

Bringing Mediation into the Mainstream

Kluwer Mediation Blog

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John Sturrock (Core Solutions Group)

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Being a mediator brings surprises along the way. For me, I was presented with what turned out to be the biggest challenge of my professional career last November when the Cabinet Secretary for Health in Scotland appointed me to conduct a review of allegations made by staff (through whistle-blowers) of bullying and harassment in Scotland's geographically largest health service, NHS Highland.

I was clear at the outset that I would not pronounce on the rights and wrongs of individual claims, nor would I engage in a fault-finding, blame-focussed inquiry. The remit for the review was to:

- *"Create a safe space for individual and/or collective concerns to be raised and discussed confidentially with an independent and impartial third party.*
- *Understand what, if any, cultural issues have led to any bullying, or harassment, and a culture where such allegations apparently cannot be raised and responded to locally.*
- *Identify proposals and recommendations for ways forward which help to ensure the culture within NHS Highland in the future is open and transparent and perceived by all concerned in this way."*

It was thought that scores of employees might be affected. As it turned out, 340 people came forward. The review became much more time-consuming and complex than had ever been anticipated. The Government minister had pledged in the Scottish Parliament that I would report, at least in an interim fashion, by February this year. It was a tight timeline.

Of those 340 people who made contact, the review engaged directly with 282 respondents in face to face meetings and in written form and a total of 186 individuals were able to express their views personally on a one to one basis or in a group setting. This was not easy for many but, as we know so well, one to one conversation, especially with someone who is prepared to listen and acknowledge without judgment, is precious.

People were able to talk about things which they had not felt able to raise previously - with anyone. I chose, in my report, to give expression to many of these voices by quoting them directly and anonymously. For some of those affected, this will have been all they needed. For others, it was the first step in a healing journey. The organisation has since apologised to all those affected and has begun a long journey towards creating a different type of culture.

Experiences of inappropriate behaviour are, I suspect, not unusual in large (or small) organisations in different parts of the world. I made many suggestions for change and tried to underpin and infuse my report with notions of kindness and compassion. I majored on the importance of relationships and wrote about distributed or collective leadership (a letting go of command and control).

I also included chapters which endeavoured to wrestle with underlying human nature, cognitive biases and neuroscience, while placing mediation and facilitation at the centre of a new approach to addressing difficult issues within the organisation.

It is a long report (176 pages in total) but many readers have commented on its accessibility. If you are interested in reading more, [here it is](#).

On the subject of reports, more recently, and more pertinently for mediators and those interested in mediation's development, an expert group in Scotland, which I had the privilege to co-chair, has just published a report on how to bring mediation into the mainstream in civil justice in Scotland. We drew on examples and experience from elsewhere, though I have to confess to some frustration that (our own) language barriers meant that we used European resources less than we should.

One proposed innovation is the creation of "EDRO" (the Early Dispute Resolution Office), a variation on many themes elsewhere. Its function would be to review all cases received by the relevant court or tribunal, identify and direct appropriate cases towards mediation (or other more appropriate form of dispute resolution) and to coordinate the mediation process. We have wrestled with the extent to which we should recommend making mediation mandatory with possible opt outs or, as we prefer, special cause exemptions.

I really hope that, at last, we will see the kind of traction for mediation in Scotland that has occurred in other jurisdictions but avoiding some of the pitfalls, such as over-regulation or over-legalising. Mediation is different and needs to be enabled and encouraged to thrive in its own way.

Our report can be read [here](#).

This report follows on a proposal for mediation legislation in Scotland by one of our Scottish Parliament members, Margaret Mitchell. Her proposals can be found [here](#).

It is remarkable that, after years of waiting for Scotland to pick up the mediation baton emphatically, we now have these two initiatives. The key will be to approach these collaboratively and use our mediation skills to distil the best points from each.