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Our Flagship Course

Negotiation, Mediation and Conflict Management Skills

Course Workbook

Summer School:

Using Mediation Skills as a Leader

Module 1: 2 - 5 September 2018

Further Modules for Mediation Training and Assessment:

Module 2: 4 – 5 October 2018

Module 3: 31 October - 2 November 2018
Mediator Assessment

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Introduction

We are delighted that you have decided to undertake Core's Summer School. You join a group of many hundreds of individuals from a wide range of professional, business, public sector, consultancy and not-for-profit backgrounds who have experienced this mediation training course with us. Alumni of the course form part of an ever extending network of people who are seeking to do things differently in the world, at home and at work, and at local, national and international levels. We hope that, as a result of participating in this course, meeting new friends and learning new skills, you will feel a part of that network. You can read more of the experiences of our alumni – and about how mediation can be used - in our own Thinking Differently anniversary book on our website.

This workbook is designed to guide you through the course. More than that it is a tool to be used by you in your own way as you acquire new skills, re-evaluate your own understanding of things and reflect on what you are learning. In addition to what is contained here, we shall issue copies of PowerPoint slides which are used to illustrate part of the course and, after the first module, a record of the main points which are recorded on flip chart sheets during that module.

This, therefore, is a manual to be built upon. We encourage you to use it creatively before and during the course. It should be self explanatory but, if any questions arise, do just contact us. Some work can be done in advance of the course; most of the workbook can be utilised as the course proceeds. Generally, we will not provide specific time for this. It is up to you to use it as and when you wish. Indeed, we rely on you to manage the information in the course to meet your individual learning needs and objectives.

The course is intensive. You will work hard and we encourage full commitment for each of the days of the course. You will wish to find reflection and preparation time each evening. But, above all, we hope that you will find your involvement to be an uplifting and engaging experience.

Prior to the course it is useful to read some of the books on our recommended list. We do not prescribe any book as essential although those listed in the first section of the list are central to our understanding of mediation and effective negotiation. Others can be dipped into and enjoyed. As much as anything, their value lies in suggesting new ways of thinking and doing – and being.

There is a considerable amount of information about Core's services, mediation and conflict management, including examples of the use of mediation, John's blogs and press articles, on our website: **www.core-solutions.com**. (See our Resources sections). The Mediator's Log is particularly useful and we encourage you to use that as the course proceeds. There is a special, teaching version on the course webpage.

See also **www.collaborativescotland.org** for more resources.

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Reading Suggestions

Important

- Brown, B. (2010) ***The Gifts of Imperfection: Let go of who you think you're supposed to be and embrace who you are***,
- Hazelden Publishing
- Cloke, K. (2001) ***Mediating Dangerously,*** Jossey-Bass
- Cloke, K. (2013) ***The Dance of Opposites: Explorations in Mediation, Dialogue and Conflict Resolution Systems,*** GoodMedia Press
- Dobelli, R. (2014) ***The Art of Thinking Clearly***, Harper Collins
- Fisher, R and Ury, W (1991) ***Getting to Yes***, Penguin (2nd Edition)
- Hicks, T. (2018) ***Embodied Conflict: The Neural Basis of Conflict and Communication,*** Routledge
- Nesic, M and Boulle, L (2009) ***Mediator Skills and Techniques: Triangle of Influence: Skills, Techniques and Strategies***, Bloomsbury Professional
- Richbell, D. (2014) ***How to Master Commercial Mediation***, Bloomsbury Professional Ltd
- Schein, E. (2013) ***Humble Inquiry: The Gentle Art of Asking Instead of Telling***, Berret-Koehler
- Stengel, R. (2010) ***Mandela's Way: Lessons on Life***, Virgin Books.
- Ury, W. (2015) ***Getting to Yes with Yourself,*** Harper One
- Ury, W. (1999) ***The Third Side: Why We Fight & How We Can Stop***, Penguin

For Consideration

- Abramson, H. (2011), ***Mediation Representation***, Oxford University Press
- Adams, S. (1998) What the ***Fly heard: What Mediators Say Behind Closed Doors***, Conflict Resolution Services
- Adler, P. S. (2008), ***Eye of the Storm Leadership***, Mediate.Com Publications
- Barner, R. and Barner, C. (2012) ***Building Better Teams: 70 Tools and Techniques for Strengthening Performance Within and Across Teams***, Pfeiffer
- CEDR (2015) ***How to Master Negotiation***, Bloomsbury Professional
- Cloke, K. (2006) ***The Crossroads of Conflict: A Journey Into the Heart of Dispute Resolution***, Janis Publications
- Cloke, K. (2008) ***Conflict Revolution, Mediating Evil, War, Injustice and Terrorism: How Mediators Can Help Save the Planet***, Janis Publications
- Covey, S. M. R. (2006) ***The Speed of Trust: The One Thing That Changes Everything***, Free Press
- Crawley, J. and Graham, K. (2002) ***Mediation for Managers***, Nicholas Brealey Publishing
- De Bono, E. (1990) ***Six Thinking Hats***, Penguin
- De Bono, E. (2006) ***Why So Stupid?,*** Blackhall Publishing
- Fisher, R and Sharp, A (1999) ***Getting It Done: How to Lead When You're Not in Charge***, Harper Collins Business
- Fisher, R. and Shapiro, D. (2007) ***Building Agreement: Using Emotions as You Negotiate***, Random House
- Fisher, R and Brown, S (1988) ***Getting Together: Building Relationships as We Negotiate***, Penguin
- Fraser, D. (2011) ***Relationship Mastery: A Business Professional's Guide***, Visual Impressions Publishing
- Heie, H. (2007) ***Learning to Listen, Ready to Talk: a Pilgrimage Towards Peacemaking***, iUniverse Publications
- Lande, J. (2011) ***Lawyering with planned early negotiation: How you can get good results for clients and make money***, American Bar Association
- Leathes, M. (2017) ***Negotiation: Things Corporate Counsel Need to Know but Were Not Taught,*** Kluwer Law International
- Mackie, K. J; Miles, D.; Marsh, W; Allen, T. (2007) ***Commercial Dispute Resolution – The ADR Practice Guide***, Butterworths (3rd Edition)

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- Mayer, B. (2009) ***Staying with Conflict: a Strategic Approach to Ongoing Disputes***, Jossey-Bass
- Mnookin, R. (2011) ***Bargaining with the Devil: When to Negotiate, When to Fight***, Simon & Schuster
- Monberg, T. (2007) ***Handbook of Human Conflict Technology***, T Monberg/Paragon
- Nowak, M. (2012) ***Super Cooperators: Altruism, Evolution and Human Behaviour – or Why We Need Each Other to Succeed***, Canongate Books
- Pel, M. (2008), ***Referral to Mediation***, Sdu Uitgever
- Picker, B. G. (2003), ***Mediation Practice Guide, American*** Bar Association (2nd edition)
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- Schutte, B. (2003) ***Fixing the Fighting***, Oak Tree Press
- Sennett, R. (2013) ***Together: the Rituals, Pleasures and Politics of Cooperation***, Allen Lane
- Stitt, A. (2004) ***Mediation: A Practical Guide***, Cavendish
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- Turkle, S. (2015) ***Reclaiming Conversation: The Power of Talk in a Digital Age***, Penguin Press
- Ury, W. L. (2007) ***The Power of a Positive No***, Hodder & Stoughton
- Wheeler, M. (2013) ***The Art of Negotiation: How to Improvise Agreement in a Chaotic World***, Simon & Schuster Children's Publishing

Useful Others

- Axelrod, R. (1984) ***The Evolution of Cooperation***, Basic Books
  Banaji, M. and Greenwald, A. (2013) ***Blindspot: Hidden Biases of Good People,*** Delacorte Press
- Brafman, Ori and Beckstrom, R. A. (2006) ***The Starfish and the Spider: the Unstoppable Power of Leaderless Organisations***, Portfolio
- Brams, S. (2011) ***Game Theory and the Humanities: Bridging Two Worlds***, MIT Press
- Bush, R.A.B and Folger, J.P. (1994) ***The Promise of Mediation***, Jossey Bass
- Chabris, C. and Simons, D. (2010) ***The Invisible Gorilla***, Harper Collins
- Cialdini, R. (2016) ***Pre-Suasion: A Revolutionary Way to Influence and Persuade***, Simon & Schuster
- Cooley, J. (2005) ***Creative Problem Solver's Handbook for Negotiators and Mediators***, American Bar Association (www.abanet.org)
- Cordelius & Faire (2003) ***Everyone Can Win – How to Resolve Conflict***, Simon & Schuster
- Covey, S. R. (1989) ***The 7 Habits of Highly Effective People***, Simon & Schuster
- Craig, Y. J. (1999) ***Peacemaking for Churches***, SPCK
- De Bono, E., ***Conflicts: A Better Way to Resolve Them***, Penguin
- Doherty and Guyler (2008), ***The Essential Guide to Workplace Mediation and Conflict Resolution***, Kogan Page
- Fisk, P. (2014) ***Gamechangers: Creating Innovative Strategies for Business and Brands***, John Wiley & Sons
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- Godin, S. (2008) ***Tribes***, Piatkus
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- Goleman, D. (1996) ***Emotional Intelligence***, Bloomsbury
- Grant, A (2016) ***Originals: How Non-conformists Change the World,*** WH Allen
- Gunn, J. (2010) ***How to Beat Bedlam in the Boardroom and Boredom in the Bedroom***, HotHive Books
- Hulme, M. (2009) ***Why We Disagree about Climate Change – Understanding Controversy***, Inaction and Opportunity, Cambridge
- Isenhart, M.W. and Spangle, M.L. (2000) ***Collaborative Approaches to Resolving Conflict***, Sage
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- Kahneman, D. (2011) ***Thinking Fast and Slow***, Allen Lane. Review
- Keltner, D. (2016) ***The Power Paradox: How We Gain and Lose Influence,*** Allen Lane

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- Macfarlane, J. (2008) ***The New Lawyer***, University of British Columbia Press
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- Nemeth, M. (2007) ***Mastering Life's Energies***, New World Library
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- Ury, W. L. (1993) ***Getting Past No,*** Bantam Books
- Van Winkle, J. V. (2005) ***Mediation: A Path Back for the Lost Lawyer***, American Bar Association (2nd Edition)
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- Wolf, M. (1996) ***Exclusion and Embace: A Theological Exploration of Identity, Otherness and Reconciliation***, Abingdon Press

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Pre-Course Preparation

Personal Reflection

Why am I coming on this course?

What do I hope to achieve?

How will I ensure that I make the most of this opportunity?

How open-minded am I to learning new approaches?

What, if anything, inhibits me in the learning process?

What will I do to implement what I am learning?

How will I engage with others and help them to get the most from this experience?

How do I react to feedback?

What will make feedback helpful for me?

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Pre-Course Preparation

Personal Assessment

It is helpful to identify some of your key strengths and areas for improvement

How creative am I when looking for solutions to problems?

What do I do to make sure I look for new angles?

When dealing with conflict how skilled am I?

What techniques do I use to deal with difficult situations?

How effective am I at building and maintaining business relationships?

What are my strengths as a communicator?

Why are these useful to me?

How could I improve?

Why do I need to work on these?

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Getting to Yes with Yourself

"In the morning when I look at myself in the mirror, I like to remind myself that I am seeing the person who is probably going to give me the most trouble that day, the opponent who will be the biggest obstacle to me getting what I truly want."

So writes William Ury in his just published new book, Getting to Yes with Yourself. Those who attended Collaborative Scotland's Day of Dialogue in September at which William Ury was our guest conversationalist by video link, or who were present at The Hub in Edinburgh in 2009 when he led a full day masterclass, will recall a man of warmth and humility, combined with clarity and great wisdom.

Ury is the distinguished co-author of the seminal Getting to Yes, arguably the most important text about negotiation in the past thirty years. It sets out the basis for what we call interest-based negotiation, where the focus is on what we (and clients) really need rather than positions, entitlements and wants.

It reminds us of the central importance of business and personal relationships and of effective communication. One of the most useful pieces of the jigsaw is the recognition that the way to measure proposals made in negotiation is not how much or how little we get or give but what will happen if we don't come to an agreed solution? These are the classic benchmarks referred to as BATNAs and WATNAs (Best - and Worst - Alternatives to a Negotiated Agreement).

Ury has now come to the conclusion that the missing piece in all his writing about dealing with conflict is the inner one. Indeed, he describes this latest book as a "prequel" to Getting to Yes, the essential prerequisite to being able to achieve win-win, interest-based negotiated outcomes with others. Often, he observes, those who understand Getting to Yes fall back under pressure into costly and destructive win-lose methods, usually because we perceive others as "difficult people", threatening to take advantage of us and to cause us loss. We are "reaction machines".

He writes that "very little in life may be under our full control, but the choice between yes and no is ours to make at any moment. We can choose to say yes or no to ourselves, to be either our best ally or our worst opponent. We can choose to say yes or no to life, to treat life either as friend or foe. We can choose to say yes or no to others, to relate to them either as possible partners or implacable allies. And our choices make all the difference." Choose well and we can have three kinds of win.

I have often concluded training sessions with words from a poster in a hotel in Philadelphia which described the difference between something ordinary and something extraordinary as that little "extra". Much of UK Sport's successful Olympic programme, in which I was privileged to play a small part, was underpinned by the message that the difference lies at the margins, that very small things can make a huge difference.

So, Ury suggests a number of apparently small changes that may make all the difference. Put yourself in your shoes – suspend your inner critic: what do you really need? Develop your inner BATNA – who are you blaming for your own needs not being met? What are the costs? Can you take personal responsibility rather than blaming others? Reframe your picture – can you accept life as it is and not feel that it is always against you in some way? If you do, then what? Stay in the zone – dispense with resentments about the past and anxieties about the future. Be personally present inthe present. (The comparison with biblical teaching cannot be overlooked…). Respect others even if they don't respect you - separating people from the problem was a central message of Getting to Yes; this reminds us that we can operate far better if we avoid being sucked into an antagonistic mind-set. Give and receive – Ury draws on the excellent work by another Harvard scholar Adam Grant, in his book Give and Take, which shows that thoughtful givers are in the

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longer run more successful. In other words, moving from the apparent scarcity of the win/lose model to maximising gains all round leads to a double- or triple-win.

Reflecting the passage at the beginning of this article, Ury refers to President Theodore Roosevelt's colourful observation: "If you could kick the person in the pants responsible for most of your trouble, you wouldn't sit for a month." Finally, though, it is about acceptance and respect, towards yourself as much as towards life and others. And, says Ury, this is a lifelong journey, needing daily practice.

It should all be common sense but, in reality, it is uncommon sense: common sense that is uncommonly applied. This is where, says Ury, we may need the Third Side, the independent coach, facilitator or mediator, to help us along the way.

Getting to Yes with Yourself is available from Harper Collins

Text by John Sturrock: published originally as a blog and an article in The Scotsman

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Mediation - A Short Introduction

1. These notes describe the approach to mediation which is known as facilitative. Some mediators practice an approach which is described as evaluative, i.e. in which they offer or make judgments about the outcome. These notes follow the facilitative model, although in reality we operate in a continuum. The notes describe the conventional process; as mediation is infinitely flexible, there are no fixed rules, and there will often be different ways of proceeding. While describing mediation, these notes also provide a framework for anyone who is engaged in facilitating difficult meetings or seeking to help others to resolve conflict.

2. Mediation is a process by which negotiation between parties can be assisted, extended and enhanced. Mediation involves a third party who facilitates discussion between the parties in dispute or with differences in order to help them to find a way forward. The third party, the mediator, is normally wholly independent of the other parties. The role of the mediator is to assist the parties to work out their own solution, not to judge or decide any issue between them. The process by which this is done, mediation, is normally private, with all discussions taking place confidentially. In most cases, attendance at mediation is voluntary and parties may leave at any time should they be unhappy with it. Nothing said or done by the parties in the mediation is binding on them unless and until they reach and agree upon a solution which is mutually acceptable.

3. **Stages:**

   In any approach to mediation we identify a number of stages which are likely to occur. We describe them as follows, but know that it is important not to become fixated with terminology:

   - Preparation / Planning
   - Rapport Building / Opening
   - Understanding / Exploration
   - Developing and Assessing Options / Negotiation
   - Deciding / Conclusion
   - Implementation
   - Evaluation

   As the terminology suggests, these are likely to be fluid and the mediation may well move in and out of these stages as it proceeds, with other specific segments arising, especially in later stages. These notes assume a mediation with two parties.

4. **Preparation:**

   Prior to formal meetings taking place, preparation for the mediation will include the following:

   - Establishing that all concerned are willing to take part and understand the process.
   - Identifying precisely who should attend in order that the matter can be properly discussed and decisions taken about any resolution which is proposed (it is important to have someone with requisite authority present or accessible)
   - Deciding on the identity of the mediator (and, often, an assistant or co-mediator)
   - Ascertaining a date or dates (usually one day or two) convenient for all concerned
   - Identifying a venue with which all parties are comfortable and which provides facilities for the mediation to be conducted

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- Exchanging documents and other information, including a summary of the matter as seen by each party, in order to help the parties and the mediator to understand the issues
- Revising and signing the agreement to mediate
- Very often, a preliminary meeting or telephone conference call involving the legal representatives (if engaged) for the parties, to discuss the process, administration and other preparation
- Very often, some discussion between the mediator and the parties or their legal representatives to begin building a working relationship and understanding of the issues

Thus, the process of mediation commences before the formal mediation meetings.

5. **The mediator's preparation for the mediation will include:**

- Identifying the parties and their relationships
- Reading the papers provided and beginning to identify the issues
- Gaining some understanding of the legal issues if these arise
- Thinking through the stages of the mediation, the order of meetings, the use of different strategies and how to deal with the problems which may arise
- Checking the physical arrangements at the mediation venue.

6. **Rapport Building / Opening:**

- The mediator may well meet with the parties and their advisers privately in their rooms to make introductions, build confidence and trust and check on physical comfort. The emphasis in these short meetings is on building rapport between the parties, their advisers and the mediator and getting an initial feel for how things are.
- The mediator will often meet with all participants in a "joint meeting" at which everyone will introduce themselves, the mediator will mention guidelines for the mediation, check participants' understanding of the process and invite the parties and/or their advisers to make a short presentation of the position as they see it. The mediator may then summarise the issues briefly and describe the next stages.
- The guidelines will include the role of the mediator, the confidentiality of the process and of each meeting, the use of meetings and the use of time. The mediator's task is to set the tone for the mediation and encourage the parties to have confidence in it.

7. **Understanding / Exploration**

This stage enables the mediator and those involved to learn more about the dispute or differences, the issues, the parties' concerns, aspirations, needs, feelings and interests.

- This will usually be done in a series of private meetings at which the mediator will use a range of skills and techniques including: questioning, listening, observing, summarising, acknowledging, probing and checking.
- Often, this will involve careful questioning about difficult issues and sensitivity to relationships between people (on one or both sides) and between parties and their advisers.
- The mediator will be careful not to make any judgements or assumptions lest this closes off productive lines of inquiry.
- Everything disclosed and discussed in these meetings is confidential and the mediator will frequently remind parties of this, checking at the end of each private meeting what, if anything, may

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be disclosed to the other party.

- The mediator will frequently seek permission to mention matters to the other party but will do so at a time and in a way which the mediator feels will be most helpful to the process of finding a solution. Reframing of points made, using words which assist parties to understand and move forward, is a key skill of the mediator.
- Often, further joint meetings will help parties to understand each other better. Meetings may take place in combinations, such as party-party, lawyer-lawyer, expert-expert or other permutations, nearly always with the mediator in attendance.
- The mediator will help parties to begin to identify options for moving forward, attempting to encourage open-minded brainstorming and problem solving. This will often involve lateral approaches and viewing problems from new perspectives. Finding areas of common interest is a key task of the mediator.
- The mediator will frequently set the parties tasks to carry out while the mediator is meeting with other parties.
- If an assistant mediator is present, the assistant may keep parties informed of progress and check timings and other arrangements with the mediator.

8. **Developing and Assessing Options / Negotiation:**

- This stage will often overlap with exploration but can really only be commenced once full exploration has been carried out. The mediator will help parties to develop further and assess the various options available to them, test strengths and weaknesses of their arguments and positions, look at realistic outcomes, formulate proposals, identify priorities and possible concessions, view proposals from the perspective of the other side, focus on interests, examine the alternatives to agreement, and overcome deadlock. The mediator will discuss the parties' negotiation tactics and strategies and may challenge inappropriate use of these.
- At this stage, creative, non-monetary and non-legal solutions can be fully examined and commercially realistic outcomes clarified. Again, this can be done in a series of private meetings but there may be opportunities for parties (and/or advisers) to meet together to discuss some issues, usually with the mediator in attendance.

9. **Deciding / Conclusion**

- When the parties have reached the stage of finding a solution, the precise terms of any agreement may have to be articulated. This may involve a series of meetings with a view to achieving a formal agreement, either covering all outstanding matters or serving as a Heads of Agreement to be implemented later by legal advisers. Sometimes, a less formal exchange is appropriate. At other times, a report back to a third party is agreed.
- Any resolution agreement is the parties' document and the mediator's role is limited to assisting in the formulation of draft terms and possibly acting as scribe or recorder of what has been agreed, while assisting throughout to iron out potential or actual disputes and check viability and reality.
- Even if total agreement is not achieved, the parties may be able to clarify and narrow the issues between them in a way which assists the ultimate resolution of the dispute or differences or agree a course of action for going forward.
- At the end of the process, the mediator will usually bring parties together to sign the agreement, to acknowledge the work done and to thank them for using mediation.

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10. **Implementation:**

Following the mediation, the mediator (or the organisation providing mediation services) will usually follow up with the parties, helping with finalisation of documentation if necessary, checking that parties have been able to implement any outstanding matters, helping to address any difficulties and generally ensuring that matters are proceeding smoothly. If the matter has not resolved, the mediator may well follow up to help explore other possibilities. Often that will lead to a resolution later.

11. **Evaluation:**

Part of the development of the mediator's skills and competence is to reflect and debrief following the mediation process and to learn from what worked well and what might have been done differently. Similarly, those involved in the process as parties or legal advisors may also engage in reflection and consideration of lessons to be taken from the conflict and its resolution or outcome.

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Learning Outcomes

We hope you will gain understanding and practice of:

Module 1 (Residential Summer School):

Days 1 and 2

- The place of conflict resolution, negotiation and mediation
- Essential communication and preparation skills
- An outline of the stages and shape of the mediation process
- How the process starts and the opening stage of the mediation day

Day 3

- Moving through the process - the exploration stage
- Different formats of meetings
- Some of the necessary skills to get beneath the surface
- Taking it forward - identifying options for negotiation

Day 4

- The stages of the full process – from opening through exploration, developing options and negotiation to decision-making.
- Tools to take mediation forward, break deadlock, test reality and for when the going gets tough
- Mediation agreements
- What happens after mediation

Module 2:

Day 5

- The process and how it works in particular settings
- Tools for dealing with some of the "people" issues
- Roles of advisors
- Mediator ethics and conduct

Day 6

- Mediation running, in real time, from the beginning to the later stages
- The skills required at each stage in the process
- How mediation works in your chosen area of specialism

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Guidelines for Role-Playing

In the workshops we benefit most when those playing roles do so with authenticity and naturally, while following the instructions issued.

Here are some guidelines:

- Some participants clearly enjoy role playing and easily get into role whereas others find it more challenging. Please do not be concerned, as Oscars are not given out for performances! Be as real as you can be in the role that you have been given.

- Adequate preparation is critical. Please read both the general instructions (on the web page) and the specific instructions for the role you are playing (sent by email or handed out during the course) so that you are familiar with the role.

- Please do not show your instructions to your colleagues. To gain the maximum benefit for everyone from participating in role play it is important that it is as realistic as possible.

- When playing a role as part of a team (party, adviser, supporter) please speak with the other team members before the start.

- Try not to exaggerate the characteristics of your role, whilst still playing it in line with the emotional level (usually noted at the top of the specific instructions) you have been given. You should have sufficient information to engage in believable and relevant discussions which should also be in line with your role instructions.

- If there is a gap in your instructions, respond in character and in the spirit of your role instructions. It would be unhelpful to make something up which contradicted what you had said earlier or which was a very unlikely scenario. It is usually unhelpful not to respond at all although that may depend on the way the mediator approaches you. Use your imagination as to how your character is likely to act or react but do not go overboard!

- It is unhelpful to be focussed on trying to achieve a particular outcome. Do not make concessions which in reality your character would not make, just to enable the action to move on. On the other hand, do not be unnecessarily obtuse! Unless the coaches suggest otherwise, play it for real in real time – that is the most helpful way for your colleagues to practise while they are playing the mediator role.

- Most importantly - relax, enjoy yourself and learn!

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Observers' Checklist

We find that it is helpful to ask questions when observing others perform or when offering feedback. You may wish to use this as a template throughout the course.

What **worked well** and **why**?		
What **didn't work** and **why not**?		
What **might be done differently** in order to be more effective?		
Why **might that be more effective**?		

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Party Feedback to Mediator

We find that it can be helpful to offer feedback to your colleagues as they practise mediation.
The following is one way of giving a structure to that when you are playing a party in mediation.
We may not use this formally but you may find opportunities to use it among yourselves

For each question, please indicate how much you agree or disagree with each statement about the mediation. For each item, you may circle any number corresponding to the scale below.

		-4 STRONGLY DISAGREE	-3	-2 DISAGREE	-1	0 NOT SURE	+1	+2 AGREE	+3	+4 STRONGLY AGREE
	The mediator	-4	-3	-2	-1	0	+1	+2	+3	+4
1	Made me feel comfortable	-4	-3	-2	-1	0	+1	+2	+3	+4
2	Said things I did not understand	-4	-3	-2	-1	0	+1	+2	+3	+4
3	Treated me with respect	-4	-3	-2	-1	0	+1	+2	+3	+4
4	Did not understand what was most important to me	-4	-3	-2	-1	0	+1	+2	+3	+4
5	Listened to me	-4	-3	-2	-1	0	+1	+2	+3	+4
6	Did not explain what he or she would do next in the mediation	-4	-3	-2	-1	0	+1	+2	+3	+4
7	Was interested in me as a person	-4	-3	-2	-1	0	+1	+2	+3	+4
8	Asked confusing questions	-4	-3	-2	-1	0	+1	+2	+3	+4
9	Was someone I could trust	-4	-3	-2	-1	0	+1	+2	+3	+4
10	Understood why I needed the assistance of a mediator	-4	-3	-2	-1	0	+1	+2	+3	+4

Generally:

11	I did not say everything I wanted to say	-4	-3	-2	-1	0	+1	+2	+3	+4
12	After each meeting, I knew what I needed to do next	-4	-3	-2	-1	0	+1	+2	+3	+4
13	If I came back to mediation with a different need for assistance, I would want the same mediator to assist the process	-4	-3	-2	-1	0	+1	+2	+3	+4
14	I was confused	-4	-3	-2	-1	0	+1	+2	+3	+4
15	I told the whole story	-4	-3	-2	-1	0	+1	+2	+3	+4
16	I did not tell the mediator the truth	-4	-3	-2	-1	0	+1	+2	+3	+4

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Mediator Reflection

As mediator, it is good to reflect on how you are relating and responding to the parties. This tool gives you the opportunity to do so. You can work with colleagues who have considered the questions on the previous page.

For questions 1-10, please respond by imagining how the party would respond if asked the question. For each item, you may circle any number corresponding to the scale below.

		-4 STRONGLY DISAGREE	-3	-2 DISAGREE	-1	0 NOT SURE	+1	+2 AGREE	+3	+4 STRONGLY AGREE
	The party	-4	-3	-2	-1	0	+1	+2	+3	+4
1	Felt comfortable	-4	-3	-2	-1	0	+1	+2	+3	+4
2	Did not understand some things I said	-4	-3	-2	-1	0	+1	+2	+3	+4
3	Felt treated with respect	-4	-3	-2	-1	0	+1	+2	+3	+4
4	Felt that I did not understand what was most important to him or her	-4	-3	-2	-1	0	+1	+2	+3	+4
5	Felt I listened well	-4	-3	-2	-1	0	+1	+2	+3	+4
6	Felt I did not explain what I would do next in the mediation	-4	-3	-2	-1	0	+1	+2	+3	+4
7	Felt I was not interested in him or her as a person	-4	-3	-2	-1	0	+1	+2	+3	+4
8	Thought I asked confusing questions	-4	-3	-2	-1	0	+1	+2	+3	+4
9	Trusted me	-4	-3	-2	-1	0	+1	+2	+3	+4
10	Thought I understood why he or she needed the assistance of a mediator	-4	-3	-2	-1	0	+1	+2	+3	+4

For questions 11-17, express your opinion, indicating how much you disagree or agree with each statement.

	The party	-4	-3	-2	-1	0	+1	+2	+3	+4
11	Did not say everything that he or she wanted to say	-4	-3	-2	-1	0	+1	+2	+3	+4
12	After each meeting, knew what he or she needed to do next	-4	-3	-2	-1	0	+1	+2	+3	+4
13	Would want me to help him/her, if the party came back to mediation with a different need for mediation assistance	-4	-3	-2	-1	0	+1	+2	+3	+4
14	Seemed confused	-4	-3	-2	-1	0	+1	+2	+3	+4
15	Told me the whole story	-4	-3	-2	-1	0	+1	+2	+3	+4
16	Did not tell me the truth	-4	-3	-2	-1	0	+1	+2	+3	+4

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Preparation for Day One

Current or Recent Conflict

In preparation for the first day, we ask you to consider a current or recent personal experience of conflict in your life, whether personal, at work or in business.

In advance, you might wish to note here who is involved and what the dispute is about and:

Ask Yourself

How did the conflict affect me?

Why did the conflict arise?

Why did it continue?

What did I do to cause it?

What could I have done differently?

Generally

Why do disputes and conflicts arise?

What effect do they have?

Why are they sometimes difficult to resolve?

What do people in conflict really want?

Finally and generally, what would others say about me in a conflict situation?

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Day One Programme

(Timings for particular topics may change)

16:30 *Refreshments and Registration*

17:00 **Introduction to the Course**

- What's It All About?
- Introductions and Overview of Conflict and its Resolution
- System One and Two Thinking
- The Head, Body and Soul of Managing Conflict

18:30 *Break*

18:45 **Introduction to the Course (continued)**

- Causes, Symptoms and Effects of Conflict
- Reflections on Negotiation

19:30 *Drinks*

20:00 *Dinner*

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"Don't even think about it…"

How our brains can impede – and help – problem-solving

- Cleaning the filter
- Challenging assumptions…except….
- "90% of errors of thinking are errors of perception"
- Tendency to reinforcement shapes our response: confirmation bias
- "Ladder of inference"
- WWSIATI – missing the obvious – selective seeing and hearing
- Thinking fast and slow
- Wisdom of crowds / group think
- Reactive devaluation / overvaluation
- Risk aversion
- Over-reliance on intuition
- Over optimism - planning fallacy
- Over estimating own ability
- Inertia - sticking with the status quo
- Cognitive dissonance
- System justification
- Decision fatigue
- Sunk costs
- Adrenalin, cortisol and oxytocin

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Day Two Programme

(Timings for particular topics may change)

09:00 **Plenary Session**
The Gain Game
What did we learn?
Collaboration

10:30 Refreshment Break

11:00 **The Mediation Process**

- The Different Stages and Shape of Mediation
- Preparation for Mediation
- **Demonstration** and Discussion of the **Opening Stage**

Effective Communication Skills for Negotiators and Mediators

- Building Rapport: Before, During and Throughout

12:30 *Lunch and Preparation*

13:30 **Workshop 1:** The Opening Stage: Reddale College *(roles allocated and papers handed out in advance)*

15:00 *Refreshment Break*

15:15 **Workshop 2:** The Opening Stage: Architectural Creation Partnership *(roles allocated and papers handed out in advance)*

16:30 **Plenary Session**

- Debrief on Workshops and Where Are We Now?
- Confidentiality and Authority
- Mediator as Coach
- Setting and Location

17:00 *Break*

17:30 **Plenary Session**

- The Importance of What We Say, How We Say It and How We Behave
- Language; Framing and Reframing
- **Demonstration** and Discussion of the **Understanding/Exploration Stage**
- Getting Under the Surface: Listening & Questioning Exercises
- Interests and Positions, Past, Present and Future Stories: Common Ground
- Preparation for Day Three

18:45 *Close*

19:30 *Dinner*

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Day Two

Reflections on The Gain Game

Note here what you have learned from the experience of this exercise:

- *Generally*

- *About what can happen in negotiation*

- *About ourselves - how we think and act and about our negotiating style*

- *About how others think and act*

- *About which approach works best*

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A Structure

On day one, we will introduce a structure for negotiation and mediation.

You can record here your own notes about PRUDDIE

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Preparation Questions for Difficult Meetings

Examples

- ☐ What do you really need to achieve out of this today?
- ☐ If you achieved this, what would that mean for you?
- ☐ What do you need to do today to achieve this?
- ☐ What do you need to say to the other party to help to achieve this?
- ☐ What do you need to hear from the other party which would help you achieve this?
- ☐ What are your main concerns at this stage?
- ☐ What do you think are the other party's main concerns at this stage?
- ☐ Where might misunderstandings have arisen in the past?

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- ☐ What do you think that the other party really needs out of this?

- ☐ What do you think the other party needs to hear from you which will help to move you on to a realistic outcome for all concerned?

- ☐ What are the areas of common ground between the parties?

- ☐ What are the realistic options for sorting this out?

- ☐ If you are going to work together in the future, what needs to be done?

- ☐ If you are not going to work together in the future, what needs to be done?

- ☐ If you can't find a mutually acceptable solution, what will happen?

- ☐ What will be the consequences for you if this is not resolved?

- ☐ What do you think will be the consequences for the other party?

- ☐ What have you learned about yourself in answering these questions?

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Risk Analysis:
"Chance favours the prepared mind"

- ☐ What is in dispute?

- ☐ What material do we have to support our position?

- ☐ What are our strengths?

- ☐ What are our weaknesses?

- ☐ What are the other party's strengths as we see them?

- ☐ What are the other party's weaknesses as we see them?

- ☐ If we do not reach agreement, what are the alternatives?

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- ☐ What costs have we incurred to date?

- ☐ If we do not reach agreement, what costs will we incur in future?

- ☐ If we do not reach agreement, what other issues arise for us? for the other party?

- ☐ How will we assess any proposals put by the other party?

- ☐ What proposals might we make? How? When?

- ☐ Will we make an opening presentation? By whom? How? About what?

- ☐ What questions do we have about the process?

- ☐ What else do we need to consider or ask?

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Mediator's Checklist

- ✔ When is mediation going to take place?
- ✔ Where is it going to be held? Which town/city and which venue?
- ✔ What facilities are available – rooms, refreshments, catering, flipcharts, printing?
- ✔ Who is going to attend?
- ✔ What authority do those attending have? Who else do they need to speak with during the course of the day?
- ✔ What further information do I need to prepare the Agreement to Mediate?
- ✔ What documents will I need to read before the mediation? What about summaries?
- ✔ When and by whom will these be produced?
- ✔ What do parties/legal advisers know about the mediation process?
- ✔ How can I help them understand more prior to the day?
- ✔ How might I address any concerns they may have?
- ✔ How might I help the parties/legal advisers prepare?
- ✔ Would a meeting/telephone conf. call with solicitors/parties be helpful?
- ✔ With whom will I meet first on the mediation day? Why?
- ✔ What time will mediation start? At what times should people arrive?

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- How can I start to build relationship with those attending when I first meet them?
- What do I need to say to them when I first meet them?
- What will I ask them?
- What do they need to hear from me? What do I need to hear from them?
- What will the parties say at the opening joint session? Who will speak? Who will speak first? How can I helpfully coach them about this opportunity?
- What would it be helpful for me to say at this time so that they both hear me say it?
- How am I going to take notes?
- How am I going to keep track of time?
- How am I going to keep my energy levels up during the course of the day?
- What is my plan for how the rest of the day(s) might proceed? What might I need to say about this early on?
- What else, if anything, should I think about prior to the day?

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Demonstration: Opening Stage

Your Notes

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Demonstration: Understanding/Exploration Stage

Your Notes

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Asking Questions

We cannot overstate the importance of asking well formulated questions as a mediator - or as any sort of communicator or negotiator.

- *List here examples of questions which you think might help you to understand what is going on, get underneath the surface and discover what really matters to people:*

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General notes

Days One and Two

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Learning Log

Days One and Two

- *What have I learned?*

- *What has made the biggest impact on me personally?*

- *What are the key qualities of an effective mediator?*

- *What questions do I have?*

- *What do I wish to practise tomorrow?*

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Day Three Programme

(Timings for particular topics may change)

09:00 **Plenary Session**
Effective Mediation:
- Debrief on Days One and Two: What Have We Learned?
- Key Skills and Qualities of the Mediator
- Challenges to the Mediator

09:30 **Workshop 3:** The Understanding Stage
Preparation time: 10 minutes
Architectural Creation Partnership *(continued)*

10:45 Refreshment Break

11:00 **Workshop 4:** The Understanding Stage
Reddale College (continued)

12:30 *Lunch*

13:30 **Plenary Session**
- Debrief on Workshops
- Joint and Private Meetings: Pros and Cons
- Taking Notes and Summarising Skills
- Exchanging Information, Setting Tasks and Managing Transitions
- Momentum: Different Modes and Phases – and Living with Uncertainty
- **Demonstration** and Discussion of the **Negotiating Stage: Generating and Developing Options**
- Use of Flip Chart and other Visual Aids
- Dealing with Emotion

15:00 *Refreshment Break* and Preparation

15:30 **Workshop 5:** The Negotiating Stage: Generating and Developing Options
Benroyce & RubberSeals *(roles will be allocated and papers handed out on the day)*

17:00 *Refreshment Break*

17:30 **Plenary Session**
- Debrief on Workshops
- Where are we now?
- **Demonstration** and Discussion of **Negotiating Stage: Assessing Alternatives**
- BATNAS and WATNAS
- Testing Reality: Others' Shoes
- Breaking Deadlock: Balconies and Precipices, Bridges and Constituencies

18:45 *Close*

19:30 *Dinner*

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Demonstration

Negotiating Stage: Generating and Developing Options

Your Notes

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Demonstration

Negotiating Stage: Assessing Alternatives

Your Notes

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General notes

Day Three

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Learning Log

Day Three

- *What have I learned today?*

- *What do I wish to practise tomorrow?*

- *What questions do I have?*

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Preparation for Day Four

Reframing Exercises

Sometimes, mediators and others need to find ways to communicate information or summarise points of view in language different from that used by the protagonists in a dispute. They have to find ways to express important points in ways which are not offensive or inflammatory - or to change the tone of a conversation by using different words.

- *For Day Four, list here some examples of language which might be used in the heat of a conflict and which you might need to reframe as a mediator, with examples of how you might reframe:*

Separately, we can fall into habits and use jargon which separates us from others - even as mediators, we develop our own lexicon which can seem exclusive.

- *Can you think of examples from the first two days of the course - and the antidotes?*

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Preparation for Day Four

Often, the tricky bit about mediation, as in any negotiation, is when parties get stuck, or cannot seem to get past the barriers to a resolution.

- *We shall look at this on day four. Note here some ideas for breaking a deadlock in negotiations:*

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Some Practical Exercises

What techniques and behaviours would you use as a mediator when faced with the following difficult situations?

- ☐ One party adopts an extreme and unrealistic position.

- ☐ The other party attacks you personally and blames you for the impasse.

- ☐ During the course of the mediation one party becomes emotional and begins to cry.

- ☐ The mediation has just begun and the other party says…"look, let's just cut to the chase; I have a few options that can resolve this matter."

- ☐ During the mediation you perceive that one party has greater bargaining power.

- ☐ A resolution is agreed then at the last moment one party tells you that "of course I have to run this agreement past my manager for final approval."

- ☐ The other party states that…"this is my final offer, they can take it or leave it."

- ☐ One party becomes extremely aggressive and begins to use threats when the other party does not accept an offer made.

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Day Four Programme

(Timings for particular topics may change)

09:00 **Reflection on Day Three**

09:30 **Workshop 6:** The Negotiating Stage: Assessing Alternatives
Grimm and CDA *(roles will be allocated and papers handed out in advance)*

10:45 *Refreshment Break*

11:15 **Plenary Session**

- Debrief on Workshops
- **Demonstration** and Discussion of **Negotiating Stage: Offers and Proposals**
- Decision Trees, Anchoring and Assessing and Managing Risk
- Making the Best Use of Time

12:30 *Lunch and Preparation*

13:30 **Workshop 7:** The Negotiating Stage: Offers and Proposals:
Grimm and CDA *(continued)*

14:30 *Refreshment Break*

14:45 **Plenary Session**

- **Demonstration** and Discussion of the **Decision Stage: Concluding a Mediation**

15:15 **Workshop 8:** The Decision Stage: Concluding a Mediation
Benroyce and Rubberseals *(continued)*

16:00 **Plenary Discussion and Issues Board**

- Crafting, Advising on and Drafting Agreements
- Closing Rituals
- Post Mediation Follow Up
- When Mediation does not produce a Resolution
- Facilitative and Evaluative continuum

16:30

- Mediator Ethics

Presentation of Certificates and: *Where do we go from here?*

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Demonstration:

Negotiating Stage: Offers and Proposals

Your Notes

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"Every impasse is an opportunity"

Overcoming deadlock: Get past No and turn lose-lose to win-win

Deadlock:

- **D**evelop options and alternatives – balconies and precipices? What if….? Reality check?
- **E**mbrace uncertainty – enjoy the challenge!
- **A**cknowledge needs – and progress so far
- **D**iagnose the problem: what's below the surface?
- **L**isten – what have you still not heard?
- **O**ther's shoes – and go for a walk in them
- **C**ommon ground and interests – re-affirm detail
- **K**eep an open mind – assume all their doing best

Impasse:

- **I**nterests? yours? theirs? turn "No" to "Yes"?
- **M**oney last? What else is there? Bottom lines?
- **P**ause….take a break, change venue, eat
- **A**sk more questions – what am I still missing? really?
- **S**eparate people from the problem – behaviour/mask
- **S**urprise them – give something, leave scraps
- **E**motion – still there? recognise and reassure; you?

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Blockers:

- **B**e direct and clear
- **L**eave – or be prepared to do so – risks? bottom line?
- **O**pen doors to new approach / another day
- **C**heck – is it you? What can you do to MAD? or AV?
- **K**ick the cat – is something else going on?
- **E**ngage with others in their team?
- **R**espect – always show it, never lose it….
- **S**ave face – yours? theirs?

Breakthrough:

- **B**e
- **R**ealistic,
- **E**ngage
- **A**nd
- **K**eep
- **T**hinking
- **H**ow
- **R**igour and Respect,
- **O**ptions,
- **U**nderstanding and
- **G**ains
- **H**elp

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Demonstration:

Decision Stage: Concluding a Mediation

Your Notes

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General notes

Day Four

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Learning Log

Day Four

- *What have I learned today?*

- *What do I wish to work on next time?*

- *What will I do differently between now and the next part of the course?*

- *What will I look for in video feedback?*

- *What questions do I have?*

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Personal Assessment of Current Skills

We think that it is useful to ask you to pause at this stage in the course and reflect on how your mediation skills are developing. Self assessment at this stage will give you an additional tool for measuring your development as the course proceeds.

Please read the following sentences and answer them as frankly as you can, assessing your own skills on the scale of 1 to 6 (1 very inaccurate, 6 very accurate) and taking the stage you have reached by the end of the first three days as your reference point.

1	I am an excellent listener	1 2 3 4 5 6
2	I am able to build rapport with people easily	1 2 3 4 5 6
3	I really try to understand what other people are telling me	1 2 3 4 5 6
4	I am genuinely interested in what others tell me	1 2 3 4 5 6
5	My questioning skills are excellent	1 2 3 4 5 6
6	I am able to use eye contact, facial expression and gestures in a manner which is consistent with building trust and rapport	1 2 3 4 5 6
7	I am able to observe others and learn about how they feel from what I see	1 2 3 4 5 6
8	I can handle strong emotions in a variety of commercial and non-commercial settings	1 2 3 4 5 6
9	My skills at exploring the issues and finding out people's true concerns and interests are excellent	1 2 3 4 5 6
10	I am able to explain what people mean in language which is supportive and positive	1 2 3 4 5 6
11	I can move easily between the substantive issues and process management	1 2 3 4 5 6
12	Under pressure, I can manage my own physical and verbal responses	1 2 3 4 5 6
13	I understand recent research into psychological issues sufficiently to apply these in negotiation and mediation	1 2 3 4 5 6

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Conflict Management Strategy

Looking ahead to the future, when you have responsibility for handling difficult situations:

- *What do you need to do to prevent or manage disputes?*

- *What steps should you take to implement your strategy?*

- *What incentives might you build in to ensure that the strategy succeeds?*

- *What review process would you introduce?*

- *Who would you involve in devising and implementing the strategy?*

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Commitment to Respectful Dialogue

"We [, the signatories to this Protocol,] agree that it is in the interests of our [business, organisation, employees, and those with whom we contract/do business] that all communications are conducted civilly and with dignity. Therefore, we agree to:

- *listen carefully to all points of view and seek fully to understand what concerns and motivates those with differing views from our own;*
- *acknowledge that there are many points of view and that these have validity alongside our own;*
- *show respect and courtesy to all individuals and organisations with which we have dealings;*
- *express our own views clearly and honestly with transparency about our motives and our interests;*
- *use language carefully and avoid personal or other remarks which might cause unnecessary offence;*
- *ask questions if we do not understand what others are saying or proposing;*
- *respond to questions asked of us with clarity and openness;*
- *support what we say with clear and credible information wherever that is available;*
- *look for common ground and shared interests wherever possible."*

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Preparation for Module 2: Days Five and Six

- *Ten mistakes a mediator might make?*

  What are the kind of things a mediator might do or say which would tend to undermine the process and / or the mediator's authority?

- *Dealing with Emotion:*

  Emotion often plays a significant part in any dispute. How should / could a mediator deal with this?

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Day Five Programme

(All timings are provisional)

8:45 *Coffee*

09:00 **Plenary Discussion and Workshop**

- Reflection on Days One to Four
- The Ten Most Common Mistakes of the Mediator
- Dealing with Emotion: Further reflections
- Working with Apparently Difficult People
- The Role of Legal and other Advisors
- Meetings with Experts and Parties
- The Mediator as Coach

10:00 *Preparation Time*

10:10 **Workshop 1:** *Mediation Case Study*: Maguire and Dr Giles

10:50 *Refreshment Break* and one to one debrief followed by Video Review for Mediator 1 (in workshop room)

11:10 **Workshop 1 (continued)** - Mediator 2 to take over at this stage

11:50 One to one debrief followed by Video Review for Mediator 2 (in workshop room)

12:10 **Workshop 1 (continued)** - Mediator 3 to take over at this stage

12:50 *Lunch* and one to one debrief followed by Video Review for Mediator 3 (in workshop room)

(please work on Personal Development Plans when colleagues are in Video Review)

13:40 **Workshop 2:** *Mediation Case Study:* Cowers and 3WP or Windowmax Partnership

14:20 One to one debrief followed by Video Review for Mediator 1 (in workshop room)

14:40 **Workshop 2 (continued)** - Mediator 2 to take over at this stage

15:20 *Refreshment Break* and one to one debrief followed by Video Review for Mediator 2 (in workshop room)

15:40 **Workshop 2 (continued)** - Mediator 3 to take over at this stage

16:20 One to one debrief followed by Video Review for Mediator 3 (in workshop room)

16:40 **Plenary Debrief, Discussion and Workshop**

- Mediator Ethics and Code of Conduct: outstanding issues
- What have we learned so far? Personal Development Plans

17:00 Close

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General notes

Day Five

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Learning Log

Day Five

- *What have I learned today?*

- *In particular, what did I learn from the video feedback?*

- *What do I wish to practise tomorrow?*

- *What questions do I have?*

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Day Six Programme

(All timings are provisional)

8:45	*Coffee*
09:00	**Plenary Discussion and Workshop** • Understanding the Other Side: Getting into the Other's Shoes General Review - Any Questions?
09:45	**Workshop:** *Mediation Case Study:* case study allocated according to chosen stream
10:35	*Refreshment Break* and one to one debrief
10:50	**Workshop (continued)** - Mediator 2 to take over at this stage
11:50	**Workshop (continued)** - Mediator 3 to take over at this stage
12:40	One to one Debriefs and Personal Development Plans
12:55	*Lunch*
13:30	**Workshop (continued)** - Mediator 4 to take over at this stage
14:30	**Workshop (continued)** - Mediator 5 to take over at this stage
15:20	*Refreshment Break* and one to one Debriefs and Personal Development Plans
15:35	**Workshop (continued)** - Mediator 6 to take over at this stage
16:25	*One to one Debriefs and Personal Development Plans*
16:35	**Plenary Debrief** • Preview of Assessment Stage
17:00	*Close*

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General notes

Day Six

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Learning Log

Day Six

- *What have I learned today?*

- *What do I still need to practise?*

- *What are my key attributes and skills?*

- *How will I make sure I use them?*

- *What will I do when the going gets tough?*

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Practice Day

If you wish to participate in the practice day immediately prior to the Assessment days, please let us know.

On the Practice Day, we offer participants the opportunity to work with our coaches in a flexible way to refine any areas on which you wish to work prior to the assessment stage.

Concerns about the Course and Assessment

Should you have any concerns about any aspect of the course, please in the first instance contact Miriam Kennedy, Business and Mediation Manager, at **Miriam.Kennedy@core-solutions.com** or 0131 524 8188, with details of your concern and an explanation of what you would like to happen.

John Sturrock will happily talk in confidence with you about any aspect of the course at any time, including any aspect of the assessment process with which you are not happy.

In any event, Core undertakes to address your concerns as soon as we reasonably can and, in any event, within 21 days, and to discuss with you any issues which you wish to raise. If it is not possible to resolve matters by discussion, Core undertakes to engage an independent mediator to help to address matters in a constructive way and to explore the most appropriate way to achieve a solution.

We shall maintain a confidential record all concerns and shall keep you advised in writing of the progress of our handling of any such concerns.

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Appendix
Mediator Assessment Module

For those of you who are undertaking the assessment module, when assessing your performance on the two assessment days, assessors will have regard to various criteria, including the ways in which you:

1. create and maintain an effective framework for mediation;

2. establish and maintain rapport and build effective working relationships; and

3. maintain momentum and appropriate focus on outcome.

The criteria are listed in full in the following pages. You might not be able to demonstrate all of the skills and techniques in your two assessed performances, especially those used towards the end stages as time may not enable you to get that far. The assessment process takes account of situations where there has been insufficient opportunity to demonstrate a skill or technique. We have asterisked those elements which are particularly important.

In each of the three categories above the assessors will mark according to the following standards:

1. **excellent**

2. **competent**

3. **not competent**

You will be assessed on one occasion each day. Over the two days, you will be expected to show competence or excellence in each of the 3 categories. Subject to the written assignments mentioned below, you will achieve certification as competent in mediation skills if, over the two days, you achieve at least 5 assessments of "competent" or "excellent" out of the total of 6 categories on which you will be assessed. In addition, the assessors will use numerical scoring (0-10) to check the marking in each of the 6 categories. Each candidate is expected to achieve at least 38 points overall.

You will be assessed on the mediation preparation and post-mediation stages by short written assignments to be completed within three weeks of the assessment days. Instructions for this can be found on page 69.

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Assessment Criteria for Assessment Module

Category 1

These are the criteria which we use in the assessment module. It is helpful to have these available as a checklist throughout the course.

Creating and maintaining an effective framework for mediation

Qualities

Integrity, impartiality, professionalism, objectivity, clarity, authority, awareness of own and others' assumptions, judgements and biases

Skills and behaviours

Setting out framework and guidelines at the start

- Setting the scene and explaining the process in a manner that creates confidence
- Clarifying roles and managing expectations
- Explaining guidelines, especially confidentiality*
- Checking authority to make decisions
- Establishing a structure and tone at the initial stages to create a sense of order, purpose and confidence*
- Identifying and managing expectations about the process

Maintaining framework and managing boundaries throughout

- Keeping parties informed as to what is going on
- Explaining how each part of the process fits into the whole
- Checking and maintaining confidentiality*
- Showing sensitivity to any cultural, language or other issues of diversity
- Demonstrating a clear understanding of how to manage the process, as distinct from the content
- Demonstrating appropriate flexibility to meet the needs of the parties and the process, including unexpected events*
- Retaining impartiality and dignity of self and the process throughout*

Summarising

- Summarising regularly and at the end of each session to check own understanding and ensure that everyone else understands what is happening and is proposed*
- Effective use of flip chart/other visual aids to enhance summaries and creative thinking

Process choices

- Effective use of private and joint meetings and other opportunities for engagement
- Recognising and moving between different stages of the process*
- Managing transitions smoothly so that participants know what to expect and stay engaged

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Management of time
- Appropriate pace, according to the needs of the process*
- Appropriate allocation of time between parties
- Keeping parties informed about timings

Self management
- Unobtrusive use of notes
- Use of breaks – and taking time to reflect/plan*

Handling challenges
- Demonstrating effective authority over the process – without imposing undue pressure or solutions*
- Handling challenges to the authority of the mediator/process in a calm and level-headed manner
- Identifying ethical dilemmas and addressing them with integrity
- Maintaining impartiality throughout and resisting invitations to become partial*

Working on Outcomes
- Helping parties to identify the terms of any agreement or other outcome
- Working on the detail of the resolution agreement: language, terminology, confidentiality*
- Ensuring parties agree and understand their responsibilities under the agreement and its binding nature as appropriate
- Assisting with drafting issues as appropriate
- Working with parties if no agreement reached

Category 2

Establishing and maintaining rapport and building effective working relationships

Qualities

Respect, warmth, energy, encouragement, empathy, emotional intelligence, courtesy, curiosity, lightness of touch, patience, insight, intuition, elicitive not prescriptive

Skills and Behaviours

Setting a good atmosphere
- Creating rapport with all participants as quickly as possible*
- Using room layout, seating arrangements and personal space to maximum effect
- Paying attention to comfort factors and practical needs
- Appropriate use of names

Active listening
- Avoiding interrupting
- Observing – alert to verbal and non-verbal cues
- Use of silence and pausing
- Appropriate acknowledging, clarifying, rephrasing, reflecting, summarising*
- Responding in a way that demonstrates non-judgmental understanding

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Effective Questions

- Open questions to elicit information*
- Exploring detail and answers through further thoughtful questioning

Dealing with emotions

- Recognising and paying attention to emotional content as well as substantive content of any communication
- Responding to and absorbing emotions appropriately*
- Creating opportunities for participants to recognise and express emotions
- Handling own emotions and responses

Appropriate use of language and other communication, including:

- Reframing
- Careful selection of words – neutral, precise, simple and clear (verbal)*

Non-verbal communication

- Appropriate eye contact, facial expression and body position (visual)*
- Appropriate tone of voice (auditory)

Team dynamics

- Building relationships with all members of the team, as appropriate
- Reading team dynamics and responding appropriately
- Enabling parties to consult with advisers and to reflect and prepare at each stage
- Identifying opportunities for engagement between individuals in different teams

Category 3

Maintaining momentum and appropriate focus on outcome

Qualities

Courage, flexibility, creativity, intellect, judgement, persuasiveness, stamina, tenacity, optimism.

Skills and behaviours

Probing

- Finding out and helping parties to understand each other's concerns, interests, needs, anxieties, desires and objectives*
- Discovering what lies behind the parties' positions
- Use of other techniques such as prompting and hypothesising

Information flow

- Getting authority to disclose information strategically
- Checking for authority to disclose and knowing when it would be useful to get authority to release information*
- Strategic use of information and managing its presentation*

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Parties' responsibility

- Setting and checking tasks
- Encouraging generation and examination of the options, alternatives, possible outcomes*
- Encouraging commitment to the process and to an outcome – and each member of a team to participate appropriately
- Using understanding of negotiation tactics and strategies to assist parties to maximise prospects of resolution*
- Pace
- Maintaining forward momentum*
- Helping parties to avoid commitment to solutions at too early a stage

Problem solving

- Showing appropriate persistence
- Being creative in helping parties to find solutions – including non-monetary outcomes
- Identifying common ground, joint gains and mutual interests*
- Helping parties formulate offers/proposals/packages and to make concessions – using own negotiation skills effectively*
- Helping parties to recognise and address issues of saving face
- Identifying objective criteria
- Using techniques to break impasse and deal with deadlock

Risk assessment and reality testing

- Testing strengths and weaknesses of parties' cases – risk assessment and reality testing*
- Challenging inappropriate tactics
- Tackling "bottom lines", bluffs and threats
- Showing a good sense of the business and other needs of the parties*
- Testing workability of possible solutions

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Post Course Assignment

1. Please prepare a draft of the specific terms of a resolution agreement using one of the case studies in which you acted as mediator at the assessment stage and assuming that the parties reached agreement.

2. Please prepare a memorandum setting out what you think should be done by the mediator and the parties by way of preparation for a mediation in order to enhance the prospects of the mediation being successful.

3. Please draft a personal statement setting out:

   (a) what you have learned, as an individual, from the mediation training;

   (b) what particular attributes you feel you bring to mediation;

   (c) in what areas you would wish to continue to improve as a mediator;

   (d) what you will do to help increase the use of mediation.

Generally, we find that these assignments run for 4-6 pages. Please email your completed assignment by the deadline, which will be made clear to you in advance. This is an essential part of the assessment.

After the assignment has been received, we will notify you as soon as possible of the outcome of the assessment overall and whether or not you have achieved Certification of Competence in mediation skills.

If you do not achieve competency, we will discuss the options with you, including retaking the assessment stage.

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General notes

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