

# Listening Brief

*Giving you the latest updates from the Society of Mediators.*

## Upcoming Events & Courses

SOM Trustees Meeting, Zoom,  
16th July

Foundation Accredited Mediator,  
Taunton, 7th-11th September

Foundation Accredited Mediator,  
London, 21st-25th September

Foundation Accredited Mediator,  
London, 12th-16th October

Foundation Accredited Mediator,  
London, 9th-13th November

Foundation Accredited Mediator,  
London, 7th-11th December

Please call 0207 353 3936 or email  
support@218strand.com for all  
enquiries.

## SOM Courses Start Again...

*Jonathan Dingle, Chair of Trustees - 6th June 2020*

...well - that is our hope! After a Spring and Summer of patience and tribulations, we are (subject to any changes in the Rules) glad to offer fully COVID-compliant courses throughout the Autumn term. These are face-to-face (but socially distanced) and not to be confused with the rash of start-up providers offering online courses from previously unknown trainers. All our courses (which are not-for-profit) have experienced mediators to lead and tutor, and they have undergone rigorous teaching training as well. The courses are recognised by the Civil Mediation Council and the Chartered Institute of Arbitrators and provide all of the information needed to flourish. They also include, uniquely, the first observation that is required, and a year of professional support for alumni. The feedback on the faculty for some 20 years has been that it is world-class and we will continue to deliver the very best to all – even on the smaller (numerically) courses that COVID obliges us to deliver: that is the freedom of being a Charity.

That status also carries a responsibility – to deliver and support our objectives and we are delighted that through the Free Mediation Project, we continue to make this happen. We will innovate and deliver exceptional solutions to the community.

And as part of that innovation, from September all of our CPD, Advanced Training and elements of the Workplace and University mediation trainings will be delivered from a fully-functioned online platform that follows a complete review of how best to complete our mission – to educate and to resolve. Full details of the online courses will be in the August 2020 Listening Brief.



# 218 Strand Virtual Office

Working remotely? Need a London address to receive your post and conferencing facilities but don't want to pay London rent?

218 Strand is now offering our new virtual office deal with reception staff, a London postal address and up to 20 hours meeting spaces a month - one of our many new deals starting from £800 + VAT pcm!

Please email [support@218strand.com](mailto:support@218strand.com) with your enquiry.



**Andrea Barnes - Faculty & Course  
Leader 2**

## *Remote Mediation - Making it Work from Home*

*Andrea Barnes - 1st June 2020*

When the Covid-19 Pandemic erupted and subsequent worldwide emergency lockdowns were imposed, many felt that mediation could no longer take place. However, long before the advent of Pandemic, mediation has been offered in many remote forms as an effective and efficient alternative to face to face mediation. Remote mediation can take place on various platforms either individually or using a variety of them, namely video with telephone or computer audio, telephone, computer audio, an online portal or via email.

For example, Her Majesty's Courts and Tribunal Service ("HMCTS") has provided telephone mediation since 2003. Other providers have offered the opportunity to use telephone mediation, remote conferencing via Zoom Cisco WebEx, Skype for Business or similar platforms, online

mediation via Modron, CMP or similar platforms. Other options for alternative dispute resolution include early neutral evaluation or a hybrid of facilitative and evaluative mediation, all of which can be provided remotely.

Lockdown and the lack of face to face interaction meant a phenomenal overhaul to the way in which litigation and disputes are approached and the way forward for more creative approaches to those wishing to find resolution. This was only strengthened by the fact that, following lockdown, Courts were closed and HMCTS were forced to adjourn the majority of hearings. This in turn has led to significant delays, ongoing stress from the litigation and, more importantly, lack of cashflow. I was fortunate enough to be trained in remote mediation many years ago and when lockdown arrived I had the opportunity to actively encourage solicitors and participants to use remote mediation.

Remote mediation has many advantages that face to face does not. First, the participants have the choice to decide whether they wish to see the mediator and the opposing participants. Second, remote mediation cuts out all or part of the travel participants would usually endure in getting to a mediation. This is particularly beneficial to claimants who have catastrophic or psychiatric injuries and can reduce stress and anxiety. It can similarly benefit defendant organisations such as hospital trusts and hospitals who have to combine mediation with their day to day job. Third, the participants can access mediation from home or office.

Video mediation of virtual rooms and a lobby where participants can call into the mediation and wait comfortably until they are taken to their allocated virtual room. This gives them the opportunity to hold private discussions, with the mediator able to send a chat message “virtual

knock” asking to enter their room or by simply sending off a text message to a participant’s mobile asking if they can enter. Another benefit of remote mediation is that it can be accessed in so many different ways, with some participants choosing to use their mobiles, others more content to access through a desktop computer in a formal organisation setting.

I have conducted several remote mediations since lockdown began and have been fortunate that all have successfully ended in resolution with the participants coming away from the process feeling empowered, calmer and happier. Participants have the option at any stage to choose to turn off video or mute their microphone and can even select virtual backgrounds so that they appear to be taking the mediation somewhere other than home or their office. Participants can leave or choose to leave the mediation at any time and can equally ask to rejoin. The only minor downsides I have experienced have been where internet connection is unstable, or audio is varied. I have been lucky enough to be able to talk through the technical issues participants’ have had, at the start of or during mediation, and to enable them to participate in the mediation through a variety of different remote platforms.

Although it has only been a short period since remote mediation has gained popularity the settlement statistics speak for themselves. Many remote mediation providers have witnessed an increase in mediation settlements, at an early stage and with significant cost savings. When the worldwide lockdowns disappear the world of mediation will never be the same again and I anticipate further growth the use of remote mediation platforms. It has to be the way forward in a world driven by and reliant on technology and with a constant need to provide a more efficient, cost effective and mentally supportive alternative to litigation.

# *PART 1: Wonderland - Mediating in the times of COVID 19*

*Ruby Sandhu - 31st May 2020*

The London streets were eerily empty, a vagrant deer an outlier of his herd walked along the Strand; a fox watched me slyly as he stood by the door of a pub – I thought perhaps the pub should be aptly renamed - “The Leaning Fox”.

I arrived at 218 Strand, and despite the steep climb up the circular staircase, landed on the 4th floor with vigour. I took a deep breath in, as I marvelled the views of the Royal Courts of Justice, and its rich history of tradition and spectacle.

I turned around to face the task in hand. I knew which room I was to conduct the mediation as it said “OPEN ME” – in bold letters on the brass door.

This I did, and what an exhibition did greet me!

Well Reader, at this point you will be relieved to hear that I was indeed a witness to my dream. In fact, witnessing my rational self, - witnessing my irrational subconscious self! A rare state obtained by disciplined vegan yogis. And of course, from this privileged vantage point I am narrating thus.

In the long oblong room, the walls were covered, from the floor to the ceiling, with law books in neatly arranged shelves, providing the current cracking system with much legitimacy.

And then my gaze turned to the participants, as I



**Ruby Sandhu - Trustee & Treasurer, Compliance Officer & Course Tutor (UNI)**

was in a dream it was obvious that I was not going to be perturbed with what was presented.

To the left of the long rectangle table sat Ms. Pig (PARTICIPANT A) and Miss Carnism as OBSERVER, extolling the abolitionist stance to animal consumption and in return advocating the plant / vegan based diet for humankind and as a mandatory necessity further to COVID-19.

On the other side of the rectangular table was Mr. Carnivore, (PARTICIANT B) and Mrs. Petlove as OBSERVER, representing the current system and adamant at continuing the status quo and at all cost.

And as you may have gathered the question of travel, social distancing was not relevant here as it was after all a dream, something which Mr Cummings cannot be afforded the defence of.

I was retained as the mediator during this time of

COVID 19. The link of the COVID-19 to bats and pangolins and Chinese wet markets, the antibiotic resistant “superbugs”, and the prior swine flu, SARS, Ebola, MERS, Bird flu and VCJD had raised the uncomfortable question of how we could continue to eat meat when 60% of infectious disease in humans were transmitted from other animals. And the argument was that if we were to reduce pandemics and reduce the impact on the planet – we needed to go vegan.

Whereas the die-hard meat eaters provided reasons of culture and conformity, taste, health, economy and simply a multi-billion marketing industry, of wilful indoctrination.

The two opposing views had thus polarised the great nation, that it was finally agreed that recourse to mediation was a necessity.

I thought this would be unmanageable, - but then the Head of the Mediation practice Mr. JogAlot Dingle had asked of me to do the impossible, - “Ms Sandhu”, he said, “You do the impossible by first thinking the impossible”.

In response I said, rather downheartedly, - “There’s no use in trying...one can’t believe impossible things”. Taken straight from Alice in Wonderland. Well despite that, and as dreams have a funny way of allowing you to do the impossible – here I was mediating in the times of COVID-19, in this most peculiar of all scenarios. And Ms Eleanor Tack, Head of Marketing at SoM had suggested that I needed to “grab the bull by the horns” – and knowing my compassionate vegan disposition further added “that is, gently, I mean”.

Well, like any good mediator I greeted the participants, - introduced myself as a retired lawyer, however present today in my capacity as a facilitative mediator. I had disclosed that I was a practising ethical vegan

which both Participants were well aware of and had agreed irrespectively of, to retain me on this sensitive matter. This I considered an accolade indeed, the true test of a good mediator – neutral, unbiased and independent.

Each of the Participants and Observers agreed that they would like to be addressed in the names as per provided, the mediation agreement was signed and the Observers had signed the confidentiality agreement. Health and safety, and the Rules were explained and the latter agreed to.

Well "who would like to start", I said as I put myself entirely at the service of the mediation process and put aside my thoughts of what was normal, my own views, biases and obvious solution... TO BE CONTINUED.

## *M&DRS Reforms- What have we learned?*

*Dominic Collis - 19th May 2020*

The SEND reforms of 2014 brought about The Children and Families Act 2014 and the related Special educational needs and disability code of practice: 0-25 years (SENDCoP 2015). The reforms focussed on avoiding disagreements through a person-centred approach in decision making, the collaborative and cooperative approach of professionals and the inclusion in decision making at all stages of children, young people and their families.

Local Authorities were obligated with ensuring persons in disagreement had access to suitable information, advice and support (SENDIASS) and the opportunity to access a Mediation and Disagreement Resolution Service (M&DRS) before escalating an appeal at First Tier Tribunal.

After our own experience of carrying out 14% of all

M&DRS in the UK in 2019-2020, the review of recent data, our consultancy work with various Local Authorities and their EHC and SEND provisions, interviewing SEND mediators across the country and reviewing service user survey feedback, we have found that the perception, implementation and quality of M&DRS varies significantly across the UK.

- Local Authority (LA) practices regarding M&DRS varies widely which is significantly influenced by the LA approach to resolving disagreements, as opposed to the competency of the service provider.
- There is a wide variation with the levels of person-centred approach within the EHC process.
- M&DRS should be strictly timebound in achieving a resolution. Service users reported a negative impact on the social, emotional, and mental health of their children and young people the longer disagreement continued. There is a negative impact on an efficient education and a rise in stress and anxiety during the disagreement period.
- Mediation reduces the number of disagreements reaching a First Tier Tribunal hearing. Mediation reduces the stress, time, inconvenience and cost to parents, compared to the costs of an appeal to the First-tier Tribunal and reduces the costs incurred by the LA and Tribunal.
- SENDIASS varies in the depth, quality and availability of information, advice and support offered to parents, children and young people.
- Disagreement resolution services are not understood, and service users report that SENDIASS and LA's do not fully understand its role within the process.
- The 'single route of redress' pilot resolve issues presented and led to some improvements in cooperative working around SEND across education, health and social care.

Almost everyone we asked about the concept of the pilot thought it seemed like a sensible idea, given the development of EHC plans.

Ensuring M&DRS is used as a strategic early intervention tool and entering it with a solution focussed approach will ultimately be the deciding factor on the outcomes. For example:

- where 'statutory compliance' is held in higher regard than 'the right outcomes for children and young people' there will inevitably be disagreement
- where the LA representative is not sufficiently senior and duly authorised to make senior level decisions at M&DRS, there will not be resolution and closure for families and young people
- where confrontation supersedes consultation, conflict will remain and breed contempt and escalation of disagreement

From the above, SEND mediators would do well to remember their role is to impartiality and independently chair the M&DRS process for service users. Empower the participants with fact, knowledge, and the tools to be able to speak, be heard and negotiate on an equal basis. Do not try to do the impossible, sometimes people just will not agree.



**Dominic Collis - Trustee & SoM Faculty**