

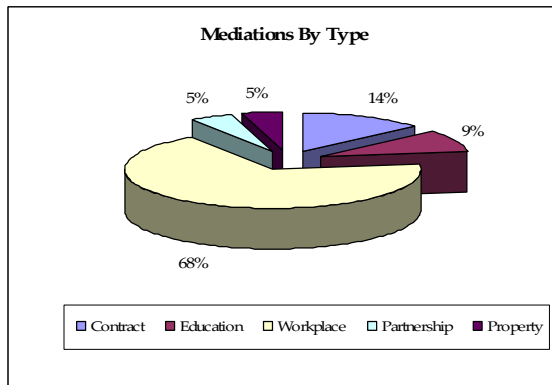
WELCOME

Welcome to the sixth edition of the Vital Spark. The introduction of mediation to the settlement of disputes in Scotland continues apace. The number of mediation meetings conducted by Catalyst Mediation in 2006 increased from 22 (2005) to 42, reflecting more mediations and mediations with multiple "sessions". Panel members were involved in 27 of those meetings, up from 12 in 2005. In this issue, we have tried to summarise the main developments here and to provide some notes about what is happening in other parts of the world. We hope you find this of interest and shall welcome your feedback.

David Semple and Jeremy Scuse.

THE GROWTH OF MEDIATION HERE

Some simple statistics may be of interest. Visits to our website have almost trebled between 2005 and 2006, to over 180,000 and almost every visitor is now downloading documents from the site. The number of solicitors putting their details on our website also doubled last year. The number of mediations we conducted last year also increased and we believe other mediation providers are projecting an increase on 2006.



The workplace has, given our ability to misunderstand each other been the major source of conflict referred to us over the last two years.

More solicitors' firms are conducting seminars on its use and the feedback we have received suggests that mediation is a route which those involved intend to use more often.

Two university graduates are conducting research projects into the use of mediation – one in the construction industry and one in workplace conflicts. We have taken part and will publicise the results in future editions.

CIVIL LAW REVIEW

The Lord Justice Clerk, Lord Gill is to head a wide-ranging review of Scotland's civil courts and the way they work. The review is aimed at ensuring that the civil justice system continues to provide an effective and efficient service for any individuals,

families, communities and businesses who have cause to use it. To coincide with this announcement, the Scottish Executive has published "Modern Laws for a Modern Scotland - a report on civil justice in Scotland." The report sets out what has already been achieved in reforming civil law and the civil justice system and outlines the areas to be covered by Lord Gill's review. The report is an important one for anyone interested in mediation as it strongly suggests the process has a central position within civil law and reviews what has been done and will be done to enable it to develop appropriately. The document is available through www.scotland.gov.uk/Resource/Doc/165338/0045028.pdf.

AN IMPORTANT ENGLISH CASE ON COSTS

Another significant case to illustrate how costs sanctions may be imposed for unreasonably declining to mediate, has emerged from the Technology and Construction Court in the case of *P4 Ltd v Unite Integrated Solutions plc* [2006] EWHC TCC 2924. The ultimately losing party P4 was awarded their costs from Unite up to the date of Unite's ultimately successful Part 36 offer (tender). In the previous trail blazing case, *Dunnett v Railtrack*, the Court of Appeal simply made no order as to costs. The Judge in the case, Mr Justice Ramsey did not accept that various offers made amounted to engagement in ADR, responding that "I do not consider that letters from solicitors which make offers can be a proper substitute for the process of ADR which involves clients engaging with each other and a third party such as a mediator to resolve a dispute." He confirmed that, in his view, mediation often succeeds where negotiations have failed.

SCOTTISH MEDIATION NETWORK

We continue to support the Scottish Mediation Network in its many initiatives. These range from road-shows, through lobbying the Scottish Parliament, organising conferences, increasing public awareness of mediation through helping to plan a register of mediators for quality assurance purposes. If you wish to know more about their work, the publication "Collaborate" can be found at <http://www.scottishmediation.org.uk/resources/bulletin.asp>

MEDIATION AROUND THE WORLD

Mediation Sought to Harmonize Enforcement of European Securities Regulations

European Union finance ministers want European securities regulators to develop and use mediation processes to make enforcement of securities regulations more uniform within the EU. The EU finance ministers would like implementation of the new mediation processes by the end of the year.

European Commission Commits to Use of Mediation in Contracts The European Commission recently committed to use mediation and other forms of

alternative dispute resolution in disputes with contractors. The Commission proposes to include an optional mediation clause in its standard procurement contracts.

October Mediation Sale – Reduced Rates for Securities Disputes

The US National Association of Securities Dealers (NASD) announced its annual Mediation Settlement Month for October, during which its mediation rates will be reduced substantially (up to 50% or more). In the 11 years since it was established, NASD's mediation program has handled over 14,000 securities cases, with a settlement rate exceeding 80%.

Poland Proposes Large Payments to Mediation Counsel

Draft executive regulations from the Polish Minister of Justice would provide state reimbursement for lawyers taking part in mediations that may be up to 150% of what is paid in ordinary court cases. Generous fees would encourage mediation, which only began in civil cases in Poland in December 2005.

UK Patent Office Offers Mediation Service

The UK Patent Office began a new mediation service in April for resolving intellectual property (IP) disputes at a set rate of £1,000 pounds/day (in London). The Patent Office also provides useful model mediation procedures and an agreement to mediate.

Muslim Cleric, Airline Successfully Mediate in New Zealand

The New Zealand Human Rights Commission illustrated the success of its dispute resolution program – which since 2002 has focused on mediation – by detailing a number of cases, one of which resolved claims against an airline by a Muslim religious leader who was removed from a plane as a security risk for spending ten minutes in the toilet in ritual ablutions before take off.

China Considering Nationwide Mediation Regulation

The Chinese Ministry of Justice is developing comprehensive legislation to regulate the practice of mediation throughout China. The legislation was proposed by the 10th National People's Congress, which recognizes the "pivotal role" mediation already plays in resolving civil disputes and promoting economic development, but sees a need for improved quality, standardization and greater financial support.

Court-Annexed Mediation Maturing in the Philippines

Court programs for referring cases to mediation have expanded in the Philippines since first introduced as a pilot project in trial courts in 2001. After initial successes, court-annexed mediation was institutionalized in 2002 in the trial courts, with pre-trial mediation referrals in all civil cases. The Supreme Court and the Philippine Judicial Academy institutionalized mediation in the court of appeals in 2002 as well. The mediation success rate from 2002-2006 at the trial level has been 71%.

NEW APPROACH TO WORKPLACE MEDIATION

Based on our experience over the last year, we have developed our approach to workplace mediation, to allow for the different types of conflict and mediation objectives – for example, reconciliation or compromise agreement. The idea is to be as flexible as possible with the structure of the mediation as this should reflect both the needs of the individuals and their desired outcome. At the same time budget control stages are agreed in advance to ensure the mediation represents true value. A document

reviewing this innovative approach is available through (weblink). If you would like to discuss this privately, please contact Jeremy Scuse at jeremy@catalystmediation.co.uk.

SHERIFF COURT MEDIATION PILOTS: UPDATE

The pilot schemes in Glasgow and Aberdeen Sheriff Courts, being run by Court Mediation Services Ltd, a subsidiary of Catalyst Mediation Ltd, have been conducted successfully for roughly a quarter of their planned period and the number of mediations undertaken is exactly 25% of the totals predicted for each pilots. Summary Cause as well as Small Claim cases have been mediated successfully, including by the use of telephone mediation. Solicitors appearing in these courts are showing an ever increasing interest in the value of mediation. For example, the syndicate solicitors are now tending to ask their instructing agents in advance whether they would agree to mediation of their cases, if requested to do so. 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 MEDIATION ABERDEEN

The opening of our new Aberdeen office is being well received. We held an employment mock mediation at the offices of a local solicitors firm with an invited audience of solicitors and HR directors. The response suggested that having an office in Aberdeen was a welcome idea and has led to some very positive contacts. If you are based in Aberdeen and would like to find out more, please contact aileen@catalystmediation.co.uk.

LITIGATORS OPEN MINDED TO MEDIATION

The list of solicitors (click on [WEBLINK](#) to see this) continues to grow and from conversations it has been useful on several occasions. If you or any of your colleagues wish to be included, please email your details to jeremy@catalystmediation.co.uk

CPD PROGRAMMES FOR SOLICITORS

We are taking bookings now for the Summer training programmes.

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 Solicitors : Our monthly Catalyst Mediation Panel training sessions provide an opportunity for solicitors with some experience and those approaching mediation for the first time, to practice their skills in role play mediations. Details will be published shortly and emailed to those we know are interested. These sessions qualify for Law Society CPD purposes. If you would like to receive information on either, please contact Jeremy Scuse at jeremy@catalystmediation.co.uk

Question: How many mediators does it take to change a light bulb? *Answer:* None. It's the mediator's job to persuade the light bulb that it's really in its own best interest to change itself.

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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