

## Breakfast Business

# Health Matters: Mediating in the Health Service

## Wednesday 15 June 2005

- Mediation awareness is increasing not only in the relatively narrow area of disputes between patients and medical staff but across the whole range of the work and organisation of the NHS.
- The Clinical Negligence Mediation project undertaken by the Scottish Executive and the Central Legal Office of NHS Scotland was launched on 1 April 2005. The project shows commitment by the Scottish Executive to mediate in the health area. "The policy is now there to mediate." Some clinical negligence cases are now coming to mediation.
- In clinical negligence claims, many claimants are not motivated by financial compensation. Some may be seeking an explanation, acknowledgement, reassurance or change in practice, all or any of which may be possible to achieve in the mediation process.
- A cultural change which allows clinicians to say "sorry" without that being construed as admission of liability would be hugely beneficial. The Australian model may provide some insight into this.
- There is a concern that the trigger point for referral to mediation, under the pilot project, namely the Closed Record stage in litigation, could be too late. Guidelines for the scheme do allow for consideration of mediation at an earlier stage.
- Funding for mediation remains an issue, particularly the legal aid rates for solicitors.
- GP partnership breakdown or agreements may be a potential area for mediation, as well as restructuring across the NHS including the "Agenda for Change" and complaints process.
- The NHS is a vast organisation employing large numbers of staff with a huge customer base which inevitably leads to disputes of many kinds and at many levels. There is a need to embrace mediation at all levels and to incorporate it into thinking and language.
- The length of time taken to resolve complaints can lead to frustration on the part of a complainer which may result in the claim going to litigation. Complaints could be dealt with in a more open manner from the outset, with information and explanations to complainers creating a culture where mistakes can be learned from to the benefit of all.
- There is a need for **awareness** of the potential for mediation across the NHS, **acceptance** of a new way of doing things and **action** taken by committed people in order to make a difference.