



Taking Mediation Forward – Action Points

On 15 November 2004, Core Mediation held a Conference entitled Finding Collaborative Solutions: Expanding Mediation in Business, Organisations and the Professions. The conference was attended by 124 participants from many backgrounds and disciplines in Scotland and elsewhere.

The proposals in this document summarise some of the main points which came from the discussions. These points cover both general observations and suggestions for particular sectors.

Mediators and the Process

The importance of establishing standards of competence for mediators and ensuring their independence

The value of enshrining the protection of confidentiality in mediation in legislation

Access and Costs

Funding mediation and ensuring that people have access to it, while ensuring that mediators and service providers are adequately remunerated and that professionalism and training is be appropriately valued

Leadership and Education

The need for leadership in commerce, business, the professions and government, with declarations of support for mediation when appropriate and actually using it in order to build up confidence and experience

The adoption of corporate, professional and organisational pledges or policy statements undertaking to use mediation

The role of education generally to raise the level of awareness among business, commerce, public sector organisations, the professions and the public

Go to
www.core-mediation.com



Increasing teaching about mediation in the law schools from the LLB onwards and in business, medical and other degrees

The value of specific case examples to illustrate the successful use, benefits and value of mediation

Information and evaluation about cost savings, when mediation is useful and how it works

Greater publicity for SLAB's new guidelines on availability of legal aid in non family mediations

A Scottish presence on the National Mediation Helpline – or a Scottish version

Regular articles in press / media / trade magazines

Network of mediation-friendly law firms and others to help increase use

The Role of the Courts

Recognition that the courts can play a significant role in the greater use of mediation.

Court rules specifically referring to mediation would give confidence and encouragement

Pre-action protocols and information to assist with encouragement of early negotiation and resolution would be beneficial

The value of a judicial champion

Professional Organisations

The importance of professional rules for solicitors and advocates requiring them, in advising clients, to give advice about mediation as an option in resolving disputes (see the observations of the Court of Appeal in Halsey in 2004); failure to do so carrying the risk of a finding of inadequate professional conduct

Mediation to be included in the standard terms of engagement of professionals

The role which other professional organisations (eg Law Society of Scotland, Faculty of Advocates, RICS, RIBA, RIAS, MDDUS, BMA) can play in encouraging and informing members about the use of mediation

Go to

www.core-mediation.com



Commerce

The potentially enormous value to business if it uses mediation (as reflected in the EU directive and extensive use by leading US companies); the Scottish Executive and the legal profession should support this valuable additional tool to help Scottish commerce to compete in the global marketplace

Inclusion of mediation clauses in commercial contracts as a general rule

The important role of in-house lawyers in the greater use of mediation by the corporate sector

Construction Industry

The value of finding an industry champion or champions, either an individual or a company, supported by the Scottish Executive which, in this field, has a huge influence through procurement

Recognition that mediation represents an approach which is consistent with concepts of best value, excellence (Constructing Excellence), collaboration and partnering which are increasingly recognised internationally and in the UK

Developing the related ideas of early engagement of a third party (to maintain and build working relationships), standing neutrals, dispute resolution boards, of which there has been positive experience, and the use of incentives to promote cooperation

The role of institutions (such as RIBA, SBCC, ICE, PACE and financiers) in driving forward changes to practice, standard clauses in contracts, education and awareness

Insertion of mediation clauses in standard contracts and in revisions to contracts

Support by the industry's insurers for mediation and other creative approaches to contract management

Go to
www.core-mediation.com



Employment and Workplace

The need to educate employers and employees and their representatives, including senior management, HR personnel and trades union leaders, that issues to do with communication, relationships and cooperation are vitally important and often difficult to address

The need for clear signals from management level that mediation and related systems are supported and used, with incentives to do so

The role of internal mediators within large organisations needs to be addressed in order to deal with issues of independence

Greater use of mediation and other co-operative processes in order to address underlying issues early and to avoid escalation to other grievance procedures

Health

A pre-action protocol to assist with encouragement of early negotiation and management of cases, as in England

Publicity for the Executive's proposed pilot scheme in medical negligence cases (including availability of legal aid) and involvement of GP's and private claims within its scope

A pledge by the Central Legal Office to support and encourage mediation would send a clear signal throughout the sector

Clear engagement with and by lawyers who represent pursuers

The value of the Public Services Ombudsman's role in suggesting mediation at the complaints stage, using mediation skills to deal with matters and referring to mediation if helpful

General change of attitude towards complaints in the health service to encourage more support for collaboration

Grater use of mediation in inter-agency, management, employment and partnership matters should be encouraged and Executive commitment sought to resolve personnel matters wherever possible before they reach tribunal stage, as in England with Department of Health initiative

Inclusion of mediation clauses in appropriate contracts

Go to

www.core-mediation.com



Insurance / Professional Indemnity

The need for awareness of mediation, and collaboration in its use, among trades unions, employers' organisations, insurers and solicitors, APIL and FOIL

Need to address funding issues for trade union solicitors who only receive judicial expenses which do not presently include mediation costs; possibility of insurers funding mediation initially and ultimate liability being part of the process

The need to address Legal Aid issues and to encourage use of mediation in legally aided cases

Introduce pre-action protocol for personal injury cases and consider use of mediation in connection with (or, preferably, earlier than) the recently introduced pre-trial meetings

Introduce the possibility of time-limited mediation for some simpler cases

The value of mediation in claims alleging negligence by professional advisers and others needs to be reinforced for claimants, the insured and insurers

Go to
www.core-mediation.com