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UCLan Centre for Mediation: Embracing Change

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Abstract

Mediation in the UK has developed dramatically over the years and the UCLan Centre for Mediation, since its inception in 2014, has sought to embrace this growth. This article explores the history and development of mediation, and in particular the more recent shift in the legal landscape from litigation towards this alternative. It then documents the range of activities which the Centre undertakes, including the provision of professional and academic trainings in mediation, and the delivery of mediation services to the local community.

1. Introduction

Mediation in the UK has gradually adopted the ethos that 'conflict is inevitable but combat is optional'.[1] Thus litigation is not the only way, and mediation may be a better way of resolving disputes. Although mediation remains a fairly alien concept to the public who are more familiar with litigation, mediation has, in fact, been present over a number of years in various different guises. The use of this alternative method of dispute resolution has grown in recent times. Although not compulsory, it is most definitely and positively being encouraged by the courts and the government. This drive towards mediation has given birth to the UCLan Centre for Mediation (the Centre). The life of the Centre and how it was inspired by and has mirrored the growth of mediation in the UK, will be outlined below.

2. Mediation: An Overview

When faced with a client in dispute, the lawyer's common response is to litigate, namely sue the other party through the courts. In such an adversarial process, negotiation is aggressive and each party will be preparing for trial with the aim of persuading a third party (a judge) that they are right. An alternative to litigation is mediation for which two commonly cited definitions can be provided. Mediation has been described by the Centre for Effective

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1 M. Lucado, as cited in M.W. Burr, 'Organizational Conflict Management Systems in Small Business' (2016) *Cornell HR Review*, available at http:digitalcommons.ilr.cornell.edu/chrr (accessed 15 October 2018).

Dispute Resolution (CEDR) as 'a flexible process conducted confidentially in which a neutral person actively assists parties in working towards a negotiated agreement of a dispute or difference, with the parties in ultimate control of the decision to settle and the terms of resolution'.[2] Similarly, the ADR Group explains: '[t]he Mediator, a neutral independent qualified professional, assists all the sides in negotiating a mutually agreeable settlement. Participation in mediation is voluntary and the process is private and confidential, it brings structure that ordinary negotiation lacks. The decision to settle and the terms of an agreement rest solely with the parties themselves, not the mediator.'[3]

These two major, if not the largest, UK mediation providers agree that mediation is a confidential process involving an impartial individual who will help the disputing parties to reach their own agreement. This alternative method of dispute resolution uses a problem-solving approach where the third-party mediator, a trained independent person, assists each party to negotiate and communicate not with the intention to judge, but to help facilitate and continue negotiations that may have taken place between the disputing parties prior to attending mediation. The idea is to facilitate the dialogue in a constructive manner whereby the parties reach their own solution as no judgment will be imposed. The process is private, voluntary and non-binding until an agreement is drawn up, which is enforceable as a contract or court order.[4] Lawyers ought to be aware that mediation requires a very different approach to handling the dispute namely, a switch from an adversarial to a collaborative approach. Indeed, the flexibility offered by mediation means that this method of dispute resolution can be used instead of litigation; or during litigation where the claim is stayed (paused); or even alongside running litigation. In short, mediation can be defined as 'a means of resolving disputes in a confidential, voluntary, flexible environment, where an independent third party facilitates communication between the parties, with the purpose of the parties agreeing their own settlement terms'.[5]

Litigation is not always the most appropriate method of resolving disputes. Clients often expect and demand a more comprehensive service from solicitors and consumers often wish to have greater involvement and control over settling their conflicts. Mediation affords consumers that freedom. For example, the commercial client will treat any disputes as an aspect of his business. Choosing

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2 E. Carroll, CEDR Deputy Chief Executive, 'Redefining Mediation', available at https://www.cedr.com/articles/?item=Redefining-mediation (accessed 16 October 2018).

3 ADR Group, 'Civil and Commercial Mediation', available at http://www.adrgroup.co.uk/DisputeResolution/civil-and-commercial-mediation (accessed 16 October 2018).

4 C. Menkel-Meadow, 'Mediation, Arbitration, and Alternative Dispute Resolution (ADR)', (2015) UC Irvine School of Law Research Paper No 2015-59, available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2608140 (accessed 15 October 2018).

5 E. McAndry, UCLan Civil and Commercial Training Course Manuals 2014-2018.

which method to use to solve such a dispute is a business decision and the client is likely to want to have some influence in the process.

One of the many key advantages of mediation as compared to litigation is that a greater array of settlement options are available than at court.[6] Often, disputes tend to be about issues beyond money. For example, there may be a need for an apology, a re-negotiation of the contractual terms, or an improvement in a business relationship. Certainly, a court does not have the power to consider these issues whereas mediation is able to do so with the benefit that the disputing parties can reach a mutually satisfying agreement. As the parties 'own' their agreement, it is more likely to work and the parties are also more likely to stand by it, bringing longevity of success. In any case, the agreement should be drawn up into a legally binding document, whether a contract or order by consent, both of which can be enforced.[7]

As both parties settle their own agreement, the settlements are often called 'win-win outcomes'.[8] In systems where a decision is made and imposed on the parties by a third party, the decision may be viewed as a case of win-lose where only one party is likely to have achieved their desired outcome. In such circumstances, it is questionable whether there is always a true winner because in a litigation scenario, the 'winner' may be penalised in costs for not accepting an offer to settle[9] or for unreasonably refusing to mediate.[10]

The Civil Mediation Council (CMC), who holds the power to accredit mediation providers, has adopted the EU Model Code of Conduct for Mediators 2004. This states at paragraph 2.2 that: 'The mediator shall at all times act, and endeavour to be seen to act, with impartiality towards the parties and be committed to serve all parties equally with respect to the process of mediation'. The Code further states that: 'The mediator must not act, or, having started to do so, continue to act, before having disclosed any circumstances that may, or may be seen to, affect his or her independence or conflict of interests.'[11] The mediator must be independent of the parties and must disclose any potential conflict of interests. This duty to disclose continues throughout the mediation. The Code gives the following examples where a potential conflict may arise '(i) any personal or business relationship with one of the parties (ii) any financial or other interest, direct or indirect, in the outcome of the mediation, or (iii) the mediator, or a member of his or her firm, having acted in any capacity other than mediator

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6 E.A. Yarbrough & W.W. Wilmot, *Artful Mediation: Constructive Conflict at Work* (Llandudno: Cairns Publishing, 1995) p. 3.

7 P. Brooker, *Mediation Law: Journey Through Institutionalism to Juridification* (Oxford: Routledge, 2013) Chapter 3.

8 R. Fisher & W. Ury (with B. Patton), *Getting to Yes: Negotiating an Agreement Without Giving In* (London: Random House, 2012) p. 59.

9 Part 36, Civil Procedure Rules.

10 See discussion below.

11 EU Model Code of Conduct for Mediators, para. 2.1.

for one of the parties'. In practice, this means that the mediator must not show any bias towards either party if they are to, on the one hand gain and retain the trust of the parties, and on the other hand reduce the likelihood of the mediation breaking down with a further potential possibility of facing litigation for negligence or breach of contract. In short, the overall effect of such neutrality is to ultimately raise rather than diminish the profile of mediation.

When CEDR re-drafted their definition of mediation highlighted above, they emphasised that 'mediation is a safe environment where parties can talk freely, experiment with ideas and are ultimately in control of the process' and that 'mediators should be proactive in assisting parties to find solution but that the parties have ownership of the outcomes.'[12] This emphasises the facilitative nature of mediation which is commonly used in the UK. The mediator's role is to facilitate communication and negotiation and will not take sides. No decisions will be made nor opinions passed, whether factually or legally as the mediator's role is not to judge. Legal advice on the case or possible outcome at court cannot be sought from the mediator.

The aim of a mediation session is to identify and explore the issues in greater depth with the purpose of getting to the heart of the real interests. In doing this, the mediator will encourage the parties to engage in a process of introspection in order to analyse their positions. Problem solving and creativity will be encouraged in order to help the parties think 'outside the box'[13] and indeed explore wider possibilities of solutions than would be available at court. It is for the parties to come up with ideas but the mediator will proactively assist this. The mediator will search for common ground and seek to bring the parties to mutually find solutions that will work for both of them.

3. The Growth of Mediation

'Alternative Dispute Resolution (ADR) is hot. It is not new'.[14] While there seems to be a tendency to see mediation as a 'trendy idea',[15] mediation has existed in some guise throughout history and within a variety of cultures.[16] Mediation can be traced as far back as Ancient Greece and Roman times,

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12 'CEDR revises definition of mediation', at https://www.cedr.com/press/?item=CEDR-revises-definition-of-mediation (accessed 16 October 2018).

13 T.E. Carbonneau, *Carbonneau on Arbitration: Collected Essays* (New York: JurisNet, LLC, 2010) p. 60.

14 D. Regan 'Hot Topic' (2016) 166 *New Law Journal* 7691.

15 Lord Neuberger, 'Keynote Address: A View from On High', Civil Mediation Conference 2015, 12 May 2015, para. 4.

16 J.M. Greig & P.F. Diehl, *International Mediation* (Cambridge: Polity Press, 2012) p. 1.; S. Morasso, *Argumentation in Dispute Mediation: A Reasonable Way to Handle Conflict* (Amsterdam: John Benjamins Publishing Co., 2011).

and has been used in Aboriginal communities to benefit the local community, as well as China and Asia where Confucianism and Buddhism favoured communal accord and peace over an adversarial approach to the resolution of disputes.[17] Religious history also confirms the use of mediation throughout time.[18] It is, for example, referenced in the Bible[19] and has been used by Clergy of the Christian church involving community, family and diplomatic disputes. The Quakers have taken credit for the great progression of mediation in America, particularly involving international disputes.[20] The Jewish faith has relied on the use of rabbis as a third party in the resolution of disputes, as has Islamic laws which have tried to promote peaceful ways of settling conflict.

In more recent times, the UK government formed a voluntary conciliation and arbitration service in 1896 to deal with workplace conflicts. However, the country saw its first formal introduction to mediation through the passing of the Conciliation Act in 1986 which fundamentally dealt with industrial relations. A similar initiation occurred in the US in 1913 when the government first created the commissioners of conciliation for labour relations which later became the Federal Mediation and Conciliation Service, an agency independent of the government, in 1947. While mediation flourished in the US, its development was more slothful in the UK. The UK's government service of 1896 became independent in 1974 and is now a statutory body recognised as the Advisory, Conciliation and Arbitration Service (ACAS). Indeed, the ADR Group (then IDR Europe Ltd) was the first commercial service to come to the UK in 1989, followed by CEDR in 1990.

The importance of finding ways to support all members of the public (and not just the rich) with access to justice through mediation has been influenced by a number of factors. These include a reduction in the availability of Legal Aid, and an increase in both court fees and court closures. The added impetus for mediation came from Lord Woolf's review of the civil justice system.[21] In accordance with the recommendations made in his report, as a minimum, lawyers were compelled to consider settlement by mediation, particularly because litigation was to be used as 'a last resort'.[22] Certainly, it is the duty of the court under CPR 1.4 (1) and the parties under CPR 1.3 to further this overriding objec-

17 B.C. Goh, *Law Without Lawyers, Justice Without Courts: On Traditional Chinese Mediation* (London: Routledge, 2016).

18 D.S. Smock, *Religious Contributions to Peacemaking* (New York: Nova Science Pub., 2010).

19 Matthew 18:15-17.

20 M. Lehti, *The Era of Private Peacemakers: A New Dialogic Approach to Mediation* (Switzerland: Palgrave Macmillan, 2018) p. 56.

21 Lord Woolf, *Access to Justice: Final Report* (London: The Stationery Office, 1996). This resulted in the Civil Procedure Rules 1999 (the CPR).

22 See Practice Direction: Pre-action Conduct and Protocols, para. 8. Note that Part 1 of the Civil Procedure Rules 1998 sets out the overriding objective of the Rules 'of enabling the court to deal with cases justly' [CPR 1.1 (1)].

tive by, for example, 'actively managing cases' and 'encouraging the parties to use an alternative dispute resolution procedure' if the court considers it appropriate to do so.[23] The importance attached to mediation is further apparent from the overriding objective of the CPR to settle cases by mediation where reasonable to do so, express references in the CPR to mediation and the stipulation that disputing parties should consider mediation at various stages of the litigation process.[24] Indeed, small claims matters can take advantage of a free mediation service.[25]

Shortly after the CPR came into effect, Lord Woolf gave judgment in the Court of Appeal and criticised the parties for failing to use mediation. He declared in *Cowls v Plymouth City Council* that 'this case will have served some purpose if it makes it clear that the lawyers acting on both sides... are under a heavy obligation to resort to litigation only if it is really unavoidable'.[26] The Court of Appeal in *Dunnett v Railtrack PLC*[27] continued this sentiment when they refused to award the winning defendant the costs of the appeal due to their failure to consider the use of mediation.

Halsey v Milton Keynes NHS Trust[28]was a significant case addressing the issue of costs penalties for failure to mediate. The claimant brought a clinical negligence claim against the NHS Trust after the death of her elderly husband in hospital caused by liquid entering his lungs from a nasal drip. The Trust denied responsibility and the inquest was inconclusive as the medical experts disagreed about liability. The claimant asked for mediation which the Trust rejected. The Trust won at trial but the claimant asked for costs as the Trust had refused to mediate in accordance with *Dunnet*. The case reached the Court of Appeal which held that where a party has reasonably refused to mediate, it will not be penalised in costs and the burden is on the opposing party to show unreasonableness. Dyson LJ identified a non-exhaustive list of reasons which may collectively or individually be grounds for reasonably refusing to mediate.[29] Evidently, this case took a softer approach to the necessity to mediate although subsequent cases have by contrast taken a much stronger approach as to when the failure to mediate can be classed as reasonable. In *Burchell v Bullard,*[30] for example, the court concluded that the defendants had 'behaved unreasonably' in believing that 'their case was so watertight that they need not engage in attempts to settle'

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23 CPR 1.4 (2) (e).
24 CPR 26.4 (1) and 44.5 (3)(a)(ii).
25 'Small Claims Mediation Service (EX73)', available at https://www.gov.uk/government/publications/small-claims-mediation-service-ex730 (accessed 15 October 2018).
26 EWCA Civ 1935, per Lord Woolf at para. 27.
27 [2002] 2 ALL ER 850.
28 [2004] EWCA (Civ) 576.
29 E.g. the nature of the dispute, the merits of the case, disproportionate costs, reasonable prospect of success of mediation.
30 [2005] BLR 330.

and that the matter was 'too complex for mediation is plain nonsense ... The costs of ADR would have been a drop in the ocean compared with the fortune that has been spent on this litigation ... The defendants cannot rely on their own obstinacy to assert that mediation had no reasonable prospect of success.'[31] It went on to say that the significance of mediation was recognised as a route to a fair outcome, running alongside litigation. 'The court has given its stamp of approval to mediation...The profession can no longer with impunity shrug aside reasonable requests to mediate. The parties cannot ignore a proper request to mediate...With court fees escalating it may be folly to do so.'[32]

In the personal injury case of *Daniel v Commissioner of Police for the Metropolis*[33] Ward LJ was forthright in strongly supporting the use of mediation. In drawing attention to costs of £50,000 in a case where the agreed damages were only £7,000, he first said: 'It is hard to resist the temptation to say that the costs incurred are disproportionate to the sum in issue.'[34] He continued: 'If the parties reasonably believe that they have a real prospect of success each is entitled [to litigate] but neither can then complain that the fight is taken to the bitter end of a judgment of the court. Each will have to accept that those who live by the sword must risk dying by the sword as well. That is the inevitable risk of litigation.'[35] 'What can the court do to prevent what, to those outside the litigation, may seem like an unseemly, or at least uncommercial, squabble? We can and we do encourage mediation, the earlier the better. It does have an extraordinary knack of producing compromise, even where the parties appear, at the start, to be intractably opposed. The profession is encouraged to do what habitually it does do, namely try and settle the case.'[36]

Momentous in the field of mediation was the Jackson Review on Civil Litigation Costs presented in January 2010. Lord Justice Jackson was not in favour of making mediation compulsory as it is not a 'universal panacea' but felt that there should be a culture change of education and encouragement. He recommended that there be greater use of mediation in order to control costs, and that there should in fact be a serious campaign to ensure that lawyers, judges, small businesses and the public are sufficiently informed about the benefits of alternative dispute resolution (ADR).[37] Indeed, in relation to personal injury matters, Lord Justice Jackson found that '[m]ediation is capable of arriving at a reasonable outcome in many personal injury cases, and bringing satisfaction

31 *Ibid.*, para. 41.
32 *Ibid.*, para. 43.
33 [2005] EWCA Civ 1312.
34 *Ibid.*, para. 35.
35 *Ibid.*, para. 36.
36 *Ibid.*, para. 37.
37 Chapter 36, para. 4.2 (i).

to the parties in the process.'[38] Yet, as he concluded, mediation was under-used, particularly in personal injury and clinical negligence cases.

The Jackson Report had a great influence in the court's attitude towards mediation. Judges embraced mediation much more and took a far stronger approach. For example, in *Rolf v De Guerin*,[39] Lord Justice Rix began by lamenting that this was 'a sad case about lost opportunities for mediation. It demonstrates ... how wasteful and destructive litigation can be'.[40] In adding the following, he agreed with Brooke LJ's statement in the lower court that skilled mediators are now able to achieve results which are satisfactory to both parties that are quite beyond the power of lawyers and courts to achieve: 'As for wanting his day in court, that of course is a reason why the courts have been unwilling to compel parties to mediate rather than litigate: but it does not seem to me to be an adequate response to a proper judicial concern that parties should respond reasonably to offers to mediate or settle and that their conduct in this respect can be taken into account in awarding costs'.[41]

A number of cases have continued to support and reinforce this message. For example, in *Faidi & Another v Elliot Corporation*,[42] the Court criticised the parties for failing to explore mediation before 'embarking on full blooded adversarial litigation'.[43] In *Garritt-Critchley v Andrew Ronnan and Solarpower PV Ltd*,[44] the defendant's attempts to argue the grounds of *Halsey* were rejected. In *Northrop Grumman Mission Systems Europe Ltd v BAE Systems (Al Diriyah C41) Ltd*,[45] Ramsey J extolled the virtues of mediation even in an unmeritorious case.[46] Furthermore, the court in *Laporte & Anor v The Commissioner of Police of the Metropolis*[47] deprived the police of a third of their costs (a considerable amount), due to their failure to mediate, despite winning on every substantive issue.

PGF II SA v OMFS Company 1 Ltd[48] changed the landscape of costs penalties considerably when severe cost punishments were delivered for a failure to respond to a request to mediate. Silence to an invitation to mediate became the equivalent to unreasonably refusing to mediate. Such a request can no longer be ignored in the hope that unreasonable refusal cannot be found. The decision

38 *Ibid.*, Chapter 36, page 361, 3.1(iii).
39 [2011] EWCA Civ 78.
40 *Ibid.*, at para. 1.
41 *Ibid.*, at para. 41.
42 [2012] EWCA Civ 287.
43 *Ibid.*, at para. 35.
44 [2014] EWHC 1774 (Ch).
45 [2014] EWHC 3148 (TCC).
46 *Ibid.*, at para. 59.
47 [2015] EWHC 371 (QB).
48 [2014] 1 WLR 1386.

effectively widened the scope of *Halsey* much to the delight of the mediation community, as was the increase in similar judicial decisions,[49] which expanded and strengthened the latest increasing inducement to mediate.

Statistical data is in keeping with judicial sentiment about the rising importance of mediation in the resolution of legal disputes. For example, CEDR conducts biennial audits surveying commercial mediator attitudes and experience. One aspect that these audits continually investigate is the size of the civil and commercial mediation marketplace. Every audit has found an increase in mediation use from the previous audit. From the inception of these audits in 2003, for nearly a decade there was a healthy rise of 30-35%.[50] This then slowed down considerably for the next few audits, though an increase was still evident.[51] The latest audit revealed the start of a return to healthy growth with a 20% rise.[52] Mediation use is therefore clearly constantly rising so there is a real need for this to be recognised by businesses and lawyers, especially those who may need educating on its use and benefits.

4. The UCLan Centre for Mediation

The implications of this shift in the legal landscape for providers of legal education was highlighted by Lord Neuberger[53] who emphasised that for mediation to become second nature, that culture would need to be embedded from the very early stages of a lawyer's training.[54]These developments prompted Lancashire Law School to set up the UCLan Centre for Mediation in 2014. The first step in this process was to send the author to train as an accredited mediator. After she qualified as a mediator, and gained practical experience by way of shadowing, observing and ultimately practising, she designed a 40 hour CPD/5-day Accredited Civil and Commercial Mediation Training Course which has since gained CMC approval. The Centre is now one of approximately only a dozen or so of organisations across the country that can claim to be a CMC Registered Trainer. Those who are trained by the Centre include UCLan staff and students, and practising solicitors, barristers, doctors, hospital directors

49 E.g. *Garritt-Critchley and Others v Ronnan and Solarpower PV Ltd* [2014] EWHC 1774 (Ch); *Laporte v Commissioner of Police for the Metropolis* [2015] EWHC 371 (QB); *NJ Richard Ltd v Holloway & Others, CA* (Civ Div) 3/11/15 unreported; *Thakkar and Another v Patel and Another* [2017] EWCA Civ 117.

50 For a full list of the audits, see https://www.cedr.com/foundation/research/ (accessed 31 October 2018).

51 CEDR Mediation Audit 2018, page 3.

52 *Ibid*.

53 President of the Supreme Court from 2012-2017.

54 Lord Neuberger of Abbotsbury, 'Educating Future Mediators', 4th Civil Mediation Council National Conference, 11 May 2010.

and other professionals. The training course has also attained international reach. As one barrister from The Bahamas said '*the Course exceeded myexpectations in many ways. I would recommend the course to anyone. Great Teaching.'* Delegates have also travelled from Cyprus, Germany, Mauritius, Nigeria and South Africa.

UCLan students who attained accreditation are given the opportunity to assist in the training course by way of observing and giving feedback to subsequent delegates in their role-play practices. The confidence and employability of those students are therefore enhanced as they engage with professionals who may be in occupations that they aspire to join. It is rewarding to learn that many have indeed obtained work placements as a result of assisting in the training programmes. For example, a recorder on one course offered a number of students marshalling experience and one student, in particular, secured paid work as a part-time barrister's paralegal. Evidently, students benefit greatly from being given the opportunity to network with legal and non-legal professionals in this setting.

Another important development in the Centre's journey was the establishment of the Mediation Clinic (the Clinic) in 2015. This educational and public interest clinic provides mediation services to UCLan students specifically and the local community generally. The Clinic is fundamentally student-led (with supervision), making it one of the very few of such pioneering clinics in the UK. Those students who sit on the Clinic panel, all of whom would have attained accreditation, gain invaluable practical experience and the opportunity to put theory into practice in real-life scenarios. They initially only observe but once they have gained the necessary self-confidence, will co-mediate under the supervision of experienced Lancashire Law School (LLS) staff. Indeed, the Clinic relies on reflection in that the completion of each case requires students to complete a self-reflective feedback that then feeds into LLS blogs – a highly effective way to monitor the student experience. Employability is enhanced as the Clinic offers students the chance to gain transferable skills. Certainly, employers find this highly attractive knowing that students have participated in an extremely current and valuable activity.[55]

The Centre is committed to teaching that emphasises real world learning, enhances employability, and remains abreast of developments within the profession. In recognition of the changing legal landscape mentioned earlier, optional mediation modules for levels 4-7 were also developed for the Law undergraduate programmes at LLS. These have grown in interest and demand year on year. First year law students are introduced to the concept of mediation in 'The Practice of Mediation' module. This module aims to equip students with

55 J. Lande & J.R. Sternlight, 'The Potential Contribution of ADR to an Integrated Curriculum: Preparing Law Students for Real World Lawyering' (2010) 25 *Ohio State Journal on Dispute Resolution* 247.

a systematic understanding of the role of mediation and to provide them with a knowledge of the process and procedure. Students play out mock role play mediations to enable them to grasp the sense of how mediation works in practice. The second year module, 'The Lawyer's Role in Mediation' focusses on the role of the lawyer in advising, preparing and representing the client in mediation. Students learn how to advise their clients on the suitability and benefits of mediation. They develop the skills of mediation advocacy from a disputant's legal perspective through role-plays, including negotiating in a manner conducive to problem solving. The third year 'Mediator Skills' module is dependent on students having completed both the options at levels 4 and 5. This module aims to develop a systematic understanding of the role of the mediator and provide a comprehensive understanding of the skills and techniques used by a mediator. Students develop their practical skills by practising the techniques in interactive role plays. Finally, LLM students are offered the elective of 'International Commercial Mediation' which covers the entire process of mediation and explores the theoretical, practical and ethical issues in the context of international commercial mediation.

Teaching on all these modules is interactive and practical. Learning outcomes are achieved in a way that enables students to combine the academic with practical experience, that is, the modules are designed to allow students to gain knowledge, skills and, most importantly, self-confidence. Indeed, it is incredibly rewarding to see students flourish over the years as they realise that what they do in the classroom is applicable in the real world by participating in the numerous real-world opportunities that they are presented with.[56] Making great use of role-plays and self-reflection helps students become confident with the freedom to be self-critical and deliver peer-feedback in order to improve.

In the early days, the Centre observed that some parties who engaged in mediations were particularly vulnerable and nervous. The Centre, therefore, created the new role of a 'Mediation Representative' namely someone with mediation training who could personally support and represent the disputants. This is routinely offered to all parties and is regularly welcomed. The Clinic Panel is equally keen to act as either mediator or mediation representative. As such, cases are now manned by students serving as co-mediators, representatives for disputants and observers. More students are able to gain experience per case with this new role. Cases include disputes between students, or students with their landlords or employers etc. Settlement of such disputes naturally lead to a more harmonious campus.

After establishing the Clinic, the Centre approached the Citizen's Advice Bureau and Preston's Personal Support Unit and presented them with the benefits of the Clinic for their cases. As a result, both now regularly refer cases

56 E.g. working in the LLS' Pro Bono Clinic and Mediation Clinic.

to the Clinic. This offered yet another new dimension to the Clinic's work because the nature of these disputes are mainly business related. In addition, the Clinic has been directly named in a court order as one party was a litigant in person and could not afford a mediator.[57] The Judge in that case felt that the Clinic was well able to deal with the matter.

The Centre also trains LLS students for national and international mediation competitions. Participation allows students to boost their curriculum vitae (CV) which would help enormously with employability. Three of the most impressive achievements gained to date include (i) winning in every category[58] at the UK National Student Mediation Competition in 2016; (ii) being awarded a trophy for Outstanding New Mediation Program, and a student named 4th Best Individual Mediator at the International Mediation competition in 2015; and (iii) winning First Place for Best Individual Mediator at the International Mediation Competition in two consecutive years, 2016[59] and 2017.[60]

During the first year of its operation, the Clinic won a National Mediation Award namely, 'Highly Commended Rising Star' in the Trailblazer category held by the Professional Mediators Association in 2015 for being innovative and demonstrating excellence. The Clinic received further recognition in UCLan's Student Union Golden Roses Awards by being shortlisted for the 'University Service of the Year' award in 2016. One nomination said: '*I had a dispute with another student in a presentation group which was affecting my work…I had lost all hope… I really would like to thank the Mediation Clinic for helping me through such a difficult situation*'. Students also voted the author in her capacity as the Centre's Head for the Student Union Golden Roses Real World Teaching Award. This, she won in 2014 and 2015, and was shortlisted for in 2017. One nomination said '*She has shown dedication … and consistently supported students to learn invaluable transferable skills to dramatically enhance their employability in the real working world … make connections between the students learning and the real world.*' These successes indicate that the Clinic has had an obvious and meaningful impact both for students serving in the Clinic and those using its services.

After attending and contributing to the Association of Mediation Assessors, Trainers and Instructors (AMATI) annual international conferences, the author was invited to sit on the Expert Panel of one such international conference. As this was an open space conference, she was able to take seven students to act as rapporteurs for the various group discussions. As those students had an

57 Details are available upon request from the author.

58 Namely the Best Individual Mediator, Best Mediation Team, and Best Party.

59 I.e. Josiah Raphael. See 'Law Student is World's Number One', available at https://www.uclan.ac.uk/news/law-student-world-number-one.php (accessed 16 September 2018).

60 I.e. Phoebe Dearden. See 'Law Student is World Class Mediator', *Lancashire Evening Post*, 4 May 2017, available at https://www.lep.co.uk/news/education/law-student-is-a-world-class-mediator-1-8517719 (accessed 16 September 2018).

active and definite involvement, their learning was enhanced by being privy to the conversations of the mediation industry from all over the world. One of the students commented: '*This was an informative experience … not only were we able to experience professional debates … but we were assigned to analyse and correlate the most significant arguments … we were able to be involved in the discussions and share our views … putting our presentation, persuasive and analytical skills in a practical, professional environment.*'

In summary, the Centre has become a well-rounded hub of mediation activity. The trainings are well-established and students can gain real life experience in the award-winning Clinic and can also benefit from the kind of teaching that is in keeping with the sentiments expressed by Lord Neuberger earlier. Furthermore, the Centre has engaged in research, won competitions and awards, and continually keeps abreast of market trends and court/governmental movements in order to ensure that the Centre continues to move with and respond to the broader changes within the mediation landscape.

5. Conclusion

There is no denying that the UK's mediation landscape has developed over time. While the UK has been slower in its progression than the US, recent times have seen a sturdier reinforcement of mediation from both the courts and the government and hence a steadier escalation in its use in the market. The UCLan Centre for Mediation has grown quickly and organically alongside this development and has gained rapid recognition at regional, national and international levels.

The Centre remains passionate in its belief in the power of mediation. The ultimate reward is always in witnessing the impact of mediation on the disputing parties or at least their new-found understanding of each other. Equally gratifying is beholding the students' experience, personal development, and growing confidence to engage in real life situations. The Centre has every intention to sustain the student-centric nature of its work to ensure that the next generation of lawyers receive early exposure to this method of dispute resolution.