



WELCOME

Welcome to the fifth edition of the Vital Spark – incorporating news and reviews for colleagues and others interested in the development of mediation in Scotland. A great deal has happened since the last edition. A number of key points are covered in this one – proposals for mediation by the Sheriff Court Rules Council; the launch and success of the Sheriff Court Pilot Mediation Schemes in Glasgow and Aberdeen Sheriff Courts; the 3rd Scottish Mediation Conference run by the Scottish Mediation Network; wider conferences where focus has been on mediation and the benefits it can bring to users and advisers alike; and the development of quality assurance standards for mediators. We hope that you find this issue of interest and shall welcome your feedback.

David and Jeremy.

THE ADVANCE OF MEDIATION.

Mediation has come a long way in Scotland in the last 10 years, when it was not on the radar of most business and legal firms. The **Scottish Executive** has shown serious commitment to mediation by funding various projects. It has backed the Business Plan of **Scottish Mediation Network** to produce results on a large number of projects over the next 2 years (including one on quality assurance – see below). It has funded pilot schemes for the Glasgow and Aberdeen Sheriff Courts for 2 years – being run by Court Mediation Services Ltd, a subsidiary of Catalyst Mediation Ltd. It continues to fund SACRO in running victim offender and also neighbourhood mediation. In the Parliament on 30th May, **Deputy Justice Minister, Hugh Henry** said, “I have a strong commitment to the development of mediation services, which can make a significant contribution”. He went on to state: “...a good mediator is worth his or her weight in gold... sometimes, remarkable results can be achieved.”

The Sheriff Court Rules Council has produced draft rules for consultation (see below) which, if enacted, would mean that mediation would become a normal part of dispute resolution for lawyers in Scotland. **The Lord President of the Court of Session** has given broad hints that, when he is satisfied with quality assurance in the field of mediation, he will be inclined to see mediation included as part of the resolution arrangements for disputes brought to that court.

The Chartered Institute of Arbitrators Scottish Branch and the Law Society of Scotland organised a Conference on “**The Future of Dispute Resolution**” on 1st June in the National Galleries of Scotland (an excellent venue). At this event, the scale of the change in awareness and attitude on the ground became apparent. **Lord Clark of the Court of Session’s Commercial Court** spoke positively about future developments for mediation in the Scottish Courts. He was distinctly unspecific and reserved about details but the message came through that, while being supportive of the concept of mediation and seeing many of the benefits, their lordships are concerned about the issue of standards, quality control and regulation in what is a developing profession in Scotland.

Nigel Cornwell, Head of Litigation, Skanska UK plc, one of the largest construction companies in the UK threw his weight firmly behind mediation, saying “To my mind, mediation should be the first port of call for all types of disputes on all projects. Certainly our experience in Skanska is that it ticks all the right boxes on the list of criteria already highlighted (speed, cost effectiveness, right result and finality)” **Neil Kelly of Macroberts, Solicitors**, said about mediation “Mediation should always be considered as a means of resolving disputes before embarking upon any of the more formal dispute resolution processes. It can and will bring about a settlement in certain cases and parties should, in appropriate cases, be encouraged to consider and use it by their legal advisers”.

There is still a distance to travel, but mediation is now clearly receiving the attention in Scotland it richly deserves.

THE QUALITY ASSURANCE COLLABORATIVE PROCESS

The Scottish Mediation Network has recently issued a further consensus building paper that is intended to move forward the collaborative dialogue about quality assurance of mediation in Scotland. To download the original engagement paper as well as the new paper that clarifies and summarises the responses go to www.scottishmediation.org.uk. Contributions to this consultative exercise will be greatly appreciated.

THE 3RD SCOTTISH MEDIATION CONFERENCE

The conference, held this month in the new Perth Concert Hall, had as keynote speaker, Rachel Wohl, Chief Executive of the Maryland Conflict Resolution

Office (MACRO) which is used as a model by many States for the development of mediation. She demonstrated their experience in promoting mediation– with lessons from mistakes as well as tales of success. Horst Zellesen, from Germany, provided a fascinating insight into an alternative way of resolving major planning/ environmental issues by describing the very successful 5 year mediation he headed in the development of the third runway at Vienna International Airport. This contrasted with the blunt instrument and rough justice of a public enquiry. Workshops covered many and varied topics. David chaired one for “advisers” and Jeremy hosted a discussion on the important topic of pre-mediation meetings. John Sturrock of Core Mediation gave a talk on an international mediation he had conducted.

PROPOSED NEW RULES FOR THE SHERIFF COURTS

New rules have been proposed for the Scottish Sheriff Courts in a consultation document issued by the Sheriff Court Rules Council. If enacted, they will require parties to give consideration to the use of mediation and alternative dispute resolution (ADR) procedures before and during litigation, with (potentially) financial consequences for failure to do so. The practical effect of the proposed new rule would be that the parties, particularly pursuers, would have to consider mediation at an early stage, explaining at the outset what ADR steps have already been undertaken. The proposals include that any party who refuses to mediate before raising a court action would need to present to the court their reasonable grounds for their refusal, otherwise they may run the risk of being penalised with an award of expenses against them. Catalyst Mediation has lodged responses to the consultation document, the substance of which are a) that mediation should not be mandatory b) that specific reasons should not be required for not agreeing to have the case go to mediation c) that the court would be entitled to be satisfied that the parties have obtained reasonable information about mediation, given that information due consideration and have taken an informed decision not to go to mediation in their case. Copies of the consultation paper may be downloaded by following the link to www.scotcourts.gov.uk/sheriff/rules_council/consultation/index.asp

SHERIFF COURT MEDIATION PILOTS

The pilot schemes in Glasgow and Aberdeen Sheriff Courts present two major opportunities. First to increase knowledge and use of mediation among Courts and solicitors and second to develop a group of well trained and practiced mediators. The pilots deal with Small Claim, Summary Cause and Ordinary Cause cases, the latter two on a fee basis. Some Sheriffs at both Courts seem to welcome the presence of “in house” mediators and we now have a steady number of mediations on a weekly basis. If you or anyone you know would

like to know more – either as a solicitor or as a mediator- **please contact Jeremy at jeremy@catalystmediation.co.uk**

CATALYST ABERDEEN

We have also created a Catalyst Mediation office in Aberdeen, through Aileen Riddell and her colleague Linda Paterson. Both are highly experienced mediators and Aileen is also the local Court Mediation Coordinator. The objective is to provide the full range of Catalyst Mediation services, locally. If you are based in Aberdeen and would like to find out more, **please contact aileen@catalystmediation.co.uk**.

CATALYST'S MEDIATIONS

Since November we have conducted nine mediations, have one ongoing and three being organized, covering construction, partnership and workplace disputes. We would like to thank all our mediator and solicitor colleagues for helping the Parties to create some very acceptable – and creative - results.

LITIGATORS OPEN MINDED TO MEDIATION ON OUR WEBSITE (OPEN [WEBLINK](#))

The list of solicitors (click on WEBLINK to see this) continues to grow and from conversations it has been useful on several occasions. In one case, the solicitors involved contacted us and each other because of this list. If you or any of your colleagues wish to be included, please send your contact details to jeremy@catalystmediation.co.uk

NEW CPD PROGRAMMES FOR SOLICITORS

As a result of requests we have received, we have developed a series of training programmes, including:

Mediation Advocacy for Lawyers: qualifying for Law Society CPD points, this 1 or 2 day programme will enable solicitors to be proficient in the process from deciding when and how to recommend mediation, preparing for a mediation with their client through to contributing to a successful outcome. These are available on an “in house” basis and through open sessions for interested individuals from separate firms.

Monthly Practice for Lawyers : again qualifying for Law Society CPD points, this series of monthly sessions, linked to the Catalyst Mediation Panel practice sessions, enables solicitors with some experience and those approaching mediation for the first time, to practice their skills in role play. Details will be published shortly and emailed to those we know are interested.

If you would like to receive information on either, **please contact Jeremy Scuse at jeremy@catalystmediation.co.uk**

CATALYST MEDIATION WEBSITE

Some statistics that may be of interest. In the last 6 months just under **15,000** individuals have visited the site. Our banner on the Law Society's Journal online has already accounted for 500 hits – which we assume can only come from intrigued solicitors! The feedback we have had on the website is positive with the downloadable documents being particularly useful. However we know we can make it better, so if anyone has any comments, **please contact Jeremy Scuse at jeremy@catalystmediation.co.uk**

We live in interesting times as the Chinese say – we will keep you posted!

Please pass this “Vital Spark” on to any of your colleagues who may be interested. If you would like to be placed on our emailing list for future “Vital Sparks”, please let us know by email.

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