



The Viability of a Mediation Centre of Excellence in Wales – Phase 1 Report

Skills for Justice is part of JSSC group, which is an independent, employer-led charity enabling employers and employees across the world to develop skills for success.

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Executive Summary¹

Introduction and Methodology

The investigation into the viability of a mediation centre of excellence has largely concerned addressing the question of appetite and demand for such a development, and to uncover the true “raison d’etre” and functions of that centre in order to make such a concept viable.

During this short piece of research, there was excellent engagement with a range of people and organisations, none of whom asked what mediation was, nor thought the idea of a mediation centre was inappropriate, nor untimely. The research identified quite the opposite: it is a good idea, for mediation, for Wales and for now.

The online survey aimed at UK & Welsh general public (prospective consumers of mediation services) showed 67% of people, when asked, had heard of mediation – a huge increase in recent years. For those who work with people in some way, many are undergoing mediation training, all are certainly not ignoring it. For a range of reasons, the traditional route of instructing a solicitor and ‘see you in court’ as the next step in a dispute, is no longer the practice of choice, no longer the practice advised, and no longer the practice to be afforded. Whilst mediation has been around for a long time, new developments are gathering pace, and hybrid practices are emerging, encouraged by external influences, not least from the legal system. The challenge for mediation is, however, that everybody wants a piece of it. Whilst it remains unregulated, there is freedom to develop new practices, give them new names and push the boundaries of traditional approaches. If a bandwagon is coming, there is a long queue of people waiting to jump on it – to practice, to train others, to develop, and to sell. Thus the challenge is to secure a share of the market – which potentially is huge. Market forces may take over, and as demand increases so could the cost. It may become more regulated and has a risk of developing into a quasi legal system of its own – a criticism of arbitration already. The challenge is to maintain the flexibility, simplicity and neutrality of mediation, yet develop it into a commercial offering which can stand tall alongside alternatives.

The research into the viability of a mediation centre of excellence has uncovered clear interest and support from the mediation sector as well as its stakeholders. It also depicts the regulatory and external drivers of demand that will impact the growth of this sector into the future. What is less clear is how quickly the impact of demand will come to be realised by the sector and to this end, a Mediation or Dispute Resolution centre of excellence that can be a catalyst for growth and best practice is to be wholly welcomed by the sector.

The first phase of this project comprised a short review of current mediation activity (conducted between May and June 2013) and empirical qualitative and quantitative research to understand the appetite for, and potential functions of, a mediation centre (conducted

¹ For an overview of family, workplace, commercial and community mediation see the [appendices](http://www.sfjuk.com/wp-content/uploads/2013/06/Mediation-Phase-1-Report-Appendices-January-2014.doc) (http://www.sfjuk.com/wp-content/uploads/2013/06/Mediation-Phase-1-Report-Appendices-January-2014.doc)

between June and December 2013). A second phase of research to be conducted between January and May 2014 will look at potential business models for such a centre.

The supply of mediators, and factors influencing experience and quality

At present there are sufficient mediators to meet demand. However, they exist in silos where some do regular work (in all sectors), many having worked in mediation for years. The success of a mediation centre will require this labour force to emerge from these silos, be less protective of their small share of the market, and be more open and willing to engage with competitors.

Sitting behind this tranche of experienced mediators is a large group of trained but inexperienced mediators which comprises lawyers and non lawyers. Sustainability of a centre will require increased access to observations and co-mediation practice for them to develop experience and maintain quality.

There are no easily identifiable skills gaps amongst mediators. The majority say their training prepared them for practice, but it was enhanced by observations and experience. There is, however, a need for increased mediation skills training for lawyers and line managers; however such skills may be used to improve negotiation and conflict management generally.

Whilst the quality of mediators and occupational standards and regulation were hot topics in all discussions, national mediation bodies are engaged in debate about these and there appears to be no need for a centre to repeat this process. Once these discussions conclude, there will be opportunity for a mediation centre to adopt or build on those outcomes to set a 'Welsh' standard for mediation.

The demand for mediation

Current demand for mediation services across the board is low, but potential demand is high. It is unclear why current demand is so low, as mediation is now familiar to most people, yet evidence shows disputes still go to court (often unrepresented) and claims continue to be made to employment tribunals rather than opting to access mediation. Most referrals to mediation come from sources known to mediators (mainly solicitors), so increasing awareness, publicity, accessibility and a referral process may help boost demand for mediation from other sources.

A number of recent changes encourage referral to mediation, and may stimulate future demand: cost recovery in litigation is more difficult; an EU directive on dispute resolution will be introduced in 2015; and there will be compulsory mediation assessments in publicly funded family cases from April 2014.

Boundaries between mediation and other forms of dispute resolution are moving, and hybrid practices are emerging such as med-arb.

A mediation centre, and its functions

Almost all those who engaged with this project felt a dispute resolution centre was a very good idea, and should have both a virtual and physical presence. The centre should have a number of functions, with priority on promotion and raising awareness of all forms of dispute resolution. It should also focus on accessibility, and improving the quality of mediators. A centre could be a public place for information and signposting via a telephone number, website and building. For mediators, the centre could provide access to training, peer support, best practice and CPD. Opinions were divided about central regulation of mediators, but most thought some 'light touch' regulation would be beneficial. The evidence from this research suggests the time is now for a dispute resolution centre. Mediation is an 'immature' industry which now needs to grow up quickly, establish itself, and become more business like if it is to compete in the dispute resolution marketplace.

Recommendations

The following recommendations were drawn from the research:

- The remit of a centre should be widened to include all forms of dispute resolution rather than being limited to mediation.
- Notice should be taken of the real interest in mediation and other forms of dispute resolution, and the high levels of engagement with this project across a range of sectors. Work should continue to encourage collaboration to develop these approaches, and remove the silos that still exist in the industry.
- A stakeholder group should be established comprising those with an interest in a mediation – or dispute resolution - centre and include organisations such as Higher Education Institutions (HEIs), professional bodies (such as Chartered Institute of Arbitrators CIARB), ACAS and Leadership and Management Wales.
- There should be investment into raising awareness of, and promoting the use of, mediation in order to better reconcile demand with supply.
- There should be improved access to mediation and all forms of dispute resolution. Clear accessible information is needed which will help people make an informed choice about their preferred route to resolve a dispute. Discussions should take place with organisations such as the Citizens Advice Bureau (CAB) to help deliver this.
- Lawyers and managers need to improve their knowledge and understanding of dispute resolution to enable them to support clients and employees who engage with mediation. There are a very small number of mediators doing high value practice and who don't have time to take on more, but this is not representative of mediation generally. The vast majority of work is not at this level. In Wales, there are disproportionately higher levels of publicly funded work than anywhere in the UK and there are some of the highest levels of poverty, isolation, unemployment in the

country. Focussing on small numbers of high value cases is not a sustainable model for mediation in Wales. Mediation should be promoted at all levels to match the nature and demographics of disputes.

- The mediation centre should:
 - Engage in the debate around standards and quality of mediators.
 - Offer more observations for newly trained mediators.
 - Develop better continuing professional development (CPD) for mediators
 - Investigate the possibility of a register of mediators.
 - Encourage other organisations such as the Chartered Institute of Personnel and Development (CIPD) and the Law Society to increase mediation training as the norm in professional courses.
 - Seek to raise the profile of mediation and dispute resolution to support it becoming more mainstream in Wales, and include increased introduction in schools and communities.
 - Develop a research function to engage with service users, and measure the Social Return on Investment for mediation.
 - Liaise with the department for Business Innovation and Skills (BIS) about the forthcoming EU directive.
 - Involve service users at all stages of development.
 - Seek to develop a referral process connected with the judiciary and court system in Wales.
 - Seek to establish a quality mark to support Dispute Resolution professionals in becoming formally affiliated with the centre.

Section One: Introduction, methodology, report outline

Introduction

“Mediation is at a cross roads, with huge potential”²

Mediation is one of several processes under the umbrella term 'Alternative Dispute Resolution' (ADR). It is an 'alternative' to traditional processes such as courts (litigation) and tribunals, but the effect of mediation reaches far beyond that of 'dispute resolution'. Mediation helps parties take responsibility for their part in the dispute; has potential to enable parties to reach a more creative outcome which is more appropriate to them; and offers more 'healing' than a court could. It also goes some way to repair damage to relationships between disputing parties so they can, for example, continue working productively alongside one another.

Mediation has been present in the UK as a method of dispute resolution for many years, but has always been in the shadow of more mainstream processes, for example arbitration and conciliation. Around 5% to 10% of all disputes make an appearance in court, but it is acknowledged that for a significant number of these cases, court is not the appropriate place, and litigation is not the appropriate process to try to resolve the dispute.

Notwithstanding the expense and duration of that process, litigation can only look at black and white facts of a case and apply the relevant law. Many disputes concern shades of grey, seen from different points of view. There is increasing interest in mediation as a way to resolve disputes more efficiently, fairly, and for increased long term benefit. Consequently, this project was commissioned by the Welsh Government to look into the viability of, and interest in, a mediation centre.

Methodology

The first phase of this project comprised a short review of current mediation activity (conducted between May and June 2013) and empirical qualitative and quantitative research to understand the appetite for, and potential functions of, a mediation centre (conducted between June and December 2013). A second phase of research to be conducted between January and May 2014 will look at potential business models for such a centre.

During the first phase of the research 130 individuals and organisations currently engaged in mediation were consulted. These participants included mediators, lawyers, government departments, trainers, academics, employer organisations and professional organisations.

Around 80 individuals participated in four focus groups investigating the function and need for a mediation centre.

A total of 12 in-depth structured interviews were completed with lawyers and mediators.

² Family mediator

Some 104 individuals completed a detailed online survey on mediation, representing a 20% response rate from the survey sample. A further 2009 completed a more general public survey about awareness of mediation and handling disputes.

In addition, 6 conferences and seminars were attended; and exploratory visits were made by the project team to the Scottish Mediation Network and the Scottish Arbitration Centre.

Report Outline

The viability of a mediation centre is essentially a question of supply and demand: is there a sufficient supply of skilled, experienced mediators with capacity and interest to manage the demand for mediation? How much demand is there for mediation as the process of choice to resolve disputes? This report seeks to answer these questions.

For an overview of Family, workplace, commercial and community mediation please go [here](http://www.sfjuk.com/wp-content/uploads/2013/06/Mediation-Phase-1-Report-Appendices-January-2014.doc):
(<http://www.sfjuk.com/wp-content/uploads/2013/06/Mediation-Phase-1-Report-Appendices-January-2014.doc>)

Section Two: Supply of mediators

“...the problem is the market is flooded by people who are not very good. It needs higher standards and more work”³

Summary

At present there are sufficient mediators to meet demand. However, they exist in silos where some do regular work (in all sectors), many having worked in mediation for years. The success of a mediation centre will require this labour force to emerge from these silos, be less protective of their small share of the market, and be more open and willing to engage with competitors.

Sitting behind this tranche of experienced mediators is a large group of trained but inexperienced mediators (lawyers and non lawyers). Sustainability of a centre will require increased access to observations and co-mediation practice for them to develop experience and maintain quality.

There is no identifiable skills gap amongst mediators. The majority say their training prepared them for practice, but it was enhanced by observations and experience. There is, however, a need for increased mediation skills training for lawyers and line managers; however such skills may be used to improve negotiation and conflict management generally.

Whilst the quality of mediators and occupational standards and regulation were hot topics in all discussions, national mediation bodies are engaged in debate about these and there appears to be no need for a centre to repeat this process. Once these discussions conclude, there will be opportunity for a mediation centre to adopt, or build on, those outcomes to set a 'Welsh' standard for mediation.

Supply of mediators

Surveys and qualitative work confirmed the initial findings during the desktop research phase, that there is no shortage of **trained** mediators. As the project progressed, more mediators voiced their opinions across all sectors - volunteer, family, and high value commercial mediators, as well as lawyers and managers who were considering mediation training, despite the healthy number of existing mediators. However, there are some smaller mediation training organisations struggling to attract business. Indeed some have gone out of business completely during the past year, and ACAS has had some recent training courses cancelled due to lack of numbers. This poses the question 'has the market reached saturation point?'

Of the 57 people (54%) who identified themselves as mediators in the survey, 45% had trained in the past three years. Some 32 (56%) are legally qualified, of whom 23 work as lawyers (although they identified themselves principally as a mediator), and 9 identified

³ Structured interview with mediator

themselves as lawyers and not mediators. Mediation was at least mentioned as an appropriate process to follow when disputes arise by professionals in many areas including lawyers, managers, union members, HR advisers, NHS staff, public sector workers and private sector workers. In addition mediation is increasingly written into policies if not adopted as a module in a professional training package.

There are also a number of volunteer mediators either working alone or associated with community mediation organisations. For example Newport mediation has 45 mediators and Mediation Cymru Cyfrygu has trained and accredited 27 mediators. A pro bono (professional service offered voluntarily for no payment) mediation and legal advice service is offered by LawWorks, and have in excess of 100 volunteer mediators on their register (across both England and Wales). LawWorks agrees there is no need for further training of new mediators, but there is a need for observations and experience for newly trained and inexperienced mediators. Some mediators join these services in order to gain much needed experience, hoping to attract more work elsewhere. Others offer their time as a service to their community. One mediation provider in Wales is “inundated” with newly trained mediators wishing to observe mediations in order to complete their training portfolio.

A significant amount of community mediation arises from landlord and tenant disputes with social landlords, and ‘community’ mediation is offered in-house by some housing associations who have trained housing officers at their disposal. A number of community mediation organisations have closed in recent years due to the withdrawal of government funding, however community mediators are still out there, albeit somewhat hidden. Mediators sometimes implied they had completed more mediations than was actually the case. In reality few had delivered a significant number of mediations, most had done very little, a significant number had done none at all since training, and all would like to do substantially more. One lawyer mediator said he had done “some” mediations but that his main job, he felt, was “getting clients to do it” and that he would support his clients at mediation. By extrapolating from this, and other experiences relayed during the research, it appears that attending mediation with their client, or indeed getting their client to attend mediation alone, could in some cases be considered by lawyer as having experience of mediation.

Most people said that when choosing a mediator for a dispute they would ask for a CV, use personal recommendation, speak to colleagues about who they had previously used, or select according to relevant experience – which needs to be demonstrated. The potential of a commercial mediator fulfilling these criteria in a particular geographical area seems to be limited. However there is greater availability of experienced family mediators, either at a National Family Mediation organisation across Wales or in their own practice.

Notwithstanding the comments above about in-house community mediators, community mediators with experience were identified in only two or three organisations in South and West Wales. When asked, they struggled to identify any other community organisations still in existence. In-house workplace mediators are available in some public organisations, but experience seemed to be very patchy, and umbrella organisations such as ACAS and CIARB have now added mediation to their suite of dispute resolution techniques, but admit they would like more cases.

It remains a 'catch 22' situation – mediators need more work to gain experience, and they need experience to gain more work. Thus any headline number of the supply of trained mediators should be considered with caution. The online survey showed that 40% of mediators had completed less than 10 cases in the last three years and 45% (26) said they had completed more than 45 cases. However, generalising about the number of cases an individual mediator undertakes to be considered experienced is dangerous. Indeed a small number of mediators are retaining too many high value commercial mediation cases which, it was suggested, compromises quality:

*“ top mediators are over trading and not coming fresh to each case – they do not have enough time to thoroughly prepare”.*⁴

In every sector – family, commercial, workplace and community –there are more than adequate numbers of trained and experienced mediators to meet the current demand for their service. Even where demand was high – for example in the Small Claims Mediation Service - where lawyers reported having to wait several weeks for a case to be mediated - the 18 mediators currently employed by that service is sufficient and there are no plans to recruit further. With the downturn in referrals to family mediation services since April 2013 there are experienced family mediators being made redundant. One service (not based in Wales) said that they had made five mediators redundant in as many months.

All mediators said they had capacity to take on more mediations. One said she would do so for free just to gain the experience. Some expressed a desire to do mediations full time but realised this was not going to happen as there are *“too many mediators and not enough work.”*⁵

Skills of mediators - gaps and shortages

When asked to identify the skills of a mediator in the survey, listening was the predominant skill (identified by 66%), followed by empathy (48%), knowledge (44%), understanding (37%), and communication (24%).

Understanding
Knowledge
Communication
Empathy
Listening

⁴ Lawyer mediators at CIARB conference, London October 2013

⁵ Lawyer mediator

Other suggestions included patience, creativity, impartiality, life experience, and “acceptance of other human beings” and “the ability to write and spell correctly”!

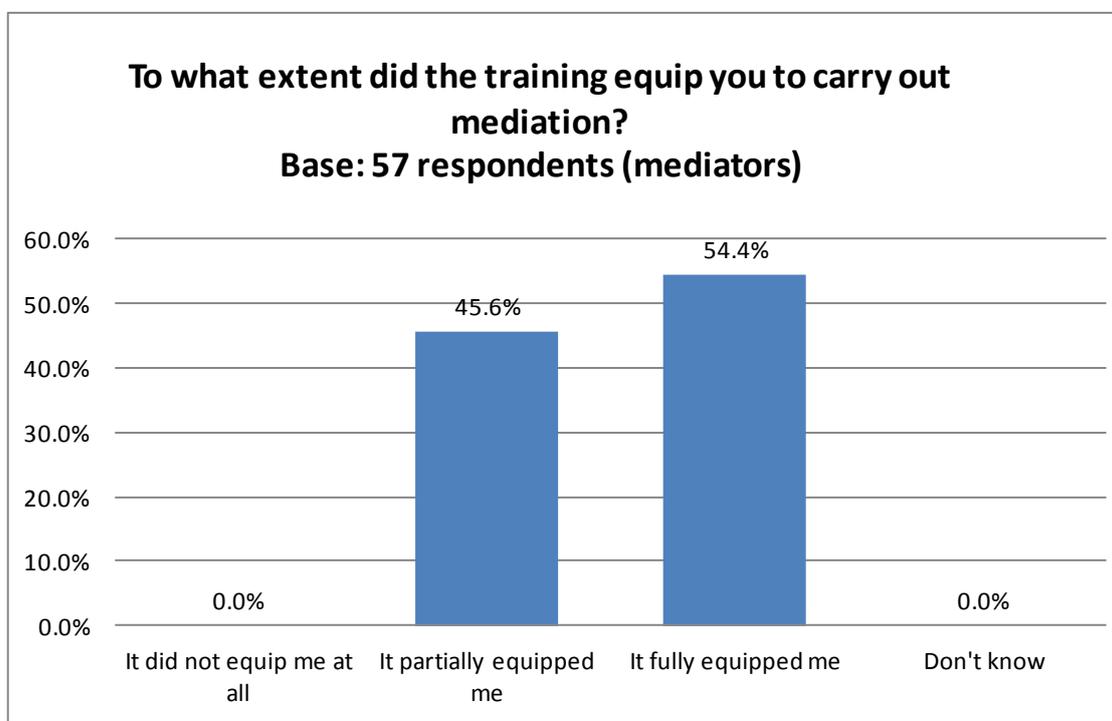
Knowledge was mentioned particularly in relation to the law, finances and legal processes, which raises the question of whether there is any advantage if a mediator is legally qualified:

*"An effective Mediator will have good people skills, communication skills, listening skills and an ability to empathise and manage emotions. Depending on the nature of the dispute, you should check the Mediator's level of experience within the field and whether he has the academic and professional credentials to back this up. Arguably, lawyer mediators have a sound specialist knowledge of the law and therefore are able to grasp and tackle legal or technical issues, which may ease the process. The opposite view is that if the lawyer mediator knows the law the temptation will be to advise, evaluate or make recommendations, thus inadvertently manipulate the outcome of the process."*⁶

A lawyer mediator from CIARB said:

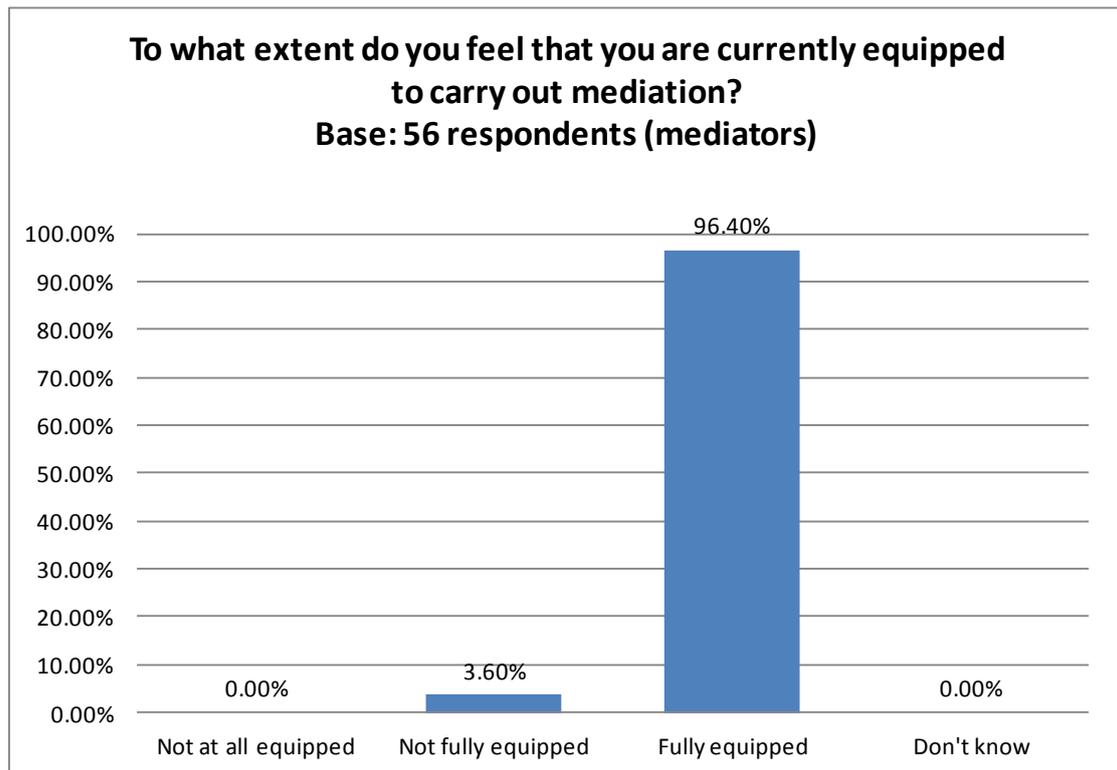
"lawyers have this need to know everything...why do they need to know everything, it is not their dispute. I am wondering if lawyers do make the best mediators"

A total of 54% of mediators completing the survey said they felt fully equipped to carry out mediations after completing training as the chart below shows.



⁶ Survey respondent

However 96% said they only **now** feel fully equipped, as the next chart shows.



When asked about current training needs, 'more observations' was overwhelmingly the top priority. Some 80% said they undertake CPD but there is great variation in its content, from organised documented hours arranged and coordinated by a training organisation, to peer support, and something "arranged by myself". The larger training providers and umbrella organisations such as the Civil Mediation Council, Clerksroom and National Family Mediation require up to date documentation from each mediator as evidence of ongoing CPD before they become accredited and are referred cases. Other mediators do not have to provide such evidence.

When comparing the suggested skills required for mediators, lawyers and non lawyers have different priorities. Non lawyers say listening is key, whilst lawyers say negotiation:

*"Lawyers need to be trained to move from being litigation based to being broad minded. They should understand that what is paramount is solving a problem. Cases do not necessarily have to end in one's favour, however, where one intends to be just and open minded, then issues are more easily resolved."*⁷

Mediators (lawyers and non lawyers) appear content with their training and preparedness to manage mediations. Again, more work and more experience is the call:

"In terms of how equipped I am to carry out mediation, I think you learn and improve through experience and you should always be learning. Training is not enough, you also need

⁷ Survey respondent

*practical experience. I am lucky to be able to work as a co-mediator with a more experienced mediator from a therapeutic background which is of great benefit.*⁸

Some solicitors said the skills they used in negotiation were gained from mediation training, and others who listed the skills required, suggested very similar skills to those mentioned as necessary to be a good mediator.

However, an alternative view of skills in the sector was presented by a commentator on a recent commercial mediation case (PGF)⁹ said:

“ if solicitors had not lost the ability to negotiate, mediation would not be necessary. Lots of cases used to settle through a few letters and a couple of phone calls. Now the same result is achieved only after a mediation costing well into five figures.”

In the workplace it was made very clear that line managers should receive mediation training, or at least training in managing conflict, to improve their people management. This training would also allow them to manage a dispute at an early stage, not to fear it, nor fuel it, but be able to listen to different points of view, and work with the parties in reaching a solution.

Quality, standards and regulation

The focus groups looked at possible functions of a mediation centre and the quality of mediators - standards and regulation were a top priority. This debate is not new, and has been considered by the larger umbrella organisations in mediation for some time. The Civil Mediation Council (CMC) and the Family Mediation Council (FMC) are working together to try to set agreed standards for training and accreditation. CMC sent out a consultation paper in March 2013, and hopes to have some draft proposals out by spring 2014.

Feelings ran high about this issue in the groups, but there was consensus that a mediation centre should not try to ‘reinvent the wheel’ but wait to see how these discussions progress. However, a ‘Welsh’ quality mark for mediators belonging to a centre was considered a useful measure of quality and standard.

These findings reflect the outcomes from National Family Mediation (NFM) Project Handshake¹⁰ in 2009 where several ideas were assessed in an online survey, which may be used to influence the shape of family mediation as a service in the future. They too found particular interest in training and professional qualifications, quality standards, and financial and property expertise (knowledge).

Project Handshake also found people felt more confident in a mediation service when the ‘Legal Services Commission Quality Mark’ (required to deliver publicly funded mediation)

⁸ Survey respondent

⁹ PGF II SA V OMFS Company 1 Limited [2013] EWCA Civ 1288

¹⁰ http://downloads.ilegal.org.uk/Responses/02.11_nfm_response_to_legal_aid_reform_proposals.pdf

was mentioned. One person said they “*hadn’t heard of it, but it sounds good*” and another, “*It is a good thing that they have a quality mark because it inspires confidence*”¹¹.

However not everybody agreed. Some mediators suggested that National Standards are not the answer:

“that will create an industry, and we do not need an industry. We need peer review and self regulation.”

There was also some scepticism that standards were being seen as an end in themselves, rather than something to improve the quality of mediation practice for the benefit of clients. Most mediators were aware of some ‘rogue’ practice and were keen to reduce this, but felt standards in themselves would do nothing to stop mediators practicing in a variety of good and less good ways.

Discussions about regulation focussed on a ‘light touch’ approach. There was an element of fear that mediation could evolve into a quasi legal process (as some people suggested was happening with arbitration) and this would have a devastating effect on the value and benefit of mediation. There was a clear call to maintain the ‘simplicity’ of mediation in order to ensure its effectiveness.

ADR courses in Higher Education and professional training

A number of Higher Education institutions are offering courses in dispute resolution and conflict management. From September 2014 the University of South Wales¹² introduces its new MSc in Dispute Resolution which focuses on arbitration but has elements of mediation. The course is recognised by the Chartered Institute of Arbitration (CIARB) and successful completion of the course gains fellowship of CIARB. Whilst training in dispute resolution is not a core module in professional legal training, increasing numbers of lawyers access training on such courses as part of their CPD or as postgraduate study.

The final report of the Legal Education and Training Review (LETR)¹³ recommended increased training in mediation :

“Resolution of Disputes out of Court should be reviewed to place greater practical emphasis on the skills required by Alternative Dispute Resolution, particularly with regard to mediation advocacy.”

Increased participation on these courses will further increase the number of trained mediators, and raise awareness among professionals. Whether these skills are used to provide mediation or dispute resolution services, or to enhance management of conflict and negotiation of settlements, remains to be seen.

¹¹ female, divorced/separated)

¹² <http://www.southwales.ac.uk/media/files/documents/2013-10-21/usw-msc-dispute-resolution-leaflet-2013.pdf>

¹³ <http://letr.org.uk/the-report/executive-summary/executive-summary-english/index.html>

Section Three: The demand for mediation

“I think mediation is essential – I would have liked to go earlier – I didn’t because I went to a solicitor where I got poor advice and incurred unnecessarily high costs – but I expect I was more ready to settle later. Mediation should be compulsory prior to issuing proceedings and at multiple stages thereafter – both sides think they are right and don’t see perspectives.”¹⁴

Summary

Current demand for mediation services across the board is low, but potential demand is high. It is unclear why current demand is so low, as mediation is now familiar to most people. Yet evidence shows disputes still go to court (often unrepresented) and claims continue to be made to employment tribunals rather than individuals choosing to access mediation. Most referrals to mediation come from sources known to mediators (mainly solicitors) so increasing awareness, publicity, accessibility and a referral process may help boost demand for mediation from other sources.

A number of recent changes encourage referral to mediation, and may stimulate future demand: cost recovery in litigation is more difficult; an EU directive on dispute resolution will be introduced in 2015; and there will be compulsory mediation assessments in publicly funded family cases from April 2014.

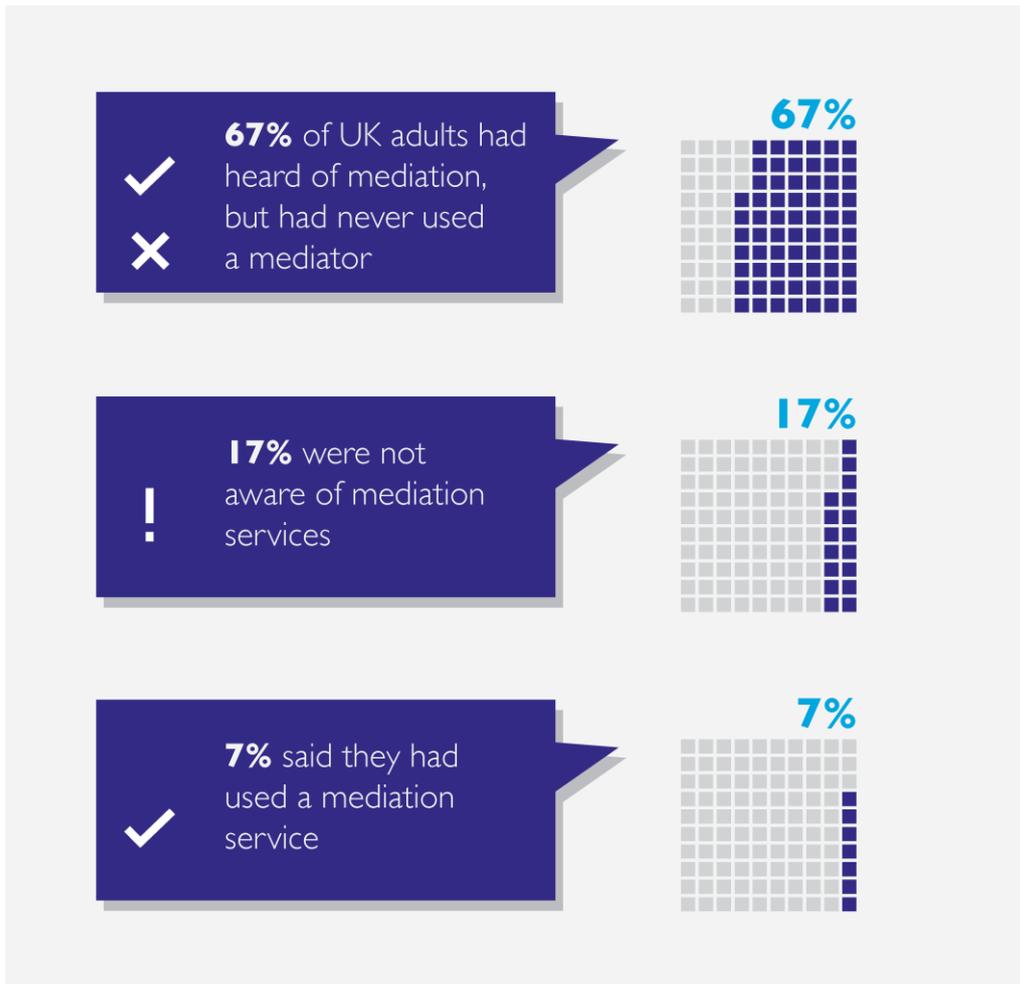
Boundaries between mediation and other forms of dispute resolution are moving, and hybrid practices are emerging such as med-arb.

Current demand

The public survey showed 67% of UK adults had heard of mediation, but had never used a mediator. A total of 17% were not aware of mediation services, and just under one in ten (7%) said they had used a mediation service.

Mediation as a term is becoming more familiar, perhaps it is even understood to be something to do with dispute resolution. However its full meaning and value to both the individual and the professional remains unknown, such that individuals and professionals alike are seldom seeking mediation as a way to resolve their dispute. This pattern exists across all sectors: despite cuts in legal aid reducing access to a solicitor for legal advice in a family dispute, and legal aid remaining available for mediation, referrals to family mediation have fallen dramatically since April 2013, with reductions in excess of 75%. The effect of this is an increase in litigants in person appearing in most family courts.

¹⁴ Commercial mediation client



Similarly, despite 'mediation' as a term now being written in many employment contracts as a preferred option should a dispute arise, the number of individuals accessing mediation in the workplace is small. Indeed, when it is accessed "*as a last resort*", or "*too late in the process*"¹⁵ this demonstrates a lack of understanding about the value of early referral, and the added long term benefit to working relationships, productivity and business generally.

Knowledge and understanding are two different things. Where does the public go to understand mediation and how it can help? Many will turn to the internet for help, yet may find themselves faced with a myriad of words, explanations, sales pitches and links taking them deeper and deeper into confusion. Mediation is a word which is increasingly bandied around without explanation nor understanding in clear, simple terms. Internet searches produce descriptions which include:

- "...a third party is enlisted"
- "a way of resolving disputes with concrete effect"
- "an action in mediating between parties, as to effect an agreement or reconciliation"

None of the above descriptions adequately describes mediation, and in fact would probably put some parties off! Does a party in a family dispute necessarily want to think of

¹⁵ As told to us by a number of managers and workplace mediators

reconciliation? Some mediation organisations and the Ministry of Justice (MOJ) say there are good clear explanations for mediation on their websites, but if you are a novice and do not know such websites exist, where do you start your search?

Case study - HMCTS – Salford pilot

As part of the Small Claims Mediation Service, currently, any case lodged with the Small Claims Court (up to £10,000) is invited to try mediation. Parties are sent information about mediation with their court papers containing the telephone number of the central administrative centre where they can express their interest in this route. Alternatively, when the case comes before a District Judge, he or she may again suggest that the parties try to settle via mediation, and will adjourn the hearing. If both parties agree to proceed with mediation, they will be contacted by a mediator from Her Majesty's Courts and Tribunals Service (HMCTS) who will explain the process – one hour of telephone mediation. Of those cases that are referred to mediation either by the parties by themselves, or as directed by a judge, around 50% are converted to a mediation case. Nationally, 68% of cases on average, which proceed to mediation, have settled. In 2012, 12,000 cases settled this way, saving on average 79 minutes of judge's time per case. In Wales in April 2013, 84 referrals came from a judge. There remains no compulsion for any party to agree to mediation. It is entirely voluntary. In total, 18 mediators are employed by HMCTS with one administrator to manage this system nationally. They have no plans to expand.

The Salford project is piloting an automatic referral of all cases up to £10,000 where both parties have ticked 'yes' to mediation when asked to express their interest in this route. These cases do not, therefore, go before a judge before being 'diverted' to mediation, thus saving time and costs. These cases also have a different 'directions' questionnaire which contains more detailed information on mediation, rather than just a passing mention. The mediation must take place within 28 days. Since April 2013 the referrals have increased but it is not possible to say if this is due to the new process, the new directions questionnaire or the increase in cases going to small claims from £5,000 to £10,000. The coordinator for the pilot commented that the biggest problem with mediation is "*lack of understanding*"; "*public education*", he said, "*would be good*".

Elizabeth Stokoe at Loughborough University has studied telephone conversations when a mediation enquiry is made. She concludes that staff in mediation services do not adequately explain what mediation is, nor its benefit to that individual. As a consequence, more times than not, the enquiry does not translate into an appointment.¹⁶

Mediators are generally accessible, meaning that there are plenty with capacity to take on more work. Often they are willing to travel, and there are good networks of mediators who can try to 'find one near you'. During the research there was no identification of anybody who did not go to mediation because they could not find a mediator. However it remains unknown how many people would like to use a mediator but do not know how or where to find one without the help of a solicitor, and therefore feel that route has been closed to them.

¹⁶ Elizabeth Stokoe [E.H.Stokoe@lboro.ac.uk]

Referrals to mediators tend to come from sources already known to them. Results from the online survey showed 45% of mediators receive referrals from solicitors. Other referrers included: "personal contacts, mediation panel, local authority, internal at work, word of mouth, via my own contacts." The research identified a strong sense that more referrals could be made, and scepticism and lack of understanding of mutual benefit still exist as illustrated here:

"..it depends on the nature of the dispute. Lawyers are gatekeepers in the process - solicitors have a duty to act in the best interest of the clients. Arguably, referring a client to Mediation may be appropriate and beneficial, however, the cynic within me questions whether solicitors are going to do this, as this may result in a settlement i.e. no more fees for the lawyer. Of course the litigating lawyer may argue that he or she is acting in the best interest of the client by pursuing litigation -I guess it depends on the merits of the individual case. Other gatekeepers include (again depending on type of dispute) HR Managers or financial decision makers for the organisation. Locating the referrers is a question of trial and error i.e. investigating the dynamics of an organisation and identifying the key gatekeeper or referrer."

Is it lack of trust, or lack of awareness of longer term benefit, which discourages lawyers and managers from making more referrals to mediation? Of the small base of 7 non mediation lawyers who completed our online survey, 85% said they refer cases to mediation, 83% of who said they attend the mediation with their client. Of the non practicing lawyers who completed our survey, most said that if they were approached they would refer a client to mediation. However one said they would "warn" their client about "lack of accreditation". Some 50% of employers who encountered a commercial dispute used conciliation as the way of resolving it. However more mentioned mediation when talking about a dispute with an employee, and when asked how the dispute could be better managed, most mentioned easier access to mediators and more mediation (and ADR) training for managers.

Commercial lawyers told us that up to 99% of cases are settled out of court, of which by far the majority are settled through negotiation. Most had experience of only one or two mediations. This was the only area where the apparent **lack of experienced mediators** within Wales required travel to Birmingham and London to find a suitably experienced mediator for such work.

There is demand for mediation in a number of other sectors. For example Llamau Homelessness charity has worked for over 26 years to offer support, help, accommodation and housing advice to homeless and vulnerable young people and women in Wales. Llamau has developed mediation services in nine out of the ten Welsh local authorities, tailored to identify the best way a young person can re-engage with their family and build support networks.¹⁷

Likewise in town planning, low levels of current demand mirrors the research findings in other sectors:

¹⁷ In recognition of this best practice model, the Welsh Assembly Government funded Llamau to produce a Family Mediation Toolkit for local authorities and third sector partners. To obtain a copy of the toolkit, please email enquires@llamau.org.uk

“My interest in mediation relates to the field of town planning. I chaired the Independent Advisory Group for the Welsh Government in 2011 recommending changes to the planning system in Wales. One of our recommendations related to mediation. We saw scope for much wider use of ADR techniques to overcome problems and recommended that a statutory basis be introduced for mediation before an appeal is submitted. There are many opportunities for mediation to be introduced at an earlier stage in the processing of a planning application; the obstacles are around creating the opportunity and persuading people to participate. An earlier report 'Mediation in Planning' in 2010 by Leonora Rozee and Kay Powell¹⁸ also saw scope for use of ADR in the planning process.”¹⁹

This project enjoyed positive engagement from the judiciary, who expressed an interest in more cases going to mediation rather than coming before them in court. Sir Allan Ward, Chair of CMC and retired Court of Appeal judge, said he has been trying to encourage lawyers to use mediation for years and that mindsets need to change from “wanting to win” to “wanting to settle”. Lawyers mentioned cases being stayed (suspended) to try mediation but that this, too, is patchy.

“it takes time to get lawyers on board, it is happening but it will take time. Increasingly I find District Judges have no tolerance if the case has not been to mediation”²⁰

However other lawyers say it depends on the individual judge. Some do not seem to mention mediation at all, for example presenting a form FMI in the Family Court (see appendix). Others take the view that it is for the parties to choose mediation, not the court to direct, or assume it has already been tried – “why would you not have tried it”.

Potential future demand for mediation – increase or decrease?

A number of influences could significantly affect demand for mediation. These influences are outlined below.

Solicitor negotiation

Lawyers confirm only a small percentage of cases go to final trial in court. The majority are settled by solicitor negotiation.

Most solicitors who had completed mediation training said they were not using their new skills for mediation, but enhanced their ability to understand conflict and negotiate a settlement. On this basis it could be argued that everybody wins: mediation trainers, solicitors who keep their fee, courts which are not clogged, and the client who has resolution to their case.

Ann Barlow from Exeter University undertaking the Mapping Paths to Family Justice project over a three year period found 98% of cases are settled by solicitor negotiation²¹. Likewise

¹⁸ <http://www.natplanforum.org.uk/Final%20Report%20-%20Mediation%20in%20Planning%20-%20PDF.pdf>

¹⁹ Survey respondent

²⁰ Litigation lawyer in Wales

early indications from the Court of Appeal pilot mediation scheme found an increase in the number of cases settled by solicitor negotiation, and fewer than expected going to mediation although there were other influences²²

It could be assumed that greater numbers of solicitors training in mediation – even if used to negotiate a settlement – is by definition increasing awareness of mediation, increasing the use of mediation trainers, and may increase demand for services from a centre. Such services could include, for example, continuing professional development and knowledge of good practice.

Changes in legislation

A European Directive will come into force in 2015 requiring all consumer disputes have access to an alternative form of dispute resolution. The Department for Business Innovation and Skills (BIS) is mapping and identifying gaps in provision. Some sectors are well established, for example ATOL for travel agents, while others have little to no provision, such as the motor industry. A consultation paper will be released in early 2014, and it is proposed an interim measure will be in place by 2015. Together with satisfying the directive there is a “need to simplify and reform the ADR landscape”²³. The extent of this will be a ministerial decision. There is interest in a single portal to simplify access to ADR processes, which will include mediation.

April 2014 also sees the introduction of compulsory Early Conciliation in employment disputes, replacing current pre claims conciliation. From April 2014, anyone considering an employment tribunal claim will need to contact ACAS first, who will then offer Early Conciliation to try and resolve the dispute quickly and cost effectively. However there is no compulsion to resolve the matter by conciliation, and indeed no compulsion on employers to engage with the process at all. Early Conciliation means that all claims relating to alleged infringements of individual employment rights will now come to ACAS in the first instance, rather than the Tribunals Service. ACAS also offers mediation.

Also from April 2014, it becomes mandatory for an applicant in a publicly funded family case to attend a Mediation Information and Assessment Meeting (MIAM). As with Early Conciliation, it is not mandatory to resolve the issue at this stage, and there is no compulsion for the respondent to participate. Most family mediation organisations expect there to be an increase in referrals from April 2014, although some doubted if numbers would return to pre 2013 levels, and the rate of translation to full mediation cases remains to be seen.

These changes in legislation, whilst not in themselves guaranteeing an increase in demand for mediation services, certainly increase awareness and have the potential to significantly increase demand.

²¹ <http://www.familylaw.co.uk/articles/Barlow-MarchFLJ2013>

²² <http://www.thelawyer.com/coa-pilots-mediation-scheme-in-bid-to-cut-litigation-costs/1012099.article>

²³ Department for Business Innovation and Skills

Reform to cost implications in court – the Jackson reforms

In 2009, Lord Justice Jackson undertook a Review of Civil Litigation Costs in England and Wales. The review was primarily undertaken due to concerns over disproportionately high costs of civil litigation, and a growing feature of litigation in the UK that recovery of costs becomes more important than the principal claim. Lord Justice Jackson's reforms will have a profound effect on costs in court cases, as they seek to make them more proportionate to the case. The question of proportionality has been debated in a number of subsequent cases (Halsey and PDF²⁴) raising the question of reasonableness (with cost implications) in refusing to mediate. A survey carried out by North West Mediation Solutions, asked 1,800 lawyers and accountants if they believed the Jackson reforms would lead to greater use of mediation to resolve disputes, 70% agreed the reforms would have a positive effect. In addition, 50% said judges are now actively promoting mediation as an alternative to a civil court hearing.

Complicated issues are inevitably arising in relation to costs, insurance (especially after the event (ATE) insurance) and mediation. Whilst it will take time for this to unravel the net effect of Jackson is, as a minimum, that mediation is mentioned, if not considered, in most civil cases. There is no indication, however, of any substantial increase in the number of mediation cases but it is early days.

Mediation- mandatory or optional?

The debate surrounding mandatory mediation is lively and current. One school of thought argues that referral to, and consideration of, mediation should be compulsory; others argue this would not be mediation – it can and should be entirely voluntary. Shirley Shipman²⁵ is studying mandatory mediation and its potential contradictions with access to justice. Sir Alan Ward suggested in Halsey²⁶ that mandatory mediation might be contrary to human rights legislation, and more recently said “*it is high time we look at this*”.

Mediation for workplace disputes is compulsory in New Zealand where it is said “*results are astonishing*”²⁷. However, Paul Letreille argues mediation does not work when a party does not want to be there so compulsion would have no effect on outcomes.

In Australia, New Zealand, Norway and parts of USA and Canada, family mediation is compulsory. In most of Europe it is voluntary but encouraged, and in Sweden 90% of separating couples use it voluntarily.

²⁴ Halsey –v- Milton Keynes General NHS Trust [2004] EWCA 3006 Civ 576
PGF II SA V OMFS Company 1 Limited [2013] EWCA Civ 1288

²⁵ Shirley shipman reference and Halsey guidelines

²⁶ Halsey –v- Milton Keynes General NHS Trust [2004] EWCA 3006 Civ 576

²⁷ Ben – ESRC conference, London

Mary Banham Hall²⁸ states:

“ [one of the] key drivers of insisting that mediation has to be voluntary and secondary to litigation is the belief that people have a human right to have access to justice. But what if we accept that access to justice requires a range of interventions to resolve conflict, equally valid and complimentary – and that “justice” encompasses non-adjudicated solutions? What about the other party’s human right to try to stop runaway/vexatious litigation? What about those cases where many, many attempts are made to get a party to mediate and they are either rejected or nominally agreed to – but made impossible because the date/mediator/venue cannot be agreed?”

In the focus groups there were mixed views on compulsory mediation. Linklaters Commercial mediation group survey found that 67% commercial litigators were against mediation being compulsory.²⁹

Is the demand for mediation or for dispute resolution?

New hybrid models of dispute resolution are emerging including ‘med-arb’ (mediation and arbitration) and ‘arb-med’ – a variation on that model. Med-arb and arb-med move a dispute between mediation and arbitration before either the same neutral, or a different one at each stage. There are a few emerging practices in the UK taking more or less formal approaches to the blurring of boundaries between these ADR practices.

Med –arb, whilst established as an option in other countries such as Canada and Australia, is becoming more recognised as a dispute resolution option for civil disputes and some members of CIARB offer hybrid models as part of their portfolio of services. All conferences mentioned the emerging hybrid practices, so they are on people’s radar and in the absence of any national regulation the way is open for creative variations.

Barrister Tim Parker³⁰ established, and now enjoys, a thriving med-arb practice for employment disputes in Canada. Mediation, he says, is written in to some statutes but it is med- arb which takes up 90% of his work which he says is an “*effective and sophisticated model.*”

Med-arb is also the process of choice for family disputes, he added. In both sectors, parties tend to be represented at mediation and arbitration. This is advantageous in educating the lawyers on how to participate in the process effectively and encourage settlement as the priority, not fighting to win. He witnesses a huge difference in approach between those (younger) lawyers who have received ADR training as part of their core training, and (older) lawyers who take a more traditional approach. Outcomes are much better if the lawyer is familiar and trained in the process. He said it takes “*education and patience*” to get buy in from the legal profession and this, in his opinion, takes three to four years.

²⁸ www.focusmediation.co.uk

²⁹ www.civilmediation.org/downloads-get?id=481

³⁰ <http://www.parkermedarb.com/>

In the Canadian workplace, dispute resolution is part of the HR professional's role and they too have core training in ADR approaches and how to manage conflict.

One school of thought argues the blurring of boundaries between ADR practices provides more choice and more flexibility for the parties, that 'one size does not fit all'. However opposing views argue some of these practices and mediators' behaviour is not 'mediation'. Debbie De Girolamo studied a group of mediators when practicing traditional mediation, then interviewed them afterwards about their effect on the dispute and the disputants. As one commentator puts it:

"She raises the question, for example, whether all mediators are actually manipulative, and whether we simply disguise being directive as party autonomy – allowing the parties to consider the ideas we suggest as their own. She also raises the question of the sometimes slim line between evaluative mediation and bullying. As chief interventionist, are we mediators not being asked to bully the other side for the sake of getting a deal which the stronger side demands?"³¹

In her recent book *The Fugitive Identity of Mediation: Negotiations, Shift Changes and Allusionary Action* (Routledge 2013) De Girolamo argues, the key is to know how and when to transition between phases of the negotiation in order to best assist the parties towards their intended goal, whether that is to settle the dispute, repair relationships, educate disputants about their rights and obligations, or simply to enhance communication.

"The mediator must be infinitely flexible in order to accommodate the various needs presented at every moment of every dispute. Indeed, the acknowledgement that there may be numerous goals in any mediation that go beyond settling a litigated case for payment of damages is a refreshing reminder of the breadth of the practice."³²

It could be argued that such behaviours may be more suited to hybrid practices and if the parties are happy – and indeed ask for the mediator's opinion at times, who can say it should not be given? People tend to default to what is familiar, and if the familiar is receiving advice and guidance through a dispute, could there be more demand for flexible, hybrid practices than for traditional mediation?

Peter Rees QC recently said:

"there is no formula for mediation – if you think there is then you are not fit for purpose. Many mediators take too formulaic an approach to mediations – which often just pushes parties further apart".

With the apparent increase in more sophisticated negotiation taking place either without mediation or after a failed mediation is 'med-neg' another new practice waiting to emerge?

³¹ <http://schaumediators.com/secure/wp-content/uploads/2013/08/JFS-Fugitive-book-review.pdf>

³² <http://schaumediators.com/secure/wp-content/uploads/2013/08/JFS-Fugitive-book-review.pdf>

A further practice in the ADR armoury is Early Neutral Evaluation (ENE):

“a process in which a neutral third party examines the evidence and listens to the parties’ positions and then gives the parties his or her evaluation of the dispute”³³.

This is not a decision or judgement of the case, and the evaluation is non-binding, but it does give a steer as to the likely outcome of the case. It is particularly suitable for complicated, unusual cases, and provides a platform from which to have further discussions and negotiations. ENE gives the parties good neutral feedback on the merits of their case before spending money chasing unrealistic outcomes and could be a useful precursor to mediation. It can be seen as a sign of strength of your belief in your case, rather than a sign of weakness – which can happen with mediation.

³³ Stuart Kennedy - barrister at law 3 Paper Buildings

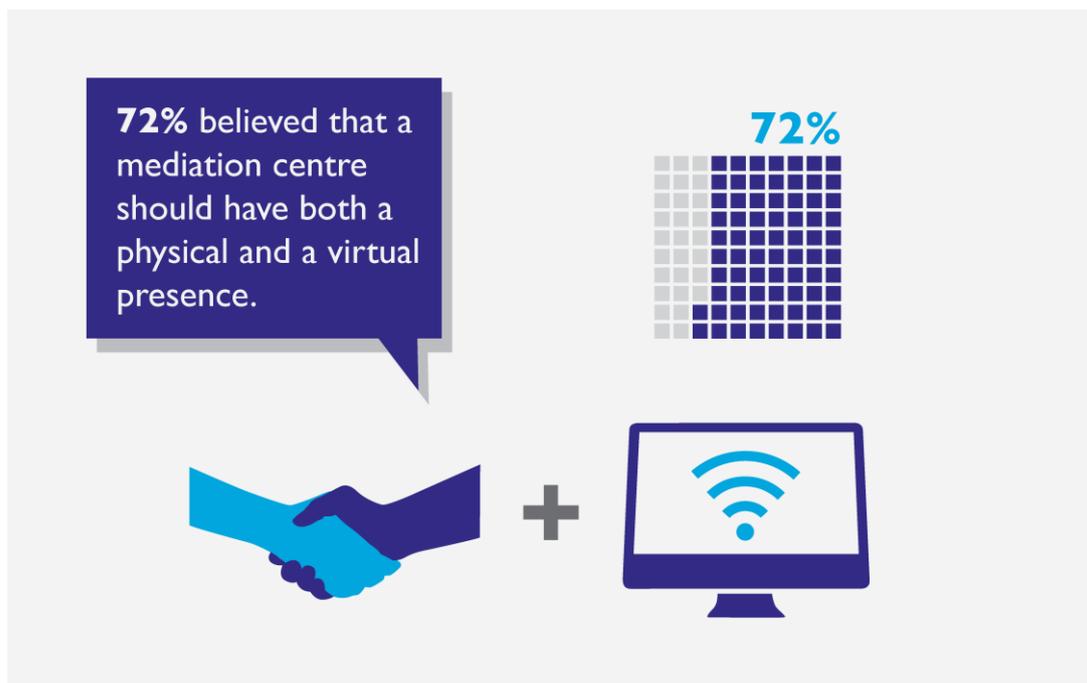
Section Four: The need for a mediation centre of excellence and its potential functions

Summary

“A centre should be broader than just mediation – it is a no brainer”³⁴

Almost all people who engaged with this project felt a dispute resolution centre was a very good idea, and should have both a virtual and physical presence. The centre should have a number of functions, with priority on: promotion and raising awareness of all forms of dispute resolution, accessibility and improving the quality of mediators. A centre could be a public place for information and signposting via a telephone number, website and building. For mediators, the centre could provide access to training, peer support, best practice and CPD. Opinions were divided about central regulation of mediators, but most thought some ‘light touch’ regulation would be beneficial. The evidence from this research suggests the time is now for a dispute resolution centre. Mediation is an ‘immature’ industry which now needs to grow up quickly, establish itself, and become more business like if it is to compete in the dispute resolution marketplace.

Whilst most people who expressed an opinion thought a mediation centre would be an excellent idea, there were mixed views about where it should be located although it was thought that it should have both a physical and virtual presence. Mediators and potential clients have a need for both entities – web based information, and a person to speak to with a building to visit. Some 72% of those who answered the question in the online survey said a centre should be a combination of virtual and physical.



³⁴ Survey respondent

Cardiff and Swansea were both suggested as possible locations for a centre, but satellite hubs throughout Wales may also be needed to maximise promotion and accessibility. All sectors of mediation need to be considered when locating a centre - a member of Leadership and Management Wales felt that any centre would need to be located in Cardiff given the population being higher here than anywhere else in Wales, and felt quite strongly that locating a centre further west may mean the Cardiff business community will not engage with it.

When asked about the functions of that centre, issues relating to increasing awareness, quality of mediators and promotion of mediation were the most common.

At the focus groups, discussion about 'four words' in relation to the functions of a mediation centre concluded that awareness, infrastructure, excellence, national, profile, and access were the most popular words.

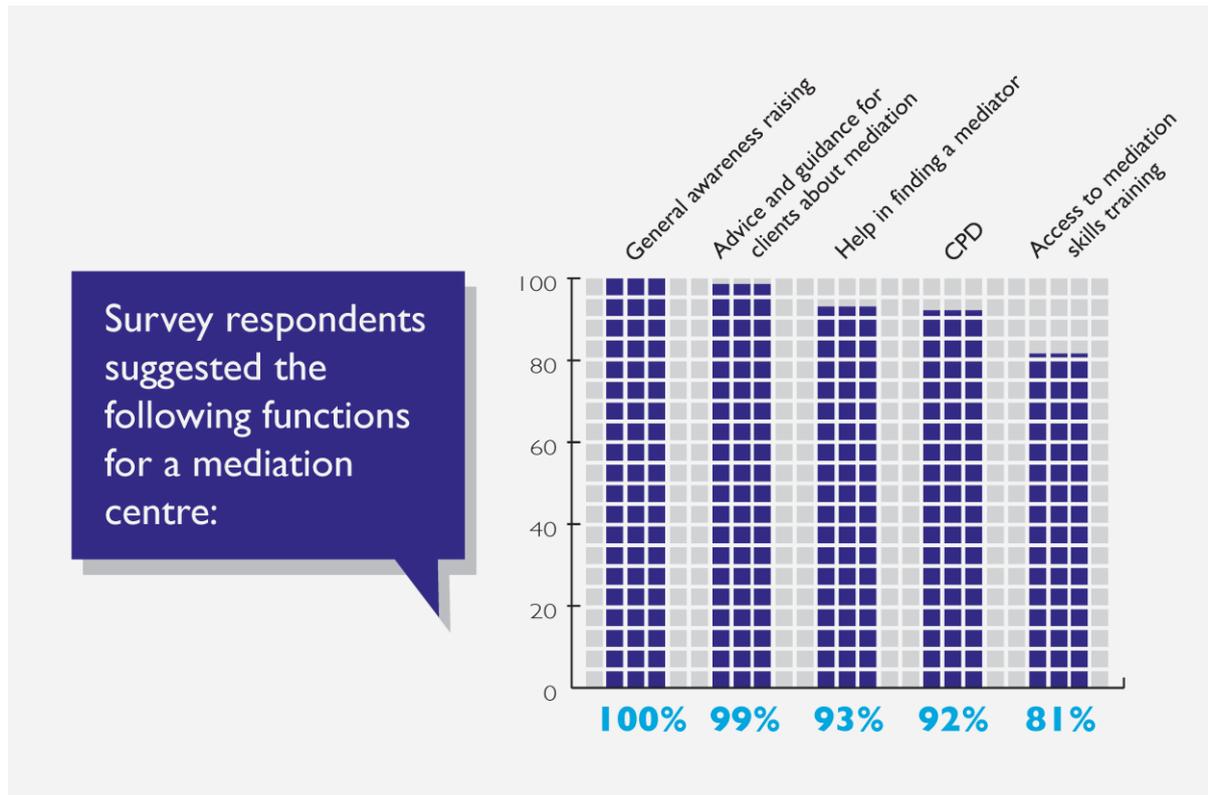
Access
National
Excellence
Infrastructure
Awareness
Profile

A second exercise produced the following words when thinking about the aims of a centre: standards, promotion, expertise, resource, and raising profile.

Promotion
Expertise
Raising profile
Standards
Resource

Regulation, training and research were also high on the list of aims for a centre, and one person said it should be *“a central point through which everything passes”*.

The online survey asked respondents what functions they thought a centre should have, and also questioned whether a centre should be for mediators or mediation. Most responses in relation to the functions of a centre related to promotion of mediation, with further functions relating to training and information for mediators themselves:



Additional functions included:

- To give information for mediators themselves (stated by 73% of respondents)
- For mediators to advertise their services (67%)
- To provide a room to hold mediations (48%)

Most open text comments surrounding the functions of a mediation centre were about accessibility and promotion in order to increase mediators' work:

"It would assist me in expanding my personal workload and enable to meet other mediators"

But opinions were divided on the issue of regulation:

"I believe that a Mediation Centre of Excellence could provide a focal point for developing and moving mediation beyond its current uses. It could hold both legal and non-legal practice together and keep a balance, so that mediation is not subsumed under that profession. It could engage us in learning from each other and in honing our skills. It could help us to establish ourselves as professionals and create ways to reach wider audiences. Once embedded, it could help to transform workplace conflict, divorce approaches, probate (family not legal) issues, community and neighbourhood issues (which we used to have funding for in Wales), disability access and planning issues, issues of diversity and cultural conflict and so much more. It should NOT become an enforcement body or regulatory body."

"To provide an executive body to regulate and advise on best practice; to provide accreditation and directory of accredited professionals."

A further group of comments centred on best practice and sharing what works:

"Sharing good practice - Learning from others - For advice and personal development/improvement as a practitioner"

"It would help me to achieve best practice by both providing knowledge directly as well as signposting me to other sources of information. It could enable engagement between mediators so that knowledge could be shared effectively. A centre could also attract mediation and mediators which could benefit the economy by providing a support service to business as well as the community and individuals. A centre of excellence would also raise the profile of the local area and Wales generally by indicating that it provides a rounded and flexible service."

The issue was raised as to whether the centre should be confined to mediation, or extended to include other forms of dispute resolution. Most thought it should focus upon dispute resolution in a wider sense.

"At the current time, it would be of real benefit to me only if it was expanded to include all forms of Alternative Dispute Resolution."

"There are so many out of court disposals that there needs to be a way of people being able to have choices and reflection for what they do."

Location modelling

There are a range of options which could be considered for a mediation or dispute resolution centre. There should be both a virtual and physical presence, and whether these are hosted by the same organisation needs to be investigated. Discussions should include CAB and MOJ when thinking of a virtual centre so information is not duplicated and signposting is as effective as possible.

Whether there needs to be one centre with a number of local satellite offices, or a number of centres coordinated through the virtual centre, should be investigated. It does appear however that a centre should be accessible in all parts of Wales, not just the south. It is

unlikely a centre would need its own building, but rather it could be located within an existing building, such as a university, local government offices or courts.

There is no great need for a centre to have rooms available to hold meetings, so one office may suffice. However access to space for meetings and CPD events may be an advantage.

The larger universities have law departments, and some have law clinics staffed by students and other volunteers. There are a number of universities offering dispute resolution courses, and some have expressed an interest in being involved with a centre.

An alternative option is to set up a centre in one sector. Richard Saundry suggests this could be the public sector workplace:

“much of the interest in mediation across all disciplines seems to come from or relate to the public sector. There could be an overall cost-saving argument to develop a central mediation centre that could serve public services, and gather together expertise. On the workplace mediation side – there is clear evidence from WERS2011³⁵ that grievances are more likely in Public Sector workplaces, and there is some evidence that this is an increasing problem. So rather than local authorities and NHS trusts investing in their own mediation services (that are often under used and where mediators don’t have enough work to practice), one model could be one public sector mediation service”.

An alternative sector to consider is commercial disputes. The Bangor University report on the future of legal services in Wales says:

*“Currently, Wales has the lowest percentage of firms undertaking more lucrative commercial/corporate and commercial property work. In order to remain competitive, Welsh firms will have to specialise far more”.*³⁶

This was the only area where people have to go further afield, and outside Wales, to find a commercial mediator. Investment in a centre for commercial dispute resolution may help boost activity in this sector as a whole, and attract greater investment from law firms themselves.

Investment in a centre could be spread across a number of different organisations and ACAS and CIARB have both expressed an interest in being affiliated to a centre in some way. A membership offering could also be made, both from individuals, legal firms or other firms.

³⁵ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/210103/13-1010-WERS-first-findings-report-third-edition-may-2013.pdf

³⁶ <http://www.cardifflaw.org/resource/WG-The-Future-of-Legal-Services-in-Wales-Full-Report.pdf>

Section Five: Recommendations

“mediation has huge potential...it gives value added, and has a great opportunity to do something.”³⁷

The following recommendations were drawn from the research:

- The remit of a centre should be widened to include all forms of dispute resolution rather than being limited to mediation
- Notice should be taken of the real interest in mediation and other forms of dispute resolution, and the high levels of engagement with this project across a range of sectors. Work should continue to encourage collaboration to develop these approaches, and remove the silos that still exist in the industry.
- A stakeholder group should be established comprising those with an interest in a mediation – or dispute resolution - centre and include organisations such as Higher Education Institutions (HEIs), professional bodies (such as Chartered Institute of Arbitrators CIARB), ACAS) and Leadership and Management Wales
- There should be investment into raising awareness of, and promoting the use of, mediation in order to better reconcile demand with supply.
- There should be improved access to mediation and all forms of dispute resolution. Clear accessible information is needed which will help people make an informed choice about their preferred route to resolve a dispute. Discussions should take place with organisations such as the Citizens Advice Bureau (CAB) to help deliver this.
- Lawyers and managers need to improve their knowledge and understanding of dispute resolution to enable them to support clients and employees who engage with mediation. There are a very small number of mediators doing high value practice and who don't have time to take on more, but this is not representative of mediation generally. The vast majority of work is not at this level.
- In Wales, there are disproportionately higher levels of publicly funded work than anywhere in the UK and there are some of the highest levels of poverty, isolation, unemployment in the country. Focussing on small numbers of high value cases is not a sustainable model for mediation in Wales.
- Mediation should be promoted at all levels to match the nature and demographics of disputes.

³⁷ www.resolution.co.uk

- The mediation centre should:
 - Engage in the debate around standards and quality of mediators.
 - Offer more observations for newly trained mediators.
 - Develop better continuing professional development (CPD) for mediators
 - Investigate the possibility of a register of mediators.
 - Encourage other organisations such as the Chartered Institute of Personnel and Development (CIPD) and the Law Society to increase mediation training as the norm in professional courses.
 - Seek to raise the profile of mediation and dispute resolution to support it becoming more mainstream in Wales, and include increased introduction in schools and communities.
 - Develop a research function to engage with service users, and measure the Social Return on Investment for mediation .
 - Liaise with the department for Business Innovation and Skills (BIS) about the forthcoming EU directive.
 - Involve service users at all stages of development.
 - Seek to develop a referral process connected with the judiciary and court system in Wales.
 - Seek to establish a quality mark to support Dispute Resolution professionals in becoming formally affiliated with the centre.