

Mediation Matters!

The quarterly newsletter of the
University of Strathclyde Mediation Clinic

Inside this issue

Editorial.....	2
From the Director.....	4
Mediation Clinics and Organisational Conflict: Seeds to Spawn ‘Om-buds’ by James Claxton.....	7
Perpetuating the Illusion: a glimpse into the troubling world of court-ordered family mediation by Sacha-Annalisa Scott.....	12
Research Conversations – Charlie Irvine and Adrienne Watson.....	16
From the Chair.....	22
Clinic News.....	23
Rosie’s Roundup	25
Patrick’s Ponderings - What is ‘settlement authority’? by Patrick Scott	26
Scottish Legal Awards 2024 by Bronwyn Sutton	28
Aunt Minerva’s Agony Column	30
Mediation Clinic Annual Report.....	33

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University of
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Editorial



Patrick Scott

Another quarter has passed and it is time for the next issue of *Mediation Matters!*

We have two interesting articles from our mediators to share with readers. Sacha-Annalisa Scott discusses some of the problematic aspects of family law in Scotland, and some of the pitfalls in court-ordered family mediation. In her article, *Perpetuating the Illusion: a glimpse into the troubling world of court-ordered family mediation*, she talks us through the harrowing experiences of Alice, trying to protect herself and her daughter, not only from her daughter's father, but also from the family court system.

James Claxton, in his article *Mediation Clinics and Organisational Conflict: Seeds to Spawn 'Om-buds'*, reflects on how skills and standards applied in mediation are equally applicable in the world of the ombudsman. These include building trust, effective communication, managing emotions, adapting to people and situations, and ethics and practice standards.

In this issue, Adrienne Watson, our assistant editor, interviews Dr Charlie Irvine on his recently completed doctoral thesis entitled *Does mediation deliver justice? The perspective of unrepresented parties*. In the interview, Charlie discusses his research, the challenges he faced, his time management and the effect that his research has had on his teaching and mediation practice.

The recently held *Scottish Legal Awards* were attended by some Clinic members and Bronwyn Sutton gives a glimpse into the glamour and festivities at the event.

We have the usual contributions, *From the Director*, *From the Chair*, *Clinic News* and *Rosie's Roundup*. In *Patrick's Ponderings*, I discuss the concept of settlement authority and the importance of representatives having such authority when participating in a mediation, and *Aunt Minerva* yet again provides her advice to Worried, from Kinlochsporrán in her Agony Column. Finally, you can read all about the activities of the Clinic over the past year in the *Report from the AGM*.

My thanks to Adrienne, our assistant editor, for all her hard work in helping to compile this newsletter. I hope that you enjoy this issue and Adrienne and I wish you all a happy festive season and health and happiness in the new year.

Patrick Scott
Editor

Mediation Matters! *Reader Survey*

As *Mediation Matters!* enters its 3rd year, we are planning the future direction of the newsletter and would love to hear your views.

Please help us by completing our survey at:

[Mediation Matters! Reader Survey](#)

From the Director.....



Charlie Irvine

A good time to take stock

As professions grow and age, so do their founders. It's well over forty years since William Ury co-wrote *Getting to Yes*, by some distance the best-selling book on mediation. Despite being pitched at negotiators, Ury confided during a visit to the Scottish Parliament that it was conceived as a mediation text but then smartly adapted for the (much larger) negotiation market. Since then, he's refined and developed his thinking in a series of follow-ups, including *Getting Past No* (responding to predictable scepticism about the first book's positivity); *The Third Side: Why We Fight and How We Can Stop*; and *Getting to Yes with Yourself (And Other Worthy Opponents)*.

I'm grateful to a Clinic mediator for pointing me towards the audible version of Ury's latest offering: [Possible: How We Survive \(And Thrive\) In An Age of Conflict](#). The joy of audio books, apart from convenience when there are dogs to walk, is that they're often read by the author. It was a bonus to hear the 71-year-old's mellowed tones ambling through what I'm going to call his *apologia*.¹ If you're familiar with his other work you'll recognise the

themes: "*Go to the balcony*"; "*Build a golden bridge*"; and "*Engage the Third Side*" now framed as "*The Three Victories*". Each is expounded via numerous anecdotes, both fascinating and name-droppy, about putting it all into practice in some of the world's most awful conflicts.

This isn't a book review, however. Anyone who likes Ury's work will enjoy it, while the criticisms his approach attracts still apply; prescriptive, rationalistic, universalising and, as fellow American, Carrie Menkel-Meadow, said of *Getting to Yes*, displaying "*an abiding American optimism, attached to classic American pragmatism*". At times his stories boggle the mind, and it's good to hear how the ideas were challenged and honed through encounters with real life. Ury is clear from the outset that he always wanted to "*get his hands dirty*," at one stage quite literally in Kentucky coal mines (at some personal risk). It's primarily a practitioner's perspective, despite this master communicator refining it to three themes of three chapters.

Instead of reviewing the book in detail, I'd like to link it to two others that sprang to mind as I listened: all are forms of *apologia* by pioneers of the English-speaking mediation world. The other two are John-Paul Lederach's [The Moral Imagination](#), and Leonard Riskin's [Managing Conflict Mindfully \(Don't Believe Everything You Think\)](#). They are also all written by American men: when will Carrie Menkel-Meadow produce her own *apologia*? Perhaps the sheer volume of her output makes that a challenge.

¹ *Apologia* is a Latin word meaning 'defence'. As a book title it was coined in English by John Henry Newman's (1864) *Apologia Pro Vita Sua*, translated as 'A Defence of One's Own Life.'

In the meantime, acknowledging the narrow pool of those who got started early in conflict resolution, my point is simple: it's a good time to take stock. In these books we can learn from three principled, committed and very hard-working individuals who've devoted a lifetime to peace-making.

They are not ivory tower theorists. Lederach, the earliest of the three to reflect on his life's work, has sat alongside people living through some of the world's toughest conflicts – Somalia, Nicaragua, the Basque Country and Northern Ireland. Also the most poetic,² his *apologia* attempts to make meaning from apparently unspeakable events and those who refuse to be crushed by them. Rejecting grand theory, Lederach prefers stories, and the book starts with four, from Ghana, Kenya, Colombia and Tajikistan. It's hard to read them without welling up, and each conveys the courage, doggedness and sheer smartness of people who survive and transcend violence. Chapter headings convey this inspiring book's quizzical tone: "*On this moment: turning points*"; "*On simplicity and complexity: finding the essence of peacebuilding*"; "*On the gift of pessimism: insights from the geography of violence*"; "*On serendipity: the gift of accidental sagacity*."

Riskin's more recent effort appears to have a narrower purpose: to enhance the way people negotiate by integrating mindfulness and internal family systems. He links them like this: negotiation for managing *external* aspects of conflict; mindfulness for managing *awareness*; and internal family systems (IFS) for managing *internal* aspects of conflict. Put simply, he thinks many negotiators fail, not because their theory is wrong, but because they are unable

to manage themselves or those with whom they negotiate.

And yet the book sits comfortably alongside the other two, despite Riskin's somewhat lower profile. It could only have been written after a lifetime's working in and thinking about conflict resolution; it transcends disciplines; and the author's distinctive voice shines through, even when conveying complex ideas. In mediation circles, Riskin is known for coining the terms "*evaluative*" and "*facilitative*." It is the measure of the man, however, that he swiftly critiqued his own critique, reworking it repeatedly until he seems to have sickened himself with the whole endeavour. This self-deprecation contrasts sharply with Ury's stories of (mostly) success. Riskin opens with two tales of abject failure in front of his family, at a time when he already knew, but did not apply, a great deal about negotiation theory. The rest of the book offers ways to address the inherent irony that negotiators are also human beings, with the fallibility that implies.

To return to Ury, here's a new thing I took away. He draws a simple distinction between "*general knowledge*" and "*local knowledge*." The former is what education mostly offers; the latter is what we need if we're to make any progress in unlocking entrenched conflict. This suddenly made sense of my lived experience introducing mediation to separating parents – just like the intake work the Mediation Clinic carries out on a daily basis.

As soon as I started the job, I discovered that people had little interest in mediation as an abstract idea (general knowledge). Their eyes glazed, they looked bored and I felt boring. However, once I had spent time learning about their situation (local knowledge) and had

² See for example <https://onbeing.org/blog/an-unfolding-poem-for-the-moment-were-in/>, making sense of the pandemic through haiku.

begun asking the right questions, it all changed. Much later in the conversation I could explain how a mediator might deal with a specific issue (again local knowledge). They would agree or disagree, but the conversation was transformed. No more glazed eyes and boredom; now they were engaged with the novel possibility that something might be done to improve things. The need for local knowledge is why we have to listen, listen and listen again. This is typical of the insights packed into *Possible* from start to finish.

So – thanks to William Ury, John Paul Lederach and Leonard Riskin for these three *apologia*. Idiosyncratic, flawed people they may be, but this has been their life's work, and we (the mediation community and wider society) are the richer for it.

Charlie Irvine

Director, Mediation Clinic

Dr 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 been awarded his Doctorate for his PhD research into mediation participants and their reasons for settling.

Save the date...

Growing mediation, your practice and beyond

The next Mediation Clinic Conference
will be held online on

Friday 28th March 2025

More details to follow...

Mediation Clinics and Organisational Conflict: Seeds to Spawn 'Om-buds'

by James Claxton



James Claxton

Mediation is an interactive and unpredictable process. That makes the experiential learning that mediators gain in clinics particularly valuable to developing practice skills. The opportunity to work on techniques in simulations and co-mediations builds confidence and judgment. Yet what mediators learn in clinics plainly has applications beyond mediation. Showing empathy, active listening, and asking good questions are important life tools that are equally useful at the mediation table and at the dinner table.

The competencies honed in mediation clinics likewise have applications across professions. One that directly benefits from the skillset developed in mediation clinics is that of the organisational ombuds, whose primary role is to assist workers to manage and resolve workplace disputes informally.¹ This short piece explains what organisational ombuds do and explores how the techniques developed in mediation clinics are transferable to a range of services offered by ombuds.

The Role of Organisational Ombuds

The ombuds institution was created in Sweden in the 19th century to protect citizens' rights by investigating complaints against public authorities. Since then, ombuds offices have been established within various entities including governments, universities, businesses, hospitals, and international organisations. The role of organisational ombuds is different to the original Swedish institution. According to the International Ombuds Association, organisational ombuds perform several functions that include:

- *helping visitors to their offices understand the informal and formal options that exist for resolving their disputes;*
- *coaching visitors to manage disputes themselves;*
- *facilitating communication and mediating disputes between parties; and*
- *identifying emerging issues and trends within an organisation that can cause conflicts.*²

Ombuds offices tend to be organised around four principles, including the fundamental principle of confidentiality. Information shared with an ombuds, and even the fact that a meeting has occurred, is kept strictly confidential unless the ombuds and the parties agree otherwise. This assurance encourages visitors to speak freely without fear that their concerns will be disclosed without their consent.

¹ The term 'ombuds' in this article is shorthand for 'ombudsman,' 'ombuds,' and 'ombuds officer' as used both in the singular and plural.

² International Ombudsman Association (IOA), "What is an Ombuds?" , <https://www.ombudsassociation.org/what-is-an-ombuds-> [Accessed 3 October 2024]

Ombuds must also be impartial and neutral. An ombuds is not an advocate for any party in a dispute and does not decide what must be done to settle a dispute. Ombuds are unbiased facilitators who help parties explore solutions without taking sides. This should ensure that parties feel fairly treated and that the process focuses on de-escalation and resolution rather than assigning blame.

Another key principle that characterises ombuds' services is informality, which signifies that the use of these ombuds is entirely voluntary. They cannot make formal decisions or take administrative actions, which distinguishes their role from that of investigative bodies, arbitrators, and courts. This informality should help to reduce the hesitation that workers may feel about approaching the ombuds for assistance. It also allows the ombuds and their visitors to explore creative solutions not available through formal channels.

Finally, independence is a principle that ensures that ombuds offices remain distinct from the organisations they serve. Ombuds normally manage their own budgets and report directly to the highest levels of the organisation, such as the board of directors or the CEO, rather than to any specific department. This structure, typically set out in the office's charter or terms of reference, helps limit influence from mid-level managers or departments that may themselves be involved in disputes.

Mediation Clinics and Organisational Ombuds

Mediation clinics offer teaching and experiences that are directly relevant to the work of organisational ombuds.

Understanding Conflict

Clinics offer mediators insights into the nature of conflict, including the sources of conflict, the role of emotions in conflict, and how conflicts escalate and de-escalate. A January 2024 study of 14 mediation clinics in the United States found that about 64% include "*conflict theory and conflict management, and elements of professional identity*" in their curricula.³ Even where conflict management is not explicitly part of a programme, mediators gain practical insights by serving in court systems or other real-world settings and observing how mediation fits within larger dispute resolution frameworks.

Ombuds are, in a sense, generalists in informal dispute resolution. They handle a wide array of issues and have a variety of tools to address those issues. Visitors who approach organisational ombuds raise interpersonal conflicts involving peers or supervisors, career progression concerns, ethical dilemmas, and sensitive claims like harassment. Ombuds may mediate financial claims, such as the terms on which staff will leave an organisation and, in some cases, contractual disputes with outside partners. A foundational understanding of conflict dynamics, as provided in mediation clinics, can help ombuds to guide parties toward resolution in a variety of situations.

Mediation Skills and Standards

Mediators in clinics engage in simulations and co-mediations in a 'learning by doing'

³ Toby Guerin and Robyn Weinstein, "How to Establish and Maintain a Mediation Clinic in a Law School", Mediation Matters, Issue 8, July 2024, p. 21.

environment that promotes continuous improvement. Clinics foster a virtuous circle, allowing mediators to practice mediation skills and then receive feedback from their peers and the experienced mediators who support them. Mediators also benefit from observing how the other mediators conduct mediations.

Building Trust

Building trust is a fundamental part of mediation practice, and in mediation clinics, mediators learn to establish rapport with parties to foster an open dialogue. Similarly, an ombuds meeting a visitor for the first time must build rapport to ensure that the visitor feels safe sharing their concerns. Ombuds must also cultivate trust with parties when acting as mediators.

Trust takes on other dimensions in the work of ombuds. An ombuds is typically approached by an individual visitor with a grievance. After hearing the visitor's perspective, the ombuds and the visitor may decide that the ombuds will contact the other party to get their perspective and explore options to resolve the dispute. The ombuds will contact that party unbidden, which can trigger a defensive reaction. The party may not understand the role of the ombuds office, or they may resent that the ombuds office is involved in a situation they feel should have been dealt with between the individuals alone. These situations require the ombuds to carefully manage the trust-building process. Ombuds may need to spend time explaining the ombud's role and building rapport before turning to the actual dispute.

Beyond individual cases, an ombuds office must build trust across the organisation as a whole to encourage those who may benefit from its services to seek them out. A lack of trust from management, by extension, can affect how receptive managers are when an

ombuds raises concerns about conflict trends in the workplace that need to be addressed. In some cases, a breakdown in trust can even jeopardise the ombuds office's funding.

Effective Communication

Mediators in clinics practice communication techniques including active listening, summarising, and asking open questions. These skills are directly applicable to a range of ombuds services, including traditional mediations in which ombuds act as mediators in sessions with parties present at the same time.

Ombuds use other forms of mediation that engage the same skills. Shuttle diplomacy, for instance, involves an ombuds communicating separately with parties in conflict as an intermediary. Ombuds meet individually with the disputants and may speak with others in the organisation who can assist in resolving the dispute. An ombuds might contact a human resources representative or a policy specialist to clarify facts or confirm that settlement terms align with organisational policies. The ombuds 'shuttles' between the individuals in an attempt to orchestrate solutions.

Group mediation is another mediation technique used by ombuds that can be helpful to address tensions within a group. An ombuds might facilitate sessions with all affected by a situation present at the same time, helping them to address underlying issues, improve communication, and develop strategies to enhance cooperation. This can take a variety of forms. For example, the process might comprise a conversation aimed at building relationships, or it might comprise a session directed at resolving particular issues. The ombuds might collect data, such as responses to a questionnaire about the problem, to aid

the ombuds in designing an appropriate process.

Managing Emotions

Mediators in mediation clinics quickly come to appreciate the important role that managing emotions plays in dispute resolution. Ombuds likewise handle cases charged with emotions. A worker may feel marginalised due to perceived discrimination, or a worker struggling with a supervisor may begin to question their career and future. Some issues raised with ombuds involve allegations of harassment or abuse. All of these situations can impact a visitor's well-being. While ombuds are not mental health specialists, they must be skilled at navigating emotions and comfortable intervening in emotionally charged disputes.

Adapting to People and Situations

Clinic mediators learn to adjust mediation processes in real time. This might involve suggesting that the parties shift from a group meeting to private meetings between the mediator and each individual. Similarly, ombuds must remain flexible and adapt their approaches as they engage with a wide range of visitors and on diverse and evolving issues. Ombuds serve all members of an organisation equally, from volunteers to senior leaders. They may operate across different countries and cultures, especially those in international organisations or multinational companies. In a single matter, an ombuds might shift between roles as conflict coach, mediator and advisor on informal and formal procedures. By remaining flexible, ombuds can better navigate these different functions and the varying expectations of the visitors they assist.

Ethics and Practice Standards

The 2024 study mentioned previously found that all mediation clinics surveyed provide an

overview of mediation ethics in their programmes. Mediators in clinics also apply what they learn directly in simulations and mediations by, for example, safeguarding confidentiality and seeking to remain neutral and project this neutrality to the parties.

Ombuds must likewise work to ensure that they adhere to practice standards, not least in order to build trust in their services among potential visitors. If the workforce feels that an ombuds office is partial to management or that confidentiality is not sufficiently protected, they are unlikely to come to the office with their grievances. This imperative impacts the ways that ombuds interact with the workers they serve. For example, ombuds may choose to locate their offices in a remote part of the organisation's building to protect visitor confidentiality. They may decline meals with managers unless staff are present or refrain from socialising with the workforce outside of the office to avoid any appearance of partiality.

Beyond Mediation

While mediation clinics can provide foundations for many aspects of ombuds work, there are ombuds functions that go beyond mediation training. Ombuds commonly use upward reporting, as discussed, to identify to organisational leadership the issues and conflict trends they observe across cases. They can similarly raise specific concerns for individuals while keeping their identities confidential. The possibility of such anonymous reporting should make it easier for reluctant staff to raise concerns.

Another aspect of the ombuds role, in some offices, is fact-finding. Unlike investigations, which are formal and often adversarial, fact-finding is more flexible. Ombuds gather relevant information through conversations,

documents, and speaking with individuals indirectly involved in a dispute. For example, if a visitor complains that they were wrongfully passed over for a promotion, an ombuds might try to obtain notes from the job interview to clarify the rationale for the decision. While mediators seek information about disputes from the parties, they do not commonly seek documents and opinions from non-disputants.

Finally, despite a recent trend in external ombuds services, ombuds tend to be part of the organisations that they serve. They must navigate the culture, politics, and structures of these organisations and may need to adapt their operations as the organisations change. This is not a concern for most mediators, whose engagement with parties commonly ends once a mediation is over.

Conclusion

The organisational ombuds profession is growing. The leading blog for the profession reported that in the United States in 2022, 52 organisations created or increased the scope of their programmes.⁴ Several international organisations – including the United Nations and the World Bank – now have internal ombuds programmes. Meanwhile, the

profession is becoming more standardised. An ombuds certification programme administered by the International Ombuds Association began in 2004, and the American Bar Association has published and revised practice guidelines.⁵

This growth is not surprising given the significant costs of conflict to organisations. This includes both direct expenses such as litigation costs as well as less tangible costs such as reduced morale and employee loyalty. A 2021 study in the United Kingdom found that workplace disputes cost businesses an estimated £28.5 billion annually.⁶ As organisations grapple with the costs of conflict, the demand for ombuds services is likely to continue. This offers an opportunity for those who emerge from mediation clinics ready to explore the range of professions that align with their training.

James Claxton is an ombuds specialist, mediator, and arbitrator, and serves on the Board of the University of Strathclyde Mediation Clinic. The views expressed in this article are his own and do not necessarily reflect the views of his employer.

⁴ The Ombuds Blog (2022, December) *2022 year in review: Transitions*. Retrieved from <https://ombuds-blog.blogspot.com/2022/12/2022-year-in-review-transitions.html>.

⁵ The Ombuds Blog (2009, December) *Ombuds: A decade in review*. Retrieved from <https://ombuds-blog.blogspot.com/2009/12/ombuds-decade-in-review.html>.

⁶ Gifford, J, Brewis, G, Gilbert, H, and Houghton, E (2021) *Estimating the costs of workplace conflict*. Advisory, Conciliation and Arbitration Service. Retrieved from <https://www.acas.org.uk/costs-of-conflict>.

Perpetuating the Illusion: a glimpse into the troubling world of court-ordered family mediation by Sacha-Annalisa Scott



**Sacha-Annalisa
Scott**

Once upon a time, 35-year-old Alice¹ met a charming civil servant, five years her senior. Witty and generous, he quickly swept her off her feet with lavish nights out, cosy dinners in, and he paid plenty of attention to her. Alice always woke up to at least one message wishing her a great day, and her charming new partner seemed keen for Alice to share all the details of her day; even the parts she thought mundane.

But this is no fairy-tale. No protective, helpful talking mice, no bibbidi-bobbidi Fairy godmother around the corner and, certainly, no happy ending for Alice.

The text messages increased, and the grip tightened. Over the months and years that followed, behaviours which once seemed caring and thoughtful were exposed for what they really were – insidious and controlling. She missed a message once, while out shopping with their new-born daughter and a friend. In response to Alice failing to respond to him for five hours, her partner threatened to take their baby daughter and hide her; detailing how he would be forced to consider

carefully whether the baby would see her mother again.

Months later, on the first day of her new job, Alice stood in the corridor and cried, phone pressed to her ear. Her colleagues would later lower their eyes as they admitted to hearing words in passing as Alice's partner screamed at her for missing a call during a meeting, berating her for her selfishness and her lack of ability to put her family first.

These examples are, of course, just a glimpse into Alice's life during the four years she spent invisibly trapped in a relationship built on control, aggression, and the ever-present threat of what her partner might do to their child should Alice ever try to end the relationship.

But end it she did; after hours spent locked in a bathroom while he stood outside, shouting, banging, and belittling her – his words piercing the thick wooden door between them. The next morning, she looked down at her bruised, swollen fingers, feeling confused for a moment. Then she remembered the force against her as she tried to close the bathroom door while he tried to push. Their daughter was next door, sleeping soundly until her dad chased her mum into the room as she ran to protect her.

Alice ended the relationship and on the advice of her daughter's Health Visitor (who had become a Fairy godmother of sorts when Alice needed a confidante), she ceased all communication with her ex-partner. The Health Visitor was clear that she would be left with little option but to contact Social Services

¹ Not her real name.

should their now three-year-old daughter be further exposed to the abusive behaviour of her father.

Instructing a solicitor to oppose her ex-partner's request for weekly contact with their child, Alice felt a sense of relief; or as much of a relief as someone who has consistently walked on broken glass can feel. She provided accounts of just some of the behaviours perpetrated against her and her daughter and gave names of those who could corroborate incidents of abuse. It would soon be over.

However, as Alice was about to find out, the Scottish legal system is not without its issues. Despite reportedly leading the way with the enactment of the gold-standard Domestic Abuse (Scotland) Act 2018, Alice was told by not one, not two, but by three different solicitors, not to shout too loudly about the abuse she suffered. The third explicitly informed her that "*Sheriffs don't like it*" when domestic abuse is mentioned in a Child Welfare Hearing and would not be viewed in her favour. Desperate for any kind of resolution which would minimise the risk to both her and her daughter, Alice mumbled her agreement when her solicitor shared that the defence had asked for mediation, and he would "*urge*" her to agree.

A referral was made to an accredited family mediator; one with extensive experience. Keen to ensure the appointment of someone with such credentials, he had been chosen by Alice and was approved by the Pursuer's solicitor. Despite the mass of butterflies she felt prior to the online intake meeting, Alice was put at ease by the warmth of the mediator and his gentle demeanour. Her intermittent self-deprecating remarks gave away her nerves; however, she heard herself sharing some of her worst experiences and felt herself shaking

when the mediator asked how thinking about her ex-partner made her feel.

That intake meeting, conducted in accordance with the Relationship Scotland Code of Conduct for Family Mediators, was followed by both legal teams being informed that mediation would not be suitable due to indicators of domestic abuse being identified. Although fearful about what may happen next, Alice felt heard. She felt respected. She had long doubted the abuse she had suffered and minimised it until it almost became normalised. The response of the mediator told her it wasn't in her head and her fear was justified.

What happened next gave Alice just a glimpse into the mess that is family law. Her solicitor, seemingly aggrieved by the "*problematic*" mediator, quickly engaged in discussions with the other solicitor. He came back and gave Alice the news that, between them, both solicitors would recommend a group of mediators who were "*unlikely to have any problem*" providing mediation to Alice and her ex-partner. Both solicitors were fully aware of the safeguarding issues identified by the mediator, yet rather than informing the court of this barrier to mediation, they deemed the mediator to be problematic and sought the services of those seemingly less concerned by such issues. During conversations with Alice following this recommendation, her solicitor consistently dismissed the issue of domestic abuse; referring to her previous relationship as "*toxic*" and perpetuating the myth that abuse is a relationship issue, rather than a form of Gender-Based Violence.

It could be argued that Alice was unlucky. That those three solicitors she encountered were unscrupulous or had little knowledge or understanding of domestic abuse and of the 'gold standard' legislation that is supposed to

protect women and children from harm. However, the mediators whom Alice was asked to consider engaging (the ones who were deemed less likely to consider domestic abuse a safeguarding issue), were also practising family law solicitors, advertising their services as collaborative practitioners. The fact that it was this group of mediators who were seemingly willing to overlook the long-argued dangers of facilitating mediation between abuser and victim, is something Alice found herself increasingly concerned about. As mediators, it is something we should all be concerned about.

The statement below was made by Lucy Hadley, Head of Policy for Women's Aid in March 2023. It was released following an announcement from the Ministry of Justice that they planned to make mediation mandatory for all family court disputes in England. Following consultation, the plans have (thankfully) been scrapped. However, the issues raised by Women's Aid provide valuable insight into the tensions between mediation and the law:

Too often, we hear that the family courts' chronic misunderstanding and minimising of domestic abuse is the reason why survivors don't feel confident to disclose abuse in the first place. Survivors frequently fear they will be accused of parental alienation – a tactic perpetrators often use to accuse women of attempting to drive an emotional wedge between them and their children – if they raise domestic abuse.

This lack of disclosure means the proposed exclusion of domestic abuse cases from mediation will not always

work, and we fear that women will be re-traumatised by mediation with their perpetrators.

We already hear from women who have experienced abuse and are pushed down the mediation route – despite the fact they are experiencing post-separation abuse and control. If mediators don't have a thorough understanding of domestic abuse – or even know abuse is a factor in a case – these processes will ignore unequal power dynamics, exacerbating the abuse women experience and putting them at further risk.²

As the title suggests, this is a mere glimpse into the ever-increasing issue of court-appointed mediation and it isn't something which we, as mediators with the University of Strathclyde Mediation Clinic, tend to be involved in. But when a fellow mediator's assessment of risk is ignored in favour of a successful legal outcome, and the need for safeguarding can be so recklessly discarded, we owe it to all potential disputants to pay attention. Furthermore, if collaborative lawyers are acting in a such a way which perpetuates the illusion that abuser and victim can be successful disputants, to appease the court, we owe it to victims to familiarise ourselves with the challenges they face when embroiled in such disputes.

As for Alice? Alice is still caught within the family court system; trying desperately to navigate the unforgiving road of protecting herself and her daughter, while facilitating and encouraging her daughter's contact with a father she so clearly fears. Agreeing to supervised contact within an approved centre, the request for mediation was put aside. Her

² Hadley, L. (2023) 'Women's Aid Responds to Ministry of Justice Mediation Proposals.' <https://www.womensaid.org.uk/womens-aid-responds-to-ministry-of-justice-mediation-proposals/> [Accessed 20 July 2024].

daughter, however, has shown increased resistance since contact moved outwith the centre; particularly after experiencing her father screaming at another child for a perceived slight.

The matter is far from settled...and Alice's solicitor has suggested she consider mediation...

Sacha-Annalisa Scott commenced the LLM in Mediation and Conflict Resolution at the University of Strathclyde before pausing to undertake the MSW Social Work at Edinburgh Napier University. She currently works as a Social Worker within Child Protection as well as volunteering for the University of Strathclyde Mediation Clinic.

Research Conversations...

Charlie Irvine discusses his PhD research with Adrienne Watson



Charlie Irvine



Adrienne Watson

In the July issue of *Mediation Matters!* we were delighted to congratulate our Director, Dr Charlie Irvine, on the completion of his PhD.¹ His research into unrepresented mediation parties in Scotland and their perspectives on substantive justice will be of interest to all mediators. In this article, Charlie shares his PhD reflections with our Assistant Editor, Adrienne.

What led you to embark on your PhD?

I had been teaching the Master's course at Strathclyde for 3 or 4 years and I was aware that many of the impressive writers I was reading seemed to have a lot more depth than I did.

In 2014, I wrote a blog for the Kluwer Mediation Blog called *Mind the Gap: Mediation and Justice*², where I considered what I thought was a gap in the research. There seemed to be a widely held assumption that the courts were good at justice and access to justice, while mediation's strengths lay in interpersonal relationships and getting resolutions. Yet few researchers ever asked

mediation parties about the justice of their mediation settlements.

A few months later some friends mentioned a PhD bursary that Queen Margaret University was offering and encouraged me to apply.

Sometimes a PhD is described as an 'apprenticeship of identity' immersing you in the foundations of academic life. But for me, primarily, I felt that this was a study that needed to be done. I still feel that it's a surprising gap in the research - if I hadn't done it, I would want someone else to be doing it. The bursary allowed me to set aside the time for the research.



Craig Cathcart and Charlie Irvine

I believed it would definitely raise my game, allow me to read a lot more and immerse me in the methodology in a deeper way than I could otherwise have done.

¹ [Does mediation deliver justice? The perspective of unrepresented parties](#)

² <http://kluwermediationblog.com/2014/05/12/mind-the-gap-mediation-and-justice/> [Accessed 4 October 2024]

Why do you think this research gap exists?

Much of the existing research comes from what I would call the 'legal academy' (the academic side of lawyering), especially in America where writers could be quite sceptical about anything that might undermine the supremacy of the courts. Before the PhD, I had never really indulged myself in arguing back. Part of the thesis systematically addresses the critics and the critiques, and attempts to highlight their weaknesses, flaws and blind spots.

Many critics are passionately committed to consumers and access to justice, but there seems to be an assumption that, unless you're a lawyer, you can't answer the question 'does mediation deliver justice?' I wanted to find out what people who aren't legally trained do when they are offered the chance to decide what outcome is acceptable, and why they make those decisions.

A lot of people are keen to examine mediation for all the ways it may be colluding with injustice, but when I floated the idea that we could trust non-lawyers to recognise what would be just and to come up with just results, people seemed quite puzzled.

A critique that particularly inspired me to look for evidence of this was when Professor Hazel Genn said at the 2008 Hamlyn Lecture in Edinburgh that mediation "...is not about *just* settlement, it is *just about settlement*".³

What were your aims?

I wanted to find out what ordinary people think about the deals they do and whether they thought the settlements they arrived at were fair. I also wanted to ask them specifically 'Did you get justice?'

I wanted to find out what ordinary people think about the deals they do and whether they thought the settlements they arrived at were fair. I also wanted to ask them specifically 'Did you get justice?'

Hazel Genn had said that mediation doesn't deliver what she calls 'substantive justice' (i.e. is what you get through mediation as much as you would get in court?). She did concede that mediation might deliver procedural justice, which many studies support. However, far fewer studies consider substantive (or outcome) justice.

Particularly in court-based mediation we see the parties effectively making deals with themselves, working through various scenarios and weighing up what result they can live with. I was really interested in finding out about their criteria. Was it about getting the better of the other party or was there more to it than that? I discovered that there was much more to it.

What were your key findings?

My biggest headline is that we should take unrepresented people more seriously as individuals who are capable of thinking about justice.

Most people said that they didn't feel they had received 100% justice, which is interesting as the result was their decision. We often stress that mediation allows parties to make their own decisions but have overlooked the fact that the other party is a decision-maker too. This means as well as being decision makers, mediation parties are also decision recipients. Some parties indicated that they would only

³ GENN, H (2010) *Judging Civil Justice*. Cambridge: Cambridge University Press

feel they had received 100% justice if they had got everything they wanted. I summed this up as:

In most cases the opportunity mediation provides for participants to apply their own principles leads to settlements that are sufficiently just not to fall outside the range of what the courts might do, with the other party's veto over the result acting as a guarantee against oppression.

This led to some interesting thoughts about the many forms of compromise. Sometimes we can view compromise in a really positive way, seeing our offer to compromise as demonstrating how reasonable we are. A negative corollary is 'they refused to compromise' which demonstrates the other party's unreasonableness. 'My refusal to compromise' demonstrates that I'm a morally upright person, but 'having to compromise' takes my choice away. People also approved of the mediator encouraging compromise.

Another key discovery was that many non-lawyers had recreated or stumbled upon things that lawyers do in legal cases. It wasn't just about 'what does the law say?'. Non-lawyers are also aware of areas such as the tactics of negotiation; for example, deciding when to make an offer. I was trying to debunk what I think is quite a patronising approach to non-lawyers by the legal fraternity.

A number of interviewees were business people and repeat players in mediation. They weren't archetypal naive consumers who can be pushed around. Some reinvented legal doctrines such as being returned to the position they were in before the other party 'messed up'. They also applied principles such

as punishment for someone who had done something wrong.

One particularly interesting thing was when interviewees answered a question I hadn't asked. I asked, 'Was the mediation outcome fair', and they would say 'I was fair'. They were effectively answering the question 'What kind of person are you?'. I think we may have underestimated parties' need to do justice and to be seen as a fair person in their own eyes, as well as in the eyes of others and the eyes of the mediator. One person who worked for a big company stressed that whether they won or lost, they wanted to make it clear that they worked for a good company. As well as seeing themselves as fair people, employees liked to feel they worked for a decent company.

I concluded that mediation can produce justice but doesn't produce law. Owen Fiss, a strong critic of mediation, says that the courts have more than one job to do.⁴ One is about resolving individual disputes, but another is that with each decision they are setting down guidelines for future cases (i.e. precedent or norms). Mediation, on the other hand, may lead to a fair result in one case, but has no effect on any other cases and isn't trying to affect any future cases.

I did find that, on balance, there is a risk of injustice in mediation. There was more than one case where it looked as though a fair outcome had not been arrived at.

When this happens, the mediator's role becomes especially significant. In court-based mediation, an activist mediator who gets the sense that an unfair agreement is emerging can offer some inputs about the legal norms which might apply, thereby helping the parties come to a fairer agreement.

⁴ FISS, O (1984) *Against Settlement*. The Yale Law Journal, 93(6), pp. 1073–1090.

I think there's a case, in this setting, for mediators developing the confidence to be willing to offer some input. Parties often commented that they hadn't had any input from the mediators, but that they would have liked some.

When mediators offered legal information that the parties didn't want to take account of, they appreciated the input but just ignored it. Parties might say that they are perfectly aware of what the law says, but they have good reasons for making an alternative decision. I consider that to be informed decision-making, which I believe is an improvement on simple self-determination.

Another finding, which was quite difficult for me as a mediator, is just how important getting a result was to the parties feeling that they had received justice. Almost none of the people who didn't get a deal thought they had reached a just outcome.

While this can be seen as common sense, most mediators feel it is important not to force anyone into a deal and accept that some cases should go back to court. I think we might have to live with the fact that some of our clients will think that they haven't received justice when the mediation has not reached a resolution.

What were the greatest challenges you faced?

As for most PhD students, procrastination is a challenge. I have come to realise that I have belatedly recognised ADHD. A PhD is a really stern psychological test, and by the end I had learnt to surf most of the upsides and downsides of ADHD. Most people probably know that the downsides include finding it very hard to get organised and procrastinating terribly. Getting started was always a chore. However, an associated ADHD 'superpower' is

that, once I got going, a kind of hyper-focus kept me at it until I had achieved what I had set out to complete.

A PhD is a challenge for everyone; I've never met anyone who sailed through it. A friend of mine who was doing a PhD said to me "...the more I read, the more I see chasms of ignorance opening up all around me..." This was exactly what happened to me – it's a challenge for new PhD students to stop themselves being drawn down multiple delightful rabbit holes.

One of the most useful pieces of advice I got was when a friend said "Charlie, it's just a PhD." I realised I didn't have to do everything or make it my life's work. It allowed me to drop some over-ambitiousness and to narrow my focus. You have to know your limits, accept them and do your best to produce a coherent piece of writing.

A friend of mine who was doing a PhD said to me "...the more I read, the more I see chasms of ignorance opening up all around me..."

In some ways it was good to be supervising dissertations at the same time as the PhD, as I would sometimes hear my own words coming back at me. Current students will recognise my repeated encouragement to 'narrow it down'.

How did you manage your time and workload?

I knew at the beginning that the PhD would take at least six years to complete part-time. Generally, universities consider a part-time PhD is on time if it takes eight years so, allowing for Covid extensions, my nine years was almost on time!

I was super-excited at the start. It was the 'kid in the candy store' stage, when you're making time to read a lot. You have many new ideas, and old ideas you haven't previously encountered, coming at you.

Reality kicked in at the First Year Review (after two years part-time). I submitted the beginnings of the literature review and an outline of how I would approach answering the research questions. I felt I got an absolute 'doing' from the reviewers who had substantial criticisms.

My supervisor had been satisfied with my work, but the reviewers fed-back that it needed 'major revisions'. At the time I was furious and in despair, and I thought about giving up, but it was good for me. I rewrote the work in a bit of a rage, and it definitely improved, which was an important lesson.

I was never able to juggle my teaching workload with the PhD. The only work I managed during the academic year was undertaking my interviews, which I did in years 3, 4 and 5.

My version of 'part-time' was working every summer for 2-3 months, with a final big push for 6 months to complete the thesis. I'm not one of the world's natural planners so I tended to set myself mini targets for each summer. Between the summers, the PhD was always on my shoulder making me feel a bit stressed.

What are you most proud of?

I was brought up not to boast so it goes against the grain, but what I'm most proud of is that it's quite readable, compared to a lot of academic writing. I would hope that if folk are reasonably interested that they would find that I stripped back a lot in order to make it more readable.

Overall, I'm glad I did it, I'm glad I got it done, but it was arduous.

Has the PhD affected your teaching or mediation practice?

Doing such an in-depth review has definitely helped my teaching in terms of the breadth of coverage. However, it dates quickly so you need to come back and review it regularly.

I'm not sure yet whether it has impacted my mediation practice, as I stepped back a bit while I was writing the PhD. I'm now getting back into my practice, but I don't think I know the answer to that yet, maybe ask me again in a few years.

Are there any aspects that you think would benefit from further research?

Yes, there are two areas. One would be to investigate what people think about the justice and fairness of their court outcomes. We currently have very little data on this. The second area would involve theorising around mediation and jurisprudence (the philosophy of law). I touch on this, but there is more work to be done.

Maybe one day I'll go through the interview data again and look at what people thought about what the mediators did. There was so much detail on areas which didn't make it into the thesis that there is almost enough for a second thesis!

Is there anything else you would like to say to our readers?

It's difficult not to sound quite clichéd, but I think it's quite important to enjoy what we do. Something that really shone through was the people who had a lot of time for their mediators and were full of praise. They said their mediators really knew their stuff and they liked the way they worked with them. People seemed to be pleased with what I call

activist mediators, who took charge, knew what they were doing and were comfortable with conflict.

One of the reasons I so objected to the idea that mediators are the servants of injustice is that mediators generally want to make the world a better place. Hazel Genn's comments inspired me to look into this and I was relieved to see that, with the right amount of thoughtfulness, we do not generally deliver injustice.

For those who are interested in hearing more, I will be speaking about my research findings at the [Civil Mediation Council Conference](#) in November.

Dr 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 been awarded his Doctorate for his PhD research into mediation participants and their reasons for settling.

Adrienne Watson trained as an Accredited Mediator in 2016 and completed the MSc in Mediation and Conflict Resolution at the University of Strathclyde in 2023. Adrienne is a lead mediator with Strathclyde Mediation Clinic and is Assistant Editor of the Mediation Matters! newsletter.

From the Chair.....



Andrew Boyd

With the changing of the season and the weather being distinctly autumnal, hopefully we have all benefitted from some downtime over the summer. It is important for those of us who are working with people in conflict, that we do not take on the burden of that conflict ourselves and that we take time to reflect and look after our own wellbeing. Reflective practice is an excellent way of sharing and talking through our concerns and our mediators are encouraged to attend Peer Support Sessions which are hosted by the Clinic throughout the year. Mediators should attend at least one Peer Support Session per year.

The Clinic's AGM was held on Tuesday the 8th of October. Your Board has been reflecting over the previous year and planning for the next. The AGM serves as a useful time to pause and consider the various reports that are presented, which detail what has been happening in 2023-24. These reports are contained in the Annual Report¹ which is now available, and I would encourage you to use it as a way of keeping up to date with what has been happening with the Clinic. The AGM also gives the opportunity for new members to contribute to the work of the Clinic by serving on the Board. Over the years the Board has

benefited both from the experience of members who have served on the Board for some time, as well as from its newer members, who bring fresh experiences and ideas about how we can both strengthen and develop the work of the Clinic.

Finally, I would like to remind you about the International Mediation Clinic Network (IMCN). Our own Clinic set up the IMCN several years ago and the meetings are held online several times each year. The meetings are an excellent way of benefitting from what is happening with other mediation clinics, both in the UK and around the world. As we all know, we gain knowledge from listening to others, but these meetings also provide us with a platform to share how we do things in our own Clinic, and this gives others the benefit of our experiences.

All the best with your mediation work over the next year and I hope that you enjoy this latest edition of *Mediation Matters!*

Andrew Boyd

Co-Chair, Mediation Clinic

Andrew Boyd completed the MSc in Mediation and Conflict Resolution at Strathclyde University in 2013. Andrew has previously worked for the Scottish Centre for Conflict Resolution as their Mediation and Conflict Resolution Advisor. Andrew was also previously on the mediation panel of the Scottish Legal Complaints Commission and was previously a consultant mediator with Common Ground Mediation. Andrew has been volunteering with Strathclyde Mediation Clinic since its inception.

¹ See page 33

Clinic News



Pauline McKay

How time flies! Another edition of *Mediation Matters!* in your inbox. It has been a busy few months for us here at the Clinic.

I would like to welcome our new LLM/MSc Mediation and Conflict Resolution students and wish them success in their studies. The Clinic has presented to them and all students are encouraged to get involved if their time permits.

I would also like to welcome our new undergraduate student, Charlotte McMunigle, who has started with the Clinic for one day per week for 10 weeks on her 'workplace' placement. Charlotte will be immersed in all things involving mediation, and you may deal with her via email or in person when she observes some mediation sessions.

We have had quite a few meetings recently, including our Funding Group, Document Review Group, and Conference Committee Group. The conference is coming along nicely. The date has been confirmed as Friday, the 28th of March 2025, via Zoom. The theme is ***Growing mediation, your practice and beyond***, and our keynote speaker is Tony Whatling. Further details will be available in due course. Many thanks to the conference group for their input to date.

The Board had a Strategy Session on Wednesday, the 18th of September, where we

reviewed our strategy and looked at the next steps for the coming year.

I was fortunate to visit Beeslack Community High School in September to speak to Legal Studies students about mediation. I was impressed by their knowledge of Simple Procedure. It was a great opportunity to engage with the students about the Mediation Clinic and promote mediation as an alternative to court.

The International Mediation Clinic Network has a new [webpage](#) and we hope to bring more content soon. Hanna Dushkova and Vitalii Diakov presented a session on their mediation experience in Ukraine, and we are holding a mini-online conference on Wednesday, the 27th of November, at 5pm GMT. Proposal submission details can also be found on the [webpage](#).

We have been organising a number of events, including Peer Support Sessions for the next quarter and a CPD event on Trauma Informed Practice with Dr Suzy Houston on Wednesday, the 6th of November. These are open to Mediation Clinic members only.

We are no longer offering our in-person mediation service in Paisley Sheriff Court. Although it has been a good exercise in promoting the Clinic and liaising with Sheriffs, the referrals have not materialised. We will continue to receive referrals by email. We would like to thank the Sheriffs, Court staff and all mediators who gave up their time to go along over the past few months.

Rosie and I attended the Fair Justice System for Scotland (FJSS) Conference on the 29th of August in Edinburgh. The FJSS Conference was well attended and included the Scottish Cabinet Secretary for Justice and Home Affairs

Angela Constance, Sir Geoff Palmer, Lord Carlaway and Sheriff Pino Di Emidio. All acknowledged the lack of diversity and inclusion in the legal profession and discussed ways to advance it. FJSS will send a summary to all participants.

We are thrilled to share that our Rosie has secured a permanent position within the Law School here at Strathclyde, starting on the 8th of November. While we will miss having her with us daily, we are excited she will still be around to mediate with the Clinic. Rosie has been a fantastic fit within the Mediation Clinic team, and we are grateful for everything she has contributed. With our newly trained undergraduate students stepping in to support intakes, we are already making plans going forward.

Hoping Autumn is good for everyone.

Pauline McKay

Co-ordinator, Mediation Clinic

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

Rosie's Roundup



Rosie McBride

Once again, it is hard to believe that it's time for another edition of *Mediation Matters!* The Clinic has been very busy, with a steady influx of cases following the summer holidays, and preparations for the year ahead. We have been excited to welcome new students who are beginning their mediation careers and are starting to observe cases already. It has been a pleasure to connect with new people.

Attending the Scottish Legal Awards in September was a big highlight of the year; it was great to reconnect with some familiar faces and to meet Adrienne and Aitana for the first time. Although we didn't win the Community Care Award (not to mention the Oasis tickets which were up for grabs!), it was a delightful evening and great to be nominated nevertheless... I'm sure you will hear more from Bronwyn on this.

Recently, we held our Annual General Meeting. It was nice to see both familiar and new faces. Hearing Andrew and Charlie share the Clinic's recent successes and upcoming plans was truly inspiring. Pauline and I had the opportunity to present to the new student cohort about the Clinic and how they can get involved. We also presented to the administrative staff at the Sheriff Courts we collaborate with. We outlined our processes

and emphasised our capacity to take on more cases. It was a productive session that highlighted our commitment to serving the community.

My time at the Mediation Clinic over the past 11 months has been an incredibly rewarding and enriching experience. As many of you know, I will be starting a new position within the Strathclyde Law School, and I will be finishing up at the Mediation Clinic on the 8th of November. I've truly enjoyed working with everyone at the Clinic, and I hope to maintain these connections.

I would like to express my gratitude to everyone who has made me feel so welcome since I joined. A special thank you to the lead mediators for their support and guidance as I assisted in mediations, to everyone who has stopped by the Clinic office to say hello, and especially to Pauline and Charlie for their kindness and support.

I am excited about my new opportunity, and I look forward to hearing about the continued successes of the Clinic in the future.

Rosie McBride

Service Delivery Administrator, Mediation Clinic

Rosie McBride started as Service Delivery Administrator with 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.

Patrick's Ponderings - What is 'settlement authority'?

by Patrick Scott



Patrick Scott

Most Agreements to Mediate contain a clause dealing with 'settlement authority'. In the case of the Strathclyde Mediation Clinic, the clause provides that:

Each party will attempt in good faith to resolve the dispute using the mediation process and will attend the mediation, either physically, online, or telephonically, with full authority to settle the dispute.

In some Agreements, the clause provides that if the person attending the mediation needs to consult someone not at the mediation to obtain authority, arrangements must be in place for the participant to speak to that person during the mediation.

What does that mean? What is settlement authority and what are the consequences of a party not having settlement authority? And, as mediators, how do we deal with this?

Here is a case study to illustrate the effect of a representative of a party not having proper authority to settle at a mediation.

Jim owned a flat which was managed by a factor. The factor did not always do as Jim wanted, and he questioned some of the entries on his invoices. Sadly, his queries were not always answered. As a protest, he did not pay his factoring fees. As the debt mounted,

with late payment charges and interest being added to the account, the factor decided to sue. It appointed Smith & Co Solicitors to represent it. The action was defended and referred to mediation. Emma Smith represented the factor at the mediation. During a pre-mediation meeting, Emma said that she would be attending the mediation alone, but she had settlement authority.

The mediation progressed well, and Jim eventually conceded that he would pay the invoices. However, he was not happy to pay the admin fees, late payment charges or interest. The total amount owing was £5000, and he made an offer to pay £4500, in two instalments. Emma said that she only had authority to waive late payment charges and would have to go back to her client for authority to accept the offer. Emma anticipated that she would have a response from her client by the next day. Alas, a month later there had still not been a response.

What was the problem here? Emma said that she had settlement authority, but she did not. What she had was a settlement mandate. She could not weigh up the factors raised by Jim in the discussion and decide whether to accept the offer. She had a limited mandate to waive a small portion of the claim but had to revert to her client for settlement authority. A further problem was that she did not have a representative from her client on call to obtain authority. This kind of situation is problematic, and should be avoided.

What should have happened was that Emma should either have had full authority to settle the matter (which most clients are loath to give to their lawyers), or a representative of

the client with settlement authority should have been present at the mediation or readily available to give instructions during the mediation. My preference is to have the person with settlement authority at the mediation as, if they are not, they do not have the benefit of being aware of the content of the mediation discussion, and they depend on their representative for that information. It is very difficult to share with someone the atmosphere of the discussion, with its intricacies and emotions, such that the person giving the authority has a feel for what took place during the mediation. It boils down to the mediator ensuring that, as far as possible, the right people are present at the mediation.

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.

Scottish Legal Awards 2024 by Bronwyn Sutton



Bronwyn Sutton

What a rare treat to find myself with an invitation to the shiniest event on the legal calendar, the Scottish Legal Awards! And what good fortune that the in-laws accepted (with delight!) my invitation for them to travel from Edinburgh to look after my two young boys, leaving me free to get dolled up and go to the ball.

So it was on the 19th of September that I met with the rest of the Mediation Clinic table at *The Butterfly and the Pig* for a wee tipple before the big event; Alastair Sharp and his wife, Ann, Pauline McKay, Rosie McBrine, Patrick Scott, Aitana Rius Fabregat and Adrienne Watson. Fabulous is an understatement – a compromise¹ of mediators have never looked so red-carpet ready! Charlie Irvine, fearless leader of the Clinic, had spent the afternoon inducting the new cohort of Strathclyde mediation students and would meet us at the venue.

On arriving, tall glasses of prosecco were distributed to the incoming waves of chattering, tottering, legal glitterati at Glasgow's lavishly decorated Hilton Doubletree, where we met up with Charlie. Across the crowded auditorium, Patrick

recognised a person he had mediated in the past. From this sighting followed a discussion on how best to handle this potentially delicate interaction. The consensus was to let the mediated party initiate a greeting and/or conversation, rather than the mediator making the first move. It seems that the principle of empowering the parties continues well past the mediation itself...

A charge of sequined excitement rippled through the crowd at the chance of two tickets to see Oasis at Murrayfield, offered by one of the event sponsors, 123 Medical. Ann and I hurried to join their mailing list for a chance to win. Sadly (and perhaps unsurprisingly) we later learned that our enthusiasm was to no avail, and another lucky punter took home the tickets.



We took our seats and awaited the carefully orchestrated arrival of pan seared seabream, followed by braised beef and dauphinoise delivered to more than 550 hungry law folk in mere minutes. Not for the first time I marvelled at the logistical magic of mass catering. Apple and pear tarte tatin followed, and an abundance of Scotland's finest tablet.

¹ see <https://www.hearsay.org.au/collective-nouns-for-participants-in-the-legal-system>

Once the plates were cleared and coffee poured, sharp-tongued comedian and compere, Des Clarke, delighted in (verbally) raising two fingers at the legal establishment and awards spectacle. He drew laughs, guffaws and shocked giggles and kept proceedings moving at a cracking pace.

Accolades rained down upon Scotland's best and brightest legal minds, star-spangled in their finery. Of note, the 'Law Champion of the Year,' award was posthumously awarded to Janet Hood, whose sudden loss earlier in the year was dearly felt by many in the Scottish legal community. Several people acknowledged Janet in their own acceptance speeches and made poignant comments in her memory.

This year the University of Strathclyde Mediation Clinic was nominated for the Community Care Award. However, after scooping awards and commendations for three years running, the Clinic had to step aside for another worthy contributor to Scotland's legal landscape, Lege Expertia. Lege Expertia is Scotland's first Polish law firm, with a mission to 'promote legal awareness among migrants in the UK and to help them in solving their legal

problems both internally in the UK and in their home country'. I'm sure I speak for everyone in the Clinic in congratulating Lege Expertia, and wish them the very best in their mission.



It is with some wistfulness I note that this event continued a trend; that willingness to don a kilt for black tie events seems to be fading. A kilt is a many-splendored thing! Yet latterly in my 12 years in Scotland, sightings away from football matches have become few and far between. So special mention goes to Alastair Sharp for upholding this fine Scottish tradition!

Bronwyn Sutton is studying for the LLM in Mediation and Conflict Resolution at the University of Strathclyde. She currently freelances in the offshore wind industry as well as volunteering for Strathclyde Mediation Clinic.



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 another query from 'Worried' of Kinlochsporrان.

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

Dear Aunt Minerva

It is "Worried" here again. A lot of curious and complex things seem to take place out here in Kinlochsporrان. This time it's the sheep shearing that's causing a problem. Let me fill you in.

As you know, the sheep shearing season has just finished and the village are celebrating the success of Hamish from the Mains of Auchmurchy in the International Sheep Shearing Championship which was held at Kinlochsporrان this year. Not only was he awarded the magnificent Golden Fleece Cup but also a cheque for £5000. All very well you may think, but the problem is that Angus from the Smiddy has made a claim for half of the money as he made Hamish's shearing clippers. It should be said that whereas nowadays most shearing is carried out with mechanical shearers, the Golden Fleece Award commemorates the old-fashioned hand tool method and is much coveted and competed for by old and new shearers from all over the world.

There is no dispute that Angus made Hamish's clippers and that they are a magnificent pair, perfectly balanced and hand forged on Angus' ancient anvil and indeed sharpened on the day of the competition by Angus, and delivered to Hamish at the competition ground. It is further agreed that Hamish paid Angus a good sum for the clippers. What is not agreed is that Hamish

would pay Angus any share of the winnings. Angus avers that as he handed the clippers over to Hamish, he whispered to him "*and you'll see me right when you win lad*" and that Hamish replied "*aye and to a half an that Angus*". Hamish recalls saying no more than "*an with half the world watching Angus*".

When Angus made a demand for £2500 in the snug of *The Rutting Stag*, Hamish laughed it off and offered him the freedom of the bar for a week but nothing more. Angus consulted a crony who had worked for a while as a paralegal in Glasgow and he launched a Simple Procedure claim at the Kinlochsporrان Sheriff Court. The Sheriff paused the case for Mediation.

Worried, From Kinlochsporrان



Photo by [Ambitious Studio*](#) | Rick Barrett on [Unsplash](#)

Worried's Questions

1. I belong to the same Book Circle as the Sheriff's wife, Marjory. At the most recent meeting whilst we were having our customary sherry at the conclusion of our discussions, she discreetly took me aside and mentioned that her husband was most concerned at the bad publicity the case could give the area and might undo all the good that the award had created. She hoped that I would be able to sort it all out and that, oh incidentally, she would be happy to sponsor me for the recent (and prized) vacancy of the local Sewing Bee. It was not clear whether she was speaking on her own or her husband's behalf. She is known to be a bit of a blether after a glass or two of the Circle's sherry. The question is what, if anything, do I do about this overture?
2. We have had a first joint meeting on Zoom, when each party has stuck to their respective positions. The meeting was awkward as neither party was familiar with the system and I sense each had a hidden supporter in the room. I got the impression each would like to talk privately but would be more at ease in an informal setting. I have been offered a private room with free bar at *The Rutting Stag*. Should I accept it and carry on the mediation in such a more relaxing environment?
3. I have been approached by the Chair of the local Chamber of Commerce, also expressing concern as to the bad publicity, especially as local business and tourism significantly improved following the award. They understand that Angus has started proceedings but do not have details. They realise his hand-crafted clippers made a significant contribution to

Hamish's success and wondered if the Chamber sponsored an award for say *The Golden Clippers*, together with a cash prize, that might help. I suspect the Chair knows a little more than he is letting on, but I didn't want to press. What should I do, and do I tell the parties?

4. I have also been approached by the local paper *The Kinlochsporrán and Glen Skean Post* (it's amazing how news travels around here). They would like an exclusive on the story with a view to a possible coordination with a national rural and wildlife film maker, exploring the continuation of ancient crafts and pastimes, such as hand sheep shearing and tool making. It could be a bonus for the area although mixed publicity for Angus and Hamish. Also, I am concerned it might pierce the veil of confidentiality and privacy of the mediation. Help! What should I do?

Aunt Minerva's Answers

1. Quite simply nothing. She may well have been expressing her husband's views and genuinely wanted to help, but you must not let her feel that you have taken any steps to further the matter as the result of her intervention. Any positive reassurances from you could well result in effusive praise, loosened perhaps by the Circle's Oloroso, when she proposes you for the Sewing Bee. The Sewing Bee may have to take a step back for the moment as your integrity is more important than a perfect gathering stitch.
2. I fully understand how the parties may feel. Face-to-face meetings are always best for those unfamiliar with online communications. There is no reason why a mutually agreed location such as a private

room at *The Rutting Stag* should not be used, preferably not a room too close to the Snug, however, but without the bar open, at least initially. If all goes well and progresses to a final joint meeting, I see no reason why a 15 year old Glensporran should not be utilised to celebrate any agreement (only to be opened after the agreement is signed!).

3. An interesting one this. It demonstrates how mediations can cast broadly for solutions that a court could not. It seems clear that Angus (deservedly) seeks acknowledgement for his part in Hamish's success and at the moment he sees the only way to achieve this as seeking money from Hamish. He may well lose interest in his Sheriff Court case if he is adequately recognised by an award as well as some cash. Furthermore, it might well ease the atmosphere in the snug where the inhabitants may well be taking sides.
4. The question is how to achieve such a solution as your powers and actions are limited. However, as you have been approached by the Chair, then you could respond by indicating that it sounds an excellent idea and that he might consider

approaching the parties about it, but you cannot act as an intermediary. You can then have a further private meeting with the parties when you can get them to bring out the proposal and then you can all discuss it as a possible basis for a settlement of Angus' claim.

5. Beware of the press bearing gifts! The proposal sounds marvellous and may well have great potential. They will however publish what they perceive to be the best story to sell their newspaper, and it may not always be entirely accurate. I would quite simply thank them for their interest but say that you cannot possibly comment on any ongoing court proceedings. You could refer them to the Chair of the Chambers of Commerce who you can say is the person to speak to about such developments. It may well be that a partnership could be formed along the lines each organisation has proposed, but it is not for you to take any additional practical steps

Good Luck and Best Wishes.

Aunt Minerva



University of
Strathclyde
Glasgow



Mediation Clinic Annual Report

2024

Introduction from Director	34
About the Mediation Clinic	34
Mission Statement	35
Chair's Report	36
Director's Report	38
Co-ordinator's Report	40

For the full Annual Report 2024, including appendices,
please contact the Mediation Clinic
mediationclinic@strath.ac.uk

Introduction from Director

report I reflect further on what we can learn after ten years of providing mediation in the courts. It's been an interesting journey. At appendix 3 you will find a copy of our strategic plan – I'm struck that, if we had had a plan in 2012, the idea of mediating nearly 200 cases per year in over half of Scotland's courts would have seemed fanciful. Yet here we are.

In the pages that follow you will find a report from our Chairs, Alastair Sharp and Andrew Boyd; my report; one from our Coordinator, Pauline McKay; the new strategic plan; client feedback; and lots of statistic. I'll summarise some headlines:

- *Referrals received from courts:* **331**
- *Cases mediated:* **175**
- *Cases settled:* **114 (65%)**
- *Estimated saving to courts:* **£138,084.48**
- *Commonest case types* **Goods and services, unpaid bills**

Thank you for supporting the Mediation Clinic.



Charlie Irvine
Director, Mediation Clinic

About the Mediation Clinic

The Mediation Clinic is part of Strathclyde Law School. Assistant mediators are largely drawn from the LLM/MSc in Mediation and Conflict Resolution; undergraduates also volunteer to conduct intake calls and provide other support. Lead mediators are experienced practitioners who give generously of their time to mentor new mediators. Many are former students on the LLM/MSc course.

Strathclyde University is known as the 'place of useful learning' with the following values: bold, people oriented, innovative, collaborative and ambitious. While the Clinic's work reflects all of these values, it has been singled out by the Principal as an example of the university's commitment to being people oriented:

<http://www.strath.ac.uk/whystrathclyde/values/>

If you would like to become a supporter of the clinic, email us at: mediationclinic@strath.ac.uk

Mission Statement

‘Promoting the quick, creative and peaceful resolution of disputes through mediation.’

The Clinic’s objectives are:

- To promote access to justice by encouraging the use of mediation as a quick, affordable and effective means of conflict resolution;
- To provide a Centre of Excellence in mediation practice and education, where experienced practitioners work alongside, and supervise, those learning their craft;
- To provide a service to the community by making mediation available in selected Sheriff Courts, Tribunals and other venues in Scotland;
- To provide postgraduate mediation students with the opportunity of applying their academic learning by observing and participating in mediations;
- To provide qualified mediators and former students with the opportunity of gaining further experience in mediation;
- To encourage the legal profession to embrace mediation as a viable alternative to litigation in the resolution of disputes;
- To educate the public about mediation: how it works in practice and its potential in settling disputes quickly, cheaply and collaboratively.

Chairs' Report

On behalf of your Board, we welcome you to the 2024 Annual General Meeting. During this year the Board has continued the approach of having two Co-Chairs, Andrew Boyd and Alastair Sharp. My thanks go to Alastair for the respectful and collaborative way in which we work together. The Board has been well served by our treasurer, Tom Scade, who has worked alongside Pauline McKay in producing our accounts. The accounts are regularly presented at the Board Meetings. The Board are also grateful to our secretary, Bronwyn Sutton, who has produced the minutes of the Board Meetings. Thanks also go to every Board Member, who throughout the year have given their time and expertise when contributing not only to the Board Meetings but additional meetings when the need arises.

Apart from the contribution that the Board makes towards the smooth running of The Clinic, there are three people who carry out the lion's share of the significant work required to run The Clinic in the efficient way in which it operates. Charlie Irvine (Mediation Clinic Director) and Pauline McKay (Mediation Clinic Co-ordinator) have shaped and driven The Clinic from its inception and without them The Clinic would not be the success that it is today. This year, The Clinic has also been fortunate that Rosie McBride (Service Delivery Administrator) has joined us. Rosie has hit the ground running and is a valuable addition to the staff. We are grateful to Charlie, Pauline and Rosie.

Funding

It has been a busy year for the Clinic with the funding that we now receive from the Scottish Government providing the resources which allow the provision of mediation services in all the Sheriff Courts in Scotland. This funding for an additional 17 courts means that we now provide mediation services in the majority of the 39 Sheriff Courts in Scotland. The focus of the Clinic and therefore the Board is to deliver a high standard mediation service in the way that is expected by our funders. The Scottish Government have been complementary about the high standards of mediation that the Clinic provides and our additional funding is the result of the way that the existing mediation services are provided. These high standards include not only the mediation itself but also the outstanding way in which the Clinic is run and the way staff support the mediators. Our close relationship with the University is also crucial to the success of the Clinic and we are grateful for the support it provides.

Strategy

In September the Board held its Annual Strategy Day (online). The Strategy Day gives the Board members the time to reflect on our Strategic Plan and consequently what we need to do in the following year. Broadly speaking our plan is expressed in our four strategic objectives: to educate, collaborate, strengthen, and develop. Our monthly Board Meetings are now structured to address and respond to these four areas.

Conference

In March, The Clinic held its annual online conference titled 'Mediation Clinics and Mediator Education'. This was well attended with attendees enjoying a variety of workshops and plenary sessions and a keynote speech from Professor Deborah Thompson Eisenberg. As well as our Annual Conference the Clinic provides its mediators with ongoing support and development by delivering Peer Support Sessions and CPD sessions, which this year have included sessions about processes, expenses and agreements.

Document Updating

With the additional funding from the Scottish Government, the Board were clear that we needed to continue to make our procedures and processes as efficient and transparent as possible. To this end, members of the Board have continued to update and clarify our documents to ensure that they are both accurate and relevant. The Board are grateful to the members of the sub-group who worked on our 'Mediation Clinic Practice Standards and Code of Practice' document and are continuing to work on our Constitution.

Mediation Matters

There will shortly be another edition in circulation of 'Mediation Matters!' The purpose of our newsletter is twofold. Firstly, it's a platform to keep the members updated about what is happening in the Clinic; secondly it's a way of sharing good practice. As well as keeping Clinic members informed and updated, Mediation Matters! is now widely distributed far beyond the Clinic and is recognised by the mediation community as an excellent resource. The Board is grateful to the newsletter's editor, Patrick Scott, and assistant editor, Adrienne Watson, for the very significant contribution the newsletter makes to the mediation community.

In conclusion, the Co-Chairs of the Board would once again like to thank all who have contributed to the Clinic's work during the year. As well as those already mentioned, we would also like to acknowledge all the mediators who work with The Clinic. Mediation can at times be challenging for all involved and the consistently high standard of mediation that is delivered by our mediators is very much appreciated.

We look forward to the future of The Clinic with optimism and confidence

Andrew Boyd & Alastair Sharp

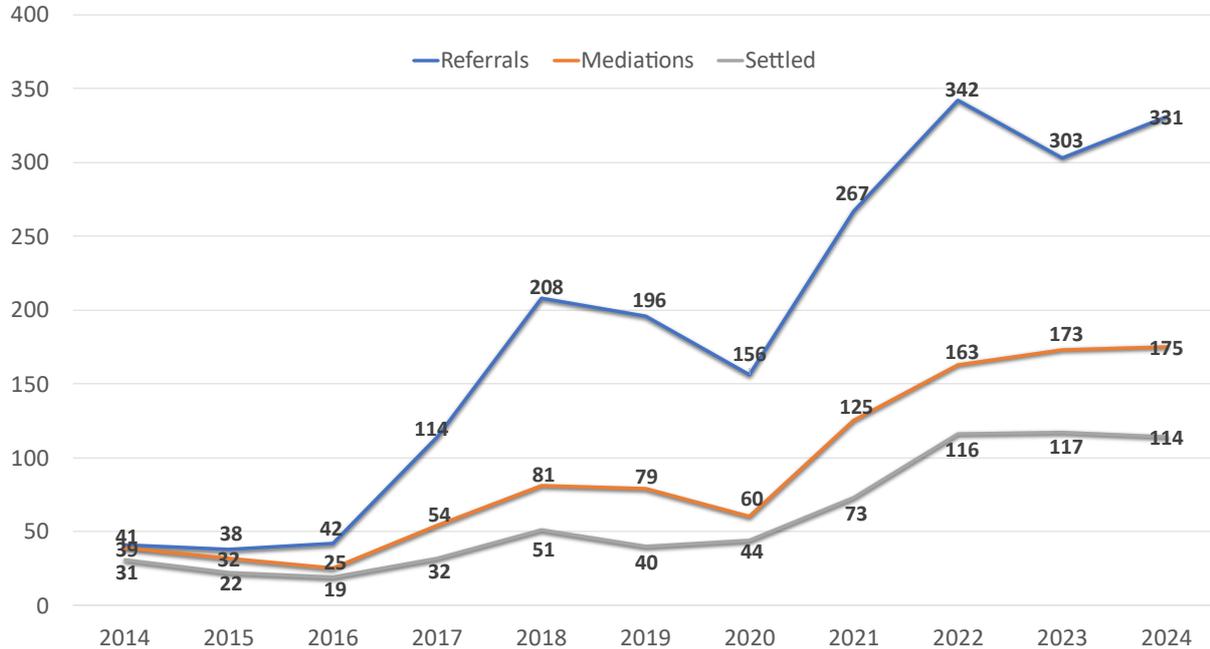
Co-Chairs: Mediation Clinic

8th October 2024

Director’s Report

This is the Mediation Clinic’s thirteenth year, and February saw the tenth anniversary of our first small claims mediation in Glasgow Sheriff Court. I’ve added all the figures below to illustrate the journey we’ve been on.

Mediation Clinic referrals and mediations since 2014



This means that over the past ten years the courts have referred 2,038 cases, of which 1,006 went on to mediate and 658 settled.

It’s an impressive achievement and couldn’t have happened without the efforts of a fair number of people over the years. In no particular order the Mediation Clinic has been supported by:

- Sheriffs and sheriff clerks
- The Law School (especially various heads), the faculty of Humanities and Social Science, and the wider university
- Our staff, now including Pauline (Coordinator) and Rosie (Service Delivery Administrator)
- The Scottish Government, particularly via grant funding from 2022 onwards
- Scottish Mediation
- The mediation profession, who offer their services for low or no fee
- Generations of students on the LLM/MSc in Mediation and Conflict Resolution, who prompted the whole endeavour and have consistently thrown themselves into the work;
- All our volunteers, including board members and undergraduates conducting intake calls

This begs the question: what is it about the Mediation Clinic that attracts all this enthusiasm, energy and time? In the spirit of academic research I should probably ask each of these groups of stakeholders for their own answers, but for now I’ll try to sum up what I’ve heard over the years.

The first thing is pretty simple: opportunity. Mediators often struggle to get started. From the first year of the course students have asked how they can build their practice. Mediation lacks an established apprenticeship system, and many of the country's leading practitioners came into it as a second or third career, building on their existing reputation to attract their first few clients while they developed their skills. In a sense the Clinic is providing a form of apprenticeship. That clearly appeals more beyond the university and we now have a number of lead and assistant mediators who have trained elsewhere and are looking to start mediating in a supportive and structured environment.

And yet not all of the Clinic's support comes from mediators. I think the tremendous goodwill we receive is also driven by a general belief in the process itself; mediation is also a form of peacemaking and a lot of our clients and referrers see it as a "better way" of resolving conflict. If we look at feedback from another group of stakeholders, mediation parties, we can see how often it is associated with relief or closure. For others it's simply a pragmatic way of dealing with a difficult problem. And the Scottish Government, although naturally concerned about improving efficiency and reducing costs, also recently explained that mediation ties in with its vision of a country that's a good place to do business, in part because people are able to negotiate a resolution to most disputes.

What about the courts? Why do sheriffs and clerks support the Clinic? In one sense it's diverting work away from them, and we know they are often initially cautious about referring parties. However, once they start seeing cases they thought were intractable (and people they thought were impossible) reach settlements, many of them warm to mediation. I'm picking up the sense that our most enthusiastic supporters see us as partners in delivering justice, with court users the beneficiaries.

And finally I'd like to acknowledge the mediation community. Over the years I've met some incredibly supportive and decent people. I think we share a way of looking at the world, especially the people who live in it, which is not necessarily the majority view. We tend to see people in a positive light; not so much 'difficult people' as 'people in difficulty,' not so much 'high conflict' as 'in a pickle.' And that seems to apply to each other. There's a shared commitment to making the world a better place, and I'd like to acknowledge and thank all the people from whose work and commitment both I and the Clinic have benefitted.

Particular thanks go to Andrew and Alastair for their Chairs' report, to Pauline for her Coordinator's Report. I won't add much more detail about the year's highlights, though I too thought last year's conference was a fantastic event. I'm looking forward to the next one on March 28th, 2025, to be entitled "Growing mediation, your practice and beyond."

I can't resist finishing by mentioning another Clinic-related activity. After too many years to mention I finally completed my PhD in June this year. It's a study of mediation parties, with almost half drawn from the Clinic's own clients. PhDs are long things, so I don't expect many to plough all the way through, but if you click on this link, you'll find a lot of direct quotations from the sort of people we work with in chapters 5 and 6. I learned a lot about the sort of things that lead folk to settle, including the urge to punish bad behaviour and, perhaps more surprisingly, a wish to be seen as a fair person.

Co-ordinator's Report

It has been another busy year and thanks to the [Scottish Government](#) funding we have continued offering our service to 22 different Sheriff courts throughout Scotland. Meetings with Sheriff Principals and court staff have been high on the agenda.

We also welcomed Rosie McBrine as our new Service Delivery Administrator. Rosie has been instrumental in supporting and promoting our service and has been a fantastic addition to the team.

Promoting our service to the courts has seen us visit Ayr, Glasgow, Dumfries, Dundee, Dunfermline, Greenock, Kirkcaldy, Oban, Paisley and Perth Sheriff Courts. Engaging with court staff and explaining our service has been essential in demonstrating our availability, capacity, and readiness to assist. Our service saves courts time and money and enhances their efficiency. We've also hosted online events for court staff to explain our processes and gather valuable feedback.

We are also excited to work in partnership with the University of St Andrews Mediation Service, providing students from the Peace and Conflict Resolution Studies course with opportunities to mediate alongside experienced practitioners within the Clinic. We welcome this collaboration and look forward to meeting more students this year.

Referral rates have remained consistent with the previous year. A crucial element in advancing the mediation process is our Intake Process, where we speak with each party involved in the dispute before proceeding to mediation. We've trained undergraduate and postgraduate students to assist with this process, and they've shared how much they enjoy volunteering, gaining valuable experience dealing with real-life disputes. We're scheduled to provide more training in October 2024 and appreciate the students' help as our caseload continues to grow.

In March 2024, our 4th Annual Mediation Clinic conference was held online. It was a great success with over 70 attendees. Work is already underway on the 5th Mediation Clinic Annual Conference which will take place online on Friday 28 March 2025.

Currently, the Clinic has a membership of 61 mediators and 15 observers, primarily based in the UK. We are proud to offer practical experience to newly qualified mediators, supporting them as they continue their mediation journey.

Our International Mediation Clinic Network (IMCN), which includes members from India, Canada, Germany, Czech Republic, Lithuania, Ireland, England, and Scotland, has hosted several CPD events throughout the year, with speakers from Poland, the USA, and Ukraine. The IMCN online conference will take place on 27 November, and proposal submissions are now open.

Additionally, the Clinic has updated its practice standards, and we are in the process of developing 1- and 3-year strategic plans.

The Clinic also offers a work placement for Year 3 LLB students as part of their Work Placement Module. This semester, we are delighted to have Charlotte McMunigle working with us one day a week, where she is becoming familiar with our mediators and processes and liaising with parties. We hope this invaluable experience will inspire her to volunteer with the Clinic and pursue mediation in her legal career.

Pauline McKay
Mediation Clinic Co-ordinator



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To subscribe to *Mediation Matters!*
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**The Mediation Clinic is supported by the Scottish Government
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