policy, and Practice* (Ashgate 2001), Introduction, page. xvii

³ Richard Susskind, 'The Future of Courts' (2020) *The Practice* 6(5), 1–23

⁴ Leonard L. Riskin, 'Mediator Orientations, Strategies and Techniques' (1994) *Alternatives to the High Cost of Litigation* 12 (9) 111

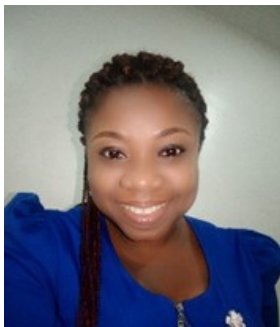
⁵ Lord Hope, *Sloan v B* (1991) S.C.412 at 438

⁶ Kilbrandon Committee, Report on children and young persons, Scotland, Cmnd, 2306, Edinburgh, HMSO, 1964

⁷ Robert Porter, Vicki Welch, Fiona Mitchell, 'Adversarialism in informal, collaborative, and 'soft' inquisitorial settings: Lawyer roles in child welfare legal environments' (2019) *Journal of Social Welfare and Family Law* 41 (4) 1–20.

The Fourth Mediation Clinic Conference: My experience

By Linda Oparah¹



Linda Oparah

It was a crisp Thursday morning, and I was about to embark on my first-ever mediation conference, albeit virtually on Zoom.

Excitement and a hint of nervousness filled me as I logged in, unsure of what to expect. It was a packed academic programme with attendees from around the globe, and Charlie Irvine

(Director of the Mediation Clinic at the University of Strathclyde) welcomed us with an inspiring opening speech.

Charlie's opening address served as a beacon of wisdom and inspiration, illuminating the path ahead with his profound insights into the essence of mediation as a practice rooted in experiential learning. His statement, "The best way to learn to mediate is to mediate," resonated deeply. He acknowledged key stakeholders, including the University of Strathclyde and the Scottish Government, which funds much of the Clinic's work.

The Head of the Law School, Professor Adelyn Wilson's speech was equally welcoming, emphasising the symbiotic relationship between the Law School and the Mediation Clinic. Her pride in the Clinic's growth and impact across Scotland echoed through her words, setting a tone of collaboration and purpose for the Conference. She expressed gratitude to all the speakers, alumni, and members of the Board who were present, including Charlie Irvine, Pauline Mckay, and Rosie McBrine, who do an extraordinary job of running the Mediation Clinic and supporting students, as well as mediators.

We heard brief comments from a service user on working with mediators in the Mediation Clinic. He was happy to use Zoom for the mediation because it was convenient, and it allowed for a communication channel to be opened and sensible discussions to take place in the presence of a third party.

Next on the programme was a recorded address from the Scottish Minister for Victims and Community Safety, Siobhian Brown, which was both enlightening and reassuring. She expressed gratitude to the University of Strathclyde Mediation Clinic and other mediation professionals for their work in providing advice and support to ensure access to justice for Scottish citizens. She acknowledged that mediation is underused in

Scotland's justice system and highlighted the government's efforts to facilitate change, including investment in established mediation organisations. She encouraged collaboration among the mediation community to address challenges and improve Scotland's justice system and thanked the audience for attending.

Following that, I joined a breakout room for an individual workshop presented by Oyinkro Olobio and Eunice Olatunji on the topic of "Experience of the Strathclyde Mediation Clinic as recent graduates."

Entering the breakout room for the workshop felt like stepping into a haven of shared experiences. At the workshop, Oyinkro and Eunice, who are recent graduates of the MSc in Mediation and Conflict Resolution at the University of Strathclyde, shared their experiences. Eunice started by discussing how theory alone isn't enough to grasp mediation; practical experience is crucial. She explored concepts like focusing on interests rather than positions in mediation, which can be challenging, especially for those accustomed to adversarial settings like law. The programme at Strathclyde provided both theory and hands-on practice and helped her understand the reasoning behind mediation principles.

Oyinkro shared his journey into mediation, which began in Nigeria. He highlighted the appeal of Strathclyde's programme, particularly its Mediation Clinic, which offered ample opportunities for practical learning. Through modules and Clinic sessions, he honed his mediation skills, learning to navigate different mediation styles like evaluative and facilitative. The workshop emphasised the importance of active participation in mediation education, including observing real mediation sessions and engaging in reflective writing. It highlighted the opportunities provided by the Mediation Clinic in the aspect of role-playing, peer reviews, and networking, contributing to ongoing learning and skill development, which is highly beneficial for students.

Eunice encouraged students to be proactive in their mediation education by joining mediation networks, seeking specialised training, and volunteering for practical experience. Oyinkro stressed the need for intentionality and involvement in the learning process, urging patience and perseverance in honing mediation skills. Overall, the workshop provided valuable insights into the practical aspects of mediation education and highlighted the importance of active engagement and ongoing learning in the field. Oyinkro and Eunice's journey from theory to practice mirrored my aspirations as a current student.

Their emphasis on the blend of theory and hands-on practice struck a chord, reminding me of the value of experiential learning.

After returning to the main room, Charlie introduced us to the Keynote speaker, Professor Deborah Thompson Eisenberg, Vice Dean and Piper & Marbury Professor of Law at the University of Maryland Francis King Carey School of Law who discussed “Mediation Clinics and Clinical, Legal Education”.

Deborah talked about mediation clinics and how they fit into legal education. She shared her experiences and insights, highlighting the importance of mediation in resolving conflicts. She explained that mediation involves helping people in conflict talk and reach an agreement. It's not easy because emotions and power imbalances can affect the outcome. However, mediation is crucial as most legal cases are resolved through negotiation, not trials. She discussed the history of legal education in the United States and how clinics emerged to teach practical skills beyond traditional classroom learning and that these clinics aim to promote justice, ethics, collaboration, and self-reflection.

She also emphasised the importance of mediation clinics in teaching skills like active listening, asking powerful questions, empathy, and adaptability. These skills, according to Deborah, are valuable not only for lawyers but also for leaders and community members in promoting social justice and resolving conflicts peacefully. Finally, she thanked the conference participants for their work in educating future mediators, recognizing the importance of their efforts in building a more just and equitable society.

It was now time for questions and answers for this session. One person asked about the difference between legal and non-legal justice, especially in mediation. Deborah explained that mediation is like grassroots justice because it focuses on what matters to the people involved in a conflict. She emphasised that mediation allows parties to decide what justice means to them based on their needs and values. Another question was asked about preventing social injustice in mediations with power imbalances. She acknowledged that it's difficult to ensure equal power but suggested strategies for mediators to give each party a fair chance to speak and be heard. Lastly, someone asked about building trust as a mediator. In answering this question, she emphasised the importance of actively listening to parties, reflecting on their concerns, and showing genuine curiosity about their needs. Trust, she explained, grows organically through these mediator skills. Overall, the event covered various aspects of mediation and the challenges involved in ensuring fairness and trust in the process.

Taking a breather during the lunch break, I marvelled at the wealth of knowledge shared during the morning sessions. Networking in the breakout rooms was a delightful bonus, offering glimpses into diverse perspectives and experiences. When I logged back in after the lunch break, it was time to listen to the next speaker.

We had another breakout session, where Charlie introduced the next speaker Professor Bryan Clark, from Newcastle University who spoke on the topic “The rise of online mediation in teaching and practice”.

During the workshop, Bryan discussed the rise of online mediation in both practice and education. He shared insights from recent research conducted with Tania Sourdin from Newcastle University in Australia, focusing on international commercial mediators' experiences and views. From the findings of the research, it was concluded that before the pandemic, many mediators had little to no experience with online mediation. However, due to COVID-19 lockdowns, online mediation became widely adopted. Despite initial scepticism, many mediators found online mediation to be surprisingly effective, with some even becoming advocates for its use.

Bryan mentioned that the benefits of online mediation include cost and time savings, reduced carbon footprint, and potentially higher settlement rates. However, there are also challenges, such as the inability to fully replicate in-person dynamics and concerns about confidentiality and security. He added that hybrid approaches, that is combining online and in-person elements, have emerged as a way to leverage the benefits of both methods and that some mediators have adapted their practice to incorporate online technologies for pre-mediation sessions, improving client engagement and preparation.

In terms of education, he explained that online mediation training has become increasingly popular, particularly during the pandemic. However, there are differences between online and in-person mediation skills, leading to discussions about the adequacy of online training for in-person practice.

Bryan also highlighted the importance of live sessions for community building in online education. Despite the challenges, online learning offers opportunities for international collaboration and student engagement. Overall, online mediation and education are expected to continue growing, with a mix of online and in-person practices becoming the norm. However, there is still a need for further development of ethical frameworks and protocols for online mediation.

Bryan's exploration of online mediation's rise in both practice and education shed light on the evolving landscape of conflict resolution. His discussion on the benefits and challenges of virtual mediation left me

pondering the future of the field in a digital age. After listening to his presentation, we went for another short break. Logging back in, we listened to another recorded feedback from a Mediation Clinic service user.

The highlight of my day, without a doubt, was the panel discussion facilitated by Dr Vanessa Collingridge, and the panel members were Dr Maria Moscati (University of Sussex), Dr Akshay Verma (National Law University Odisha (NLUO), Cuttack, India), Victoria Banke (Adekunle Ajasin University Akungba-Akoko, Nigeria) and Dr Przemysław Kubiak (University of Lodz, Poland). These speakers from various countries shared their experiences and challenges with mediation.

Victoria Banke from Nigeria emphasised the importance of education and awareness about mediation, despite facing obstacles like funding and resistance from legal practitioners. She discussed integrating mediation into university curricula and engaging students in practical exercises. Banke also mentioned initiatives such as establishing mediation centres and encouraging students to pursue professional certification.

Regarding maintaining the quality of mediators, Banke stressed adherence to rules of professional conduct and ongoing evaluation through surveys and feedback sessions. Dr Akshay Verma from India talked about compulsory mediation courses for law students and practical training through mediation clinics. Dr Przemysław Kubiak from Poland discussed efforts to regulate the mediator profession more strictly and emphasised the importance of educating law students about mediation's effectiveness.

Dr Maria Moscati highlighted the role of approved training programmes and assessments based on professional standards. She also discussed adapting teaching methods based on student feedback and focusing on practical aspects of mediation.

During the wrap-up, speakers shared their proudest achievements in promoting mediation. Maria focused on raising awareness about mediation's potential, while Akshay emphasised starting mediation education at the school level. Prem expressed hope for mediation to become the primary method for resolving disputes. Overall, the panelists provided valuable insights into their experiences and efforts to promote mediation education and practice in their respective countries, highlighting the importance of awareness and practical training in legal education.

Hearing from mediation educators worldwide was akin to embarking on a global journey of insights and inspiration. As a current student, their experiences, and challenges resonated deeply, reaffirming my commitment to the field.

As the conference concluded, with Charlie Irvine's closing remarks, I couldn't help but feel a sense of gratitude and excitement, I felt grateful for the wealth of knowledge and connections made. The conference had been a whirlwind of learning, connection, and growth, leaving me excited to continue my journey in mediation. With insights gained from the speakers and fellow attendees, I felt prepared to embrace the challenges and opportunities ahead. I am looking forward to the next conference.

¹ ***Linda Nkorika Oparah is currently completing her MSc in Mediation and Conflict Resolution at the University of Strathclyde. Alongside her academic pursuits, Linda generously volunteers her time with Cancer Research UK, demonstrating her commitment to making a positive difference in society. She is a dedicated volunteer with the Nigerian Red Cross Society, further showcasing her passion for humanitarian causes. Linda volunteers as a lead mediator with Strathclyde Mediation Clinic.***



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