

Let's Listen Let's Talk

July 2023

Contents

Chair	1
Mediator Interview	2
Reframing	8
Mediator Spotlight	9
Join Us	10



Welcome to our July newsletter!

As you know from the last newsletter I enjoy some gardening and the hot news from gardeners world; is that I have just harvested the first crop of my favourite potatoes , Charlottes. Talking of new crops I am delighted to let you know that we finished training eight community mediators at the end of June. This is the first group we have trained for around 4 years, so it is a great step forward for our service. I am pleased to say all 8 passed and we hope to have a get together in early August so you can meet them in person .

Another piece of news is that we participated in the Croydon Community Spotlight event at the Centrale Shopping Centre. We had a strong impact from our advertising pop up and people really like our logo design. We managed to talk to all the other stall holders and were visited by the elected Mayor of Croydon, Jason Perry. We are continuing to get our message out there that we are open for business and keen to support the people of Croydon .

So lots happening. I hope you have a good summer and manage to get some time off to recharge yourselves.

As ever, if you would like to get in touch, meet for a coffee or if you have ideas about improving the service, my contact details are;

neilselby23@gmail.com

07905 168285.

Look forward to seeing you soon,
Neil



Interview with a Mediator

As part of our commitment to improve learning opportunities and to ensure the continuous professional development of our small team, we have been interviewing external mediators to learn from their experience. In our last newsletter, we interviewed Gerry O’Sullivan, mediator and trainer and the author of ‘The Mediator’s Toolkit.’ This time, in what is our fifth ‘interview with a mediator,’ we have interviewed award winning mediator Emma McAndry.

Emma founded Essential Mediation Solutions in 2019, a Civil Mediation Council-approved Mediation Trainer and Organisation. She is a practicing Workplace and Civil/Commercial mediator and has been awarded Fellowship of the Civil Mediation Council (CMC) in recognition of over a decade of ‘extensive mediation expertise’. Emma was shortlisted in the top 3 of Workplace Mediators at the National Mediation Awards, presented at the House of Commons in December 2022. Working with many universities and councils, one of her more significant successful mediations was the high-profile dispute between Protect Warwick Women and the University of Warwick (with permission of both parties to say).

Emma is also a Mediation Trainer, and leads courses in Civil and Commercial Mediation (accredited by the Civil Mediation Council and International Mediation Institute), Workplace Mediation (accredited by the Civil Mediation Council), Workplace Conversion Course and Conflict Coaching/Support. Emma says she has an ‘infectious passion’ for mediation and she was ‘delighted and privileged’ to be awarded Mediation Trainer of the Year 2022/23. We’re delighted that Emma has agreed to share her knowledge with us.

How do you encourage clients to engage in the mediation process and to attend joint meetings when they are reluctant to do so?

Mediation is a powerful way for people to resolve disputes, but the parties must be willing to participate as it is a voluntary process. One of or both the parties may have reservations about mediation that make them reluctant to engage.

Asking what those concerns are is a good starting point, and then they

Emma McAndry

can be addressed and reassured. Such concerns need to be treated sensitively and empathetically, with reassurance that the mediator’s role is to help the situation and work with both/all parties in a supportive and collaborative capacity.

Here are some common issues, and how I would answer them:

Fear of the unknown: Mediation is an alien concept to many, so a lack



of knowledge and understanding can lead to fear of the unknown. Educating the party in the process will help and explaining that the mediator, as an independent third party, will support them to communicate and reach a mutually acceptable agreement.

Concern they will be told what to do: The mediator's role is not to judge nor tell the parties how to resolve their dispute. The parties retain complete control of the outcome and the mediator will help the parties to determine agreements. As the parties reach their own settlement, they are much more likely to work and have longevity of success. Agreement does not have to be reached, so there is nothing to lose. Employee rights are not removed in any way by agreeing to mediation.

Worry that colleagues and HR will find out all about the conflict: Mediation is completely confidential, and all parties will sign an agreement that will bind them to silence. Neither party nor the mediator may reveal any of the discussions had during the mediation. Even any agreement reached is confidential. There are sensible caveats to this, such as safeguarding and criminal activities, however nothing is shared with the employer or HR, unless every party to the mediation gives express permission.

There has been a complete relationship breakdown: The mediator does not have a magic wand that creates best friends. The aim is for the parties to gain an understanding of each other's perspectives and reach agreements,

even small ones, that will make their working relationship and working life more manageable and bearable.

If a party still does not wish to engage, then the voluntary aspect of mediation must be respected.

Personalities clashing: Many parties believe that they are in conflict as their personalities clash. This can seem like an insurmountable issue as personalities are what they are. However, many of us may get on very well with others who have very different personalities. If a party is educated on this and that it is the behaviours that are clashing rather than the personalities, then this becomes a surmountable issue as agreed boundaries can be placed around behaviours to help parties move on.

Fear of being in the same room as the other party: Mediation is a safe and supportive environment, conducive to constructive conversation. There will be ground rules set out at the very start of the joint meeting by the mediator, whose role is to ensure that these

ground rules are adhered to and that the atmosphere remains secure. Explaining to the anxious party that the mediator is there to support them through the process can be of comfort, but taking care to say that this is the case for both parties, to avoid any implications of bias towards the more anxious party.

Finally, I would explain the benefits of mediation, notably:

- It will cost nothing, your employer pays the mediation fee
- It is much quicker and less stressful than formal employment routes, such as grievances
- The parties retain control and decide what they want to agree to
- The conflict will benefit from entire confidentiality
- Parties will have an opportunity to have a voice and to be heard
- Parties also have an opportunity to listen to the other party's perspective, and may hear something they did not know before
- The mediator will facilitate communication between the parties and mediation improves communication in the long-term
- Mediation has an incredibly high success rate; most cases settle.

Should a party still be reluctant after talking through the above, I would ask them to think about the future and how the situation could be sorted out without going to mediation.

If a party still does not wish to engage, then the voluntary aspect of mediation must be respected.

Can you share any advice on how to successfully conduct a shuttle mediation meeting?

When shuttling in mediation, it is a little like spinning plates! You need to keep the momentum going in each room. I recommend approximately 20 minutes per caucus – a good enough amount of time to talk properly, but not too long to leave the other party. If you do find a particular conversation going on for a length of time, I would quickly pop back to the other room to explain that things are taking a bit longer than expected, which can be normal in mediation. Keeping people informed will prevent them getting frustrated with you as the mediator and the mediation process.

I also recommend tasking parties with something concrete to consider whilst waiting for you. I remember my first exposure to mediation when acting as a very junior lawyer representing a party in a mediation and we were not tasked whilst waiting. This meant that we got bored and ate too many biscuits! Proper tasking means that momentum is maintained which keeps up the energy and positivity. When considering what to task, remind the party of anything they said they needed to look up, and also task them to contemplate the next subject you intend to discuss with them, so that they have the answers ready for you when you return. This also helps make the mediation run more efficiently.

Before leaving a party, I advise reminding them about confidentiality, as you are about to go and see their fellow disputant so reassurance is often welcomed that you will not be sharing the

discussions just had with them. I will also remind the party what issues (if any) they have given me permission to share, to make sure that I am crystal clear on what I can and can't say in the next room.

no botox for mediators, as facial yoga is necessary!

Finally, although it may be tempting to rush back to the other party as you will be conscious of having left them for some time, take a breather in between rooms. You need to take the time to reflect, to get into the right head space for the next party and consider your approach. Mediation can also be mentally and physically challenging, so taking a brief pause can help with the marathon that you may be on.

Are there any key mediation skills that you had to work harder on and how did you go about improving?

Being quite a chatty character, I used to find active listening difficult. I remember when I was doing my training being told to be quiet as I talked too much! I felt that I needed to verbalise that I was following the parties and keeping up with their story and empathising with them. When delivering training now myself, I see this is quite common and new mediators feel like they need to be talking to show that they are 'working'.

I now pass the advice on to my delegates and to new mediators,

that they do not need to be speaking to be seen to be 'working'. There is the old saying that we have two ears and one mouth, so we should use them in that proportion. Now, I use my facial expressions a lot more, to communicate that I am listening, rather than distracting the party from what they are saying by interrupting. Unfortunately, this means no botox for mediators, as facial yoga is necessary! I always take delegates with me on my mediations, being a strong believer that this is part of the learning journey. It is interesting how often they express their surprise as how little I talk (maybe after seeing me delivering mediation training, when I talk a lot!).

What are your views on the pros and cons of virtual mediation? Do you have any best practice tips based on your own experience?

Before covid, I had only ever conducted one mediation online due to necessity as one party was in India and the other in Germany. When the pandemic struck, everything had to move online and not being very technical, it was challenging! I have found that my civil and commercial mediations have mostly stayed online by choice of the lawyers/parties but workplace, quite rightly, has gone back to in person. Sometimes I will conduct initial meetings online due to geography, but I now always conduct joint mediations in person. The participants will have to continue to work together in person, so it makes sense that they need to be able to be in the same room together with an independent third party present, before taking the next step of working together in the same space.

The pros of virtual mediation are that the parties can join from the comfort of their homes, which may alleviate their anxiety somewhat and make them more at ease. The physical distance between the parties can also be reassuring and there is no chance of bumping into each other. There is also the green environmental benefit of not travelling, and I have taken the Mediators Green Pledge in respect of this. As a mediator, it is physically less tiring as I am sitting throughout the process rather than shuttling between rooms (although that can be a disadvantage too!). Online mediation also opens up the geography of referrals, to not only your whole country, but the whole world.

There are also challenges to mediating online. Having only the face and shoulders in view means that body language can be harder to read. Confidentiality is harder to control – is there really no one else in the room and how do we know the party is not recording somehow? It can also be more difficult to build rapport with a party online as they are removed physically and also cannot see the mediator's body language. Parties may find it difficult to remain engaged, with the distractions of their home around them. It is mentally more draining for the mediator, controlling online functions as well as mediating, and the speed of switching rooms gives no breathing and thinking time that physically shuttling would naturally provide.

Things to consider before entering an online mediation are your professionalism and approach. I use my icon as my background as something neutral but reflective of my brand. If you choose not to use

a background, then consider what is behind you as first impressions count! Before sorting out an office space, I worked at the dining room table and just before going into my first online mediation, I realised that there was a picture on the wall behind me of a view of Brooklyn Bridge from a bar, full of alcoholic bottles on display. I quickly took it down, so I didn't offend anyone due to culture or religion or problems with alcohol! Your lighting should be in front of you where possible. If behind you, your face will be in the dark and makes you seem less trustworthy. If struggling with this, it may be worth investing in a selfie light, and the warm lighting option is particularly flattering! Also think about what interruptions may there be, eg. dog barking, children coming home from school, deliveries etc. Some interruptions you can't do anything about, and I think people are understanding about homeworking, but I do put a notice on my front door politely asking for no knocking on the door as I am online.

I generally offer a pre-mediation online check in. This is particularly useful for parties who are not familiar with online working or your preferred platform of choice. Mediators can help parties become familiar with what the platform looks like and how it works. This meeting can also be used to start to build rapport, as this requires more conscious effort when meeting people online. I would advise, however, to take care not to get dragged into the dispute and start mediating during this meeting.

The Agreement to Mediate will need tweaking to suit online mediation, particularly in terms of confidentiality, that there shall be

no recording and no one else may be present in the room. Signing of this document can be done electronically in advance.

You will need to remember to enable the waiting room and make sure it is password protected. You should also lock the meeting to ensure that no unauthorised parties join, to protect confidentiality.

I adapt my opening statement to include online considerations, such as what to do if a party loses wifi, and, also what the plan is if the mediator loses the connection. If you are having joint sessions, I would recommend a co-mediator or someone to assist, as it could be quite disastrous for a solo mediator to drop out leaving the conflicted parties to their own devices! Have a plan in place if you struggle to get back online (Postpone? Telephone conference call?) and have everyone's phone numbers to hand in case this happens.

If you are shuttling online, I advise labelling the rooms with the parties' names to ensure you send the right people to the right room. It would be very awkward if you got that mixed up! I also have a room for the lawyers, in case they want to work together, a mediator's room for me to have a moment between sessions and a couple of spare rooms, just in case. I would also advise thorough tasking when leaving parties in their rooms. As the distractions of the home will be tempting, if you give specific tasks for them to complete whilst waiting for you, this will help to keep their minds focussed and the mediation efficient.

Finally, I think becoming very familiar with your intended

platform is essential, and practicing and playing with it before mediating online would be beneficial. Things do go wrong sometimes when we work online, so it's normal and the important thing is to be transparent, honest, and not to panic!

I like using the word 'opportunity' as it has positive connotations.

Do you have any phrases or questions that you commonly use in mediation to good effect?

One thing that I find myself saying a lot is 'So, moving forwards?' When parties are stuck in the past, regurgitating history, these 3 simple words remind them to focus on the future and to look forwards.

I like using the word 'opportunity' as it has positive connotations. I tell the parties that the mediation is an opportunity to have a voice and to be heard, in a safe and supportive environment. It is also an opportunity to listen, and to hear the other party's point of view; they may hear something particularly revealing or explanatory which may help to unlock the dispute.

Can you provide any advice on how to best prepare for a joint meeting following the initial discussions with both parties?

The initial meetings are confidential, so I am reliant on the

issues that the parties are willing to bring to the table at the joint meeting. I can therefore only really think about what issues they may voice, what reactions may be provoked and, tactically, how to deal with issues. I will also consider what issues they may have in common, so that if both parties raise those in their opening remarks, I will highlight, and take the 'easy win' first. Any issue (from my knowledge of the initial meetings) that I have confidence in being swiftly agreed, will be discussed first. This helps to create positivity and momentum, and also confidence in the mediation process.

I have to be careful not to make any assumptions or form any biases from the initial meetings before the joint mediation meeting. Apart from practicalities, I do not spend a lot of time in preparation, as a lot depends on what issues are raised by the parties, and then using mediation skills and techniques to deal with them.

Do you have any tips on how to best prepare clients for the joint meeting?

Obviously, I prepare the parties by informing them about what to expect on the day in terms of the process and structure. I will tell them that they will be asked to make opening remarks, and what that means.

I always inform participants about ground rules, to ensure a safe environment and constructive discussions. Sometimes the confidential nature of mediation can make parties fearful that the other will take advantage of this, so the ground rules will become even more important as will the reassurance

that, as the mediator, I will be reinforcing the ground rules and will not allow the mediation to be a vehicle of attack. I also explain the caveats to confidentiality around safeguarding and how I can stop/adjourn the mediation should I ever feel it becomes destructive.

Finally, I coach the parties a little in how to express themselves, such as using phraseology that will be well received by the other party. I explain that their aim is to be heard by the other party, and inflammatory language will stop them from listening. I also talk about how the past cannot be changed, but with agreements formed in the mediation, the future can be shaped with boundaries around their working relationship to make it more bearable.

Preparing the parties for the joint mediation is of crucial importance to making the joint session run smoothly and well.

Do you have any advice on how to effectively co-mediate?

I am a great fan of co-mediation. Being a mediator can often be a solitary profession, so it is always nice to have some company and moral support, but there are a lot of other benefits too. Having someone to reflect on the mediation after the event can be very cathartic, as they have been through the same experience as you, albeit with a slightly different lens.

A co-mediator can assist with self-reflection and personal development, as you can both discuss the events of the process, how it went, what went well and where improvements could be made. It is also a good opportunity

to vent about difficulties and to talk through challenges presented – a mediator is skilled at listening, after all. Co-mediation can also help with impartiality; you can keep each other in check or help if one mediator is struggling.

I would very much recommend co-mediation to new mediators who are acquiring experience. When I started out, I had an agreement with another mediator who was also venturing out, that we would share our mediations for a while. Whilst this meant half the fee, it also meant double the exposure and experience to mediation and, also, double the fun! This led to gaining confidence in the process in a much quicker way and we were soon able to feel comfortable in going solo. Alternatively, new mediators may wish to co-mediate with a variety of experienced mediators to expose themselves to a diverse range of styles and techniques, which will also assist them in developing their own style.

The key to co-mediating effectively is to communicate well beforehand; how are you going to play it, will one of you lead, will you take turns in leading, maybe take a party each? I recommend that you both have clear roles decided in advance. One idea could be, in shuttling, one mediator can top and tail the mediation, that is talk about confidentiality at the start and then scoop up any questions at the end before summarising and tasking. When with the other party, the mediators can swap roles, so that each get a turn at leading. If one is much more experienced than the other, then it may be agreed that they lead throughout. Either way, the mediator leading can focus purely on content and skills,

whilst the other takes notes. It is very important when co-mediating, that the mediator not leading does not consider themselves ‘off the clock’; they must show, by their body language, that they are still very present in the mediation by demonstrating active listening with their body language.

If you both want to have equal parts, rather than having defined leads, then it is of crucial importance to listen to your co-mediator, as well as your parties. If they are clearly following a line of questioning or conversation, it is vital not to interrupt this flow. It may be worth agreeing beforehand that you will have ‘handovers’ and indicate when a topic has been completed by inviting your co-mediator if they have anything to ask.

Communicating throughout the mediation between yourselves is another crucial way to make for an effective process. Checking in with each other, tactics, how each are coping, any difficulties you are experiencing or foresee etc. When shuttling between rooms, this is a perfect opportunity. But in other situations, for example a workplace joint session, you may need to call for a break and then have a private chat. I once co-mediated with a junior mediator in a very challenging student accommodation dispute. In between rooms, the junior confided that he was massively struggling with impartiality as he had taken a dislike to one of the parties due to their disclosed morals. We decided that moving forwards, I would lead with that party and he could lead with the other party. We managed to move this to a successful conclusion.

When co-mediating, you should be conscious to set an example of behaviour in treating each other with professionalism, respect and not talking over each other. The hope is that the parties will notice this and will then follow your example and mirror your behaviour, and likewise start to treat each other with civility.

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Reframing

In our previous newsletter we focused on the key mediator skill of ‘reframing.’ This is where a mediator restates what has been said in a neutral way. The purpose of reframing is to re-package a message in a way that will encourage constructive dialogue and help find a solution.

Our last newsletter presented a series of statements to practice this skill. Below are some examples from our trustees of how they may reframe these statements during a mediation.

My brother wastes his life watching awful soaps on TV instead of looking for a job.

Jacqui You’d like your brother to contribute to the household; You’d like your brother to be fulfilled.

Barbara You feel that your brother should be looking for a job.

Dave You would like to see your brother prioritise finding a job.

Those hooligans across the street have no regard for others when they drive around at 100 miles per hour.

Jacqui You’d like to be shown some consideration, and have some peace and quiet.

Dave You would appreciate more consideration.

Barbara It sounds like you are concerned about the speed some people drive at.

He spends more time watering his stupid plants than he does with his own kids!

Jacqui You think it’s important that he spends time with his children.

Dave You would like more priority shown to spending time with the children.

Barbara You feel that he is not using his time appropriately.

I always do all the hard work in this place and he never pulls his weight.

Jacqui You’d appreciate it if he recognised all you do, and that he played his part.

Barbara You feel that you do all the hard work.

Dave You would like him to take equal responsibility.

All I want is peace and quiet – which I had before our awful neighbours moved in.

Jacqui You’d like not to be disturbed. You appreciate tranquillity.

Dave You would like your neighbours to be more considerate.

Barbara You want peace and quiet.

I have repeatedly provided instructions on how to do this but he’s just too stupid to understand.

Jacqui You’ve communicated ways to do this task a number of times.

Dave You would like to find a way to help him understand.

Buying that useless player was a total waste of money.

Jacqui So, you’d prefer to get some return for your money.

Dave You think that money could have been spent more effectively.

Barbara You feel that the player has not contributed as much as hoped for.

She is defensive and takes any kind of feedback on her work as an insult.

Jacqui So, you’d appreciate it if she’d receive constructive feedback about her work.

Dave You need to find a way to communicate feedback more effectively.

Barbara You feel that any kind of feedback is seen as criticism.

She ignores everything I say.

Jacqui You’d like her to listen to you.

Dave You would like to be heard.

Barbara You feel she doesn’t listen to you.

My manager is patronising and disrespectful of my experience.

Jacqui You’d like your manager to behave respectfully.

Dave You would like to receive more recognition for your experience.

Barbara You would like your manager to respect your experience.

Mediator Spotlight

Uche Ugoala



Uche is a qualified solicitor however after years of private practice, she decided to pursue her interest in alternative dispute resolution. This interest led to her undertaking post graduate studies in dispute resolution and training as a mediator in Scotland and more recently in England with CCM.

Uche is also an experienced complaints investigator which has provided her with opportunities for quasi mediation.

Uche enjoys spending time with her family and trying out various banana cake recipes!



We are very grateful to all the mediators who have given up their time to be interviewed for our newsletters. The interviews are being read by an increasing number of people on LinkedIn which is testament to the experience and knowledge being shared. We're pleased to be playing a role in the sharing of knowledge and learning in the mediation community. We have further interviews already lined up with some very experienced mediators but we are always on the lookout for more. Feel free to get in touch if you know of someone who would make a good interviewee!

If you want to read some past interviews you can find the links here:

Gary Webber
June 2022

Laura Kirkpatrick
September 2022

Dr Mike Talbot
December 2022

Gerry O'Sullivan
March 2023

Join Us

CCM is still growing but we need to increase the number of mediators so our service is seamless.

Would you, or someone you know, make a good mediator?

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Register your interest now by emailing;

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