



In this edition of Collaborate	Page
<b>Planning Mediation</b> the Scottish Alliance for People and Places aims to put mediation at the centre of the Planning Bill.	1,2
<b>Using Mediation in PI Claims</b> Paul Kirkwood examines why using mediation can work in resolving personal injury claims.	3,4
<b>Reflections on Recent Mediations</b> Miriam Kennedy reflects on the learning points from recent mediations.	6,7
<b>Scottish Mediation News</b> News on courses, Simple Procedure and Board activity.	8,9
<b>Board Profile</b> Scott Docherty gives an insight into his involvement in Scottish Mediation.	10,11
<b>Workplace Employment Initiative group</b> Details of next meeting.	12

Adverts from:  
University of Strathclyde, Core Solutions, Scottish Community Mediation Centre, Mediation Partnership, A Place for Hope and Centre for Good Relations.

## Making Mediation Count in Planning

Last month Scottish Mediation joined those wanting the best for our planning system by signing up to be member of the Scottish Alliance for People and Places. The Alliance has been formed to bring together progressive ideas to feed in to the Scottish Government's Planning Bill announced as part of its programmed for government for 2017-18 A Nation with Ambition.

### So, what would a progressive planning system look like?

At the outset the system should seek to provide an opportunity for people to shape the places in which they live. In doing so it should encourage sustainable development and allow for strategic consideration of issues such as housing need and the infrastructure needed for society to operate effectively.

### So, what has mediation got to do with all of that?

To achieve the positive change required Scottish Mediation, and others, firmly believe that the use of mediation and the skills of mediation will be essential components in delivering successful outcome.

### So, how might it help?

If the planning system is to improve then one of the ways of doing this will be to involve communities in shaping the future when local development plans are agreed. The idea would be that community's involvement in shaping those discussions earlier would lead to a better understanding of what's wanted locally, what's possible and what will work.



# Making Mediation Count in Planning Cont'd

Here are some of the reasons that using mediation skills can help:

- **Flexibility:** Mediation can provide the opportunity for solutions to be developed that may not be possible in an adversarial system.
- **Efficiency:** The effective use of mediation, particularly as part of pre-consultation processes, has the potential to speed up the process.
- **Ownership:** The greater involvement of the community in the process gives the potential for wider community ownership of developments.
- **Maintaining Relationships:** The opportunity to retain or rebuild trust where stakeholders are likely to meet again.
- **Accessibility:** Mediation ensures that different voices are given the same air time and encouraged to contribute.
- **Shared Learning and Capacity Building:** By equipping people with mediation skills, communities can benefit in the longer term.
- **Creativity:** When people are guided in using mediating ways to resolve their differences it can frequently spur a third way from which all benefit.

It is my belief that applications to develop in this context are less likely to be as contested as the notion of "where has this come from?" will likely be reduced. But perhaps the main impact of mediation skills would be in changing the dynamic of the early stages of planning discussions. By focusing on the interests of all those involved, it may be possible to better engage communities in the decisions

that affect them. This can take place prior to getting into the quasi-legal process that tends to push people and organisations apart, as being for or against proposed developments. Ideally, therefore, mediation would be implemented as early in the process as possible, with the earliest stages of development planning being the ideal starting point.

To spread the skills of mediation I believe they need to be included as core skills for planners, be an essential part of delivering community empowerment and their spread into communities would have wider benefits for other discussions too.

And if disputes occur once the application has been submitted?

Whilst the mediation can surely play a part in the early stages of application there is also great potential in resolving disputes once they arise during the process.

That could work either by using examples such as New Zealand where specialist courts use mediation and often even by narrowing disputes make a difference to the planning process. In Scotland even when an issue gets to the Planning Reporter (and is not to be dealt with by ministers) mediation may be suitable.

Whilst other countries have been the pioneers in using mediation in planning it is not too late for Scotland to be an early adopter and innovator by using mediation to counteract power imbalances (real or perceived) in the Scottish Planning system. Taking the first steps now would be a step towards a more collaborative and inclusive future planning process with community empowerment and mediating ways at its heart.



THE SCOTTISH ALLIANCE FOR  
PEOPLE & PLACES



# Why Mediate in Personal Injury Cases

Paul Kirkwood

I practised as a litigation solicitor from 1993 until 2016, acting exclusively on behalf of seriously injured people; including amputees and those with severe brain injuries. Many were affected with cognitive psychological and psychiatric injury and had significant personality change. All of these cases were resolved through adversarial litigation.

I came to mediation recently, having just completed the LLM in Mediation and Conflict Resolution at Strathclyde University. Discovering mediation as a means of dispute resolution has been an eye-opener. It now seems to me that mediation can achieve a much more efficient, humane and cost-effective resolution to legal disputes than litigation potentially lasting for years.

Personal injury mediation practice is not widespread in Scotland, or the UK; but is widely practised in the USA. What does it offer that litigation doesn't? Can mediation complement litigation with solicitors remaining an essential part of the process, still providing expert legal advice that injured people need?



What litigation lacks, is that clients who are badly injured never get to tell their story; to 'get it off their chest' and move on. In mediation, they can tell that story—including the effect of the injuries on them—in the way that they want to; not in a stilted, abbreviated form in written

legal documents. Mediation can enable injured people to talk to those 'responsible' for their often life-changing injuries. It can help people gain closure. In some cases, given mediation's confidentiality, it could lead to an apology; often as important as compensation. Mediation gives injured people a voice.



Solicitors often don't know what mediation involves; and they worry about losing control—in case that damages client interest. The opposite is true—solicitors and counsel are present in mediation with their clients. They still fulfil their role of providing good legal advice. Parties decide who talks to who, when, and with whom present. Mediation gives injured people more control and involvement than they have in litigation, where their participation can be belated and tightly controlled. Their active involvement in mediation lessens the risk of relationship breakdown between solicitor and client.

Mediation is confidential; conversations, documents and evidence adduced in the room, stay in the room unless by mutual agreement. There are usually difficulties and weaknesses on both sides in a personal injury litigation—and experienced solicitors know these will eventually be exposed in court. It is better to air diffi-

# Why Mediate in Personal Injury Cases

Paul Kirkwood

culties in the safe environment of mediation than in open court. Medical experts often have significant differences of opinion—they can be present in mediation so their evidence can be exchanged in dialogue as each explains the basis of their view, which can then be challenged by the other. This informs both sides, enabling better legal advice to be formulated reducing financial risk for all. These discussions often take place in private caucus in small groups for better management.

Having a mediator present can reduce personality clashes among solicitors, injured parties and medical experts. Mediators help keep the conversation going, where without them it can often break down. Mediation puts power to settle, and control, in the hands of the people involved in the dispute; not in the hands of a third-party arbitrator or judge—whose decision can be 'final' and who can get it wrong. Whether or not to do a deal is up to parties, no one else.

In many high value cases, seriously injured people often wait two to three years for a hearing in court. They cannot move on and may suffer psychological damage as a result of the long wait. For commercial funders, solicitors and insurers, payment for work done can take years, causing cash flow problems. Everyone loses. In mediation, dialogue can happen quickly—within weeks not years, often leading to settlement. Everyone wins; mediators ensure that the right parties are there, dealing with the right issues, having the right information to hand and facing the right consequences of walking away without a deal. As Carrie Menkel-Meadow says

'negotiated justice may be better than legal justice in many, if not all, cases.'

Mediation is not a silver bullet, but it allows seriously injured people to be in control of the process and potentially achieve far earlier resolution.



## Place for Hope Training Programmes

Our churches and faith communities face change, encounter difference and can struggle to manage conflict. We know conflict can be both creative and destructive.

Place for Hope offers one-day workshops to support church and faith community leaders in responding to conflict.

Courses in our 2017/18 season include:

**Growing Through Conflict: Foundation**  
25/1/18 Kendal

**Growing through Conflict: Further Skills**

1/11/17 Perth | 1/2/18 Kendal

**Scripture, Spirituality and Conflict**

22/11/17 Glasgow | 8/3/18 Perth

**Bullying and Harassment**

5/12/17 Glasgow | 22/3/18 Perth

We also offer a range of support services for groups and individuals experiencing or preparing for change, challenge and conflict.

For more information about training and support

w: [www.placeforhope.org.uk](http://www.placeforhope.org.uk)

e: [info@placeforhope.org.uk](mailto:info@placeforhope.org.uk)

t: 07884 580 359





## LLM/MSc Mediation and Conflict Resolution

The ability to deal with conflict is a key skill in the modern workplace. The UK's leading postgraduate programme in Mediation and Conflict Resolution at Strathclyde law school provides a thorough, practical and exciting introduction to this developing area. Our alumni are working as freelance mediators and in law firms, public sector bodies, NGOs and mediation organisations.

Distinctive features include:

- A focus on interpersonal mediation skills **and** a thorough introduction to the academic dimension of the discipline
- **The Mediation Clinic**, providing opportunities to work with experienced mediators on real cases
- Accreditation by Scottish Mediation (as fulfilling the training requirement for the Scottish Mediation Register)
- Rigorous and multi-disciplinary, taught by UK and international experts
- A truly international mix. Last year's cohort included students from New Zealand, India, Ecuador, Seychelles, Canada, USA, Belgium, Ghana, Nigeria and the UK
- Suitable for managers, lawyers, mediators, HR, health professionals and anyone working with people

Participants will enhance their confidence in dealing with interpersonal and organisational conflict while developing their communication and problem-solving skills. As well as core classes on mediation theory and practice, students may choose electives in negotiation, employment mediation, mediation law and policy, arbitration as well as classes from Human Rights, Construction Law and International Economic Law.

Legal training is not a pre-requisite; the MSc/LLM option caters for students from a wide range of disciplines.

**Start Date:** September each year  
**Mode of Study:** Full-Time or Part-Time taught by a combination of evening lectures and intensive weekend sessions to maximise flexibility.



Application and further information can be obtained from:  
<http://www.strath.ac.uk/humanities/courses/law/courses/mediation/>

**Contact**  
 e: [hass-pgt-enquiries@strath.ac.uk](mailto:hass-pgt-enquiries@strath.ac.uk)  
 t: 0141 444 8600

# Learning Points from Recent Mediations

## Miriam Kennedy, Business and Mediation Manager, Core Solutions

As part of my continuous professional development, I sometimes have the opportunity to attend mediations in an assistant/observer role. The purpose of this is to gain first-hand experience of the mediation process, in which I am involved from the moment one of the parties contact Core up until the mediation day itself, making arrangements and working with the mediator, solicitors or parties in their preparations. I find real value in attending the mediation days – seeing the parties come together and working hard to find a mutually acceptable solution to a problem that has at least caused those involved a headache and often caused significant and sometimes acute levels of stress and sleepless nights.

Having attended a couple of mediations

in this past year, I have collected my thoughts and put pen to paper, mostly as a way of unpacking what the mediator and I saw, and how a successful outcome was eventually achieved in each instance. Here are some of my reflections:

The **power of the pause** is something we teach in our Mediation Skills training course and it was interesting to see it in practice and particularly the impact it had on the conversations. We are often inclined to nod, smile, and say “sure” or “yes” when listening to encourage the other side to continue speaking. In a mediation setting, however, these linguistic backchannels can have the effect of the individual wrapping up their train of thought quickly, as it seems the mediator understands (or perhaps agrees

## Core's Flagship Mediation Training Course: Using Mediation Skills as a Professional

*“A brilliant course.. and whether you become a mediator or not, it will change and enhance how you work and view the world.”*

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*“By far the best course I have ever attended. I wish I had done it years ago. John and his colleagues are excellent and passionate teachers. Two and a half years on, I still frequently return to the course materials and my notes.”*



### Spring School: Using Mediation Skills as a Professional\*

26-28 March 2018 (CPD: 24hrs+)

### Module 2: Building Mediator Competence

26-27 April 2018 (CPD: 16hrs+)

### Module 3: Assessment

24-25 May 2018 (CPD: 16hrs+)

Registration now open with early bird rates available

\*The Spring School is available as a free-standing three-day course. It is also a prerequisite, as Module 1, for attending modules 2 & 3.

For details of Core's mediation, facilitation and training services, contact Miriam Kennedy at 0131 524 8188 or [Miriam.Kennedy@core-solutions.com](mailto:Miriam.Kennedy@core-solutions.com) | [www.core-solutions.com](http://www.core-solutions.com)

## Learning Points from Recent Mediations

Miriam Kennedy, Business and Mediation Manager, Core Solutions

with) what they are saying. By remaining silent and having neutral body language, even for a moment or two after the individual has finished speaking, parties and advisers are then prompted to elaborate on their thought process, reflect and ruminate. This can sometimes result in solidifying their position on the matter or, more often than not, notice that they are proffering a weaker argument or one that is not necessarily helpful to the process and achieving the desired outcome.

After listening to what the parties have to say, perhaps engaging a pause and a moment to reflect and absorb what has been said, I have noticed the role of what we call “**daft laddie/lassie**” questions in the mediation process. These are questions that really only a mediator can ask, as someone who has not been involved in the dispute from the outset and is coming in now as an independent and objective participant. Much can be achieved by asking these questions as they serve as subtle reality-testers in joint sessions or private meetings.

Throughout the day the mediator is largely in **control of the process** – determining who meets with whom and when and establishing the ground rules. Naturally, relinquishing control can discomfit some lawyers. In one mediation that I observed, each side had an expert report prepared regarding the construction of a property where there had been some admittedly long and unforeseen delays.

It was agreed that both **experts** should attend the mediation day, as meetings between experts can be essential to the process, but there were some strong views on each side about how the experts should meet. One party felt that the solicitor on the other side wanted to be present in the meeting in order to cross-examine their expert. On the other hand, that same lawyer felt that sometimes the experts can meet in private for several hours with no principals/decision-makers

or solicitors in attendance, and ultimately they each go back to their private rooms with neither position changed nor notable progress made. The mediator proposed a two-phased approach where the experts first agreed an agenda, would then meet privately (with the mediator present), then bring the solicitors into the room for the experts to summarise and give the solicitors the opportunity to ask questions.



Even though the reports received prior to the mediation day were ostensibly miles apart, the experts were able to use their initial time together to narrow down and identify the points where they fundamentally disagreed. When the solicitors were invited back into the room, the mediator asked the experts to step into each other's shoes for the purpose of the joint meeting – each was to explain where their opposite number was coming from and why they had written what they did in their report. This exercise was extremely helpful, resulting in an amicable joint meeting and serving to focus minds for subsequent negotiations.

It is only as I write this that I can truly appreciate how many of the principles that we teach in our Mediation Skills Training Courses are put into practice in each and every mediation, and with such success. It is fascinating to observe this, and to gain a more complete understanding of the mediation process that I manage in my role at Core.



## Scottish Mediation News

### Mediate 2017

Over 70 people attended Mediate 2017 and enjoyed a varied selection of keynotes and workshops and the opportunity to catch up with colleagues.

Plans are already underway for next year's conference.

### Writing for Collaborate

Collaborate welcomes articles from all those interested in mediation in Scotland.

If you would like to submit an article for the next issue then please email [admin@scottishmediation.org.uk](mailto:admin@scottishmediation.org.uk)

### Homelessness and Mediation

Cyrenians' Scottish Centre for Conflict Resolution (SCCR) and Scottish Mediation are hosting a FREE seminar which will focus on the sharing of good practice from homelessness mediation and shine a light on the great work being done across Scotland to reduce and prevent homelessness using mediation and the skills of mediation.

The event is taking place on Tuesday 28th November in Edinburgh and will run from 9am-12noon.

To book a place and for further details click [here](#).

## Restorative Skills Training

15, 16, 22, 23 + 29 January 2018.

Glasgow



Scottish  
Community  
Mediation  
Centre

This SCQF Credit-Rated course provides a safe and secure environment to learn the practical skills that are needed to become a trained restorative practitioner. You'll learn the main different approaches to dealing with harm and offending, the ethics informing restorative practice and the role of the practitioner in different stages of the restorative process.

### Key features of the course

- Applies the theory of restorative practice to real life scenarios
- Helps you to develop your ability to autonomously manage the restorative meeting
- Explores the legal context in which restorative practices takes place

For more information or to book a place please contact [infoscmc@sacro.org.uk](mailto:infoscmc@sacro.org.uk)



## Scottish Mediation News

### Welcome to Scottish Mediation

Scottish Mediation are delighted to welcome Margaret Smillie, Atinuke Kudaisi and Katie Lewis new members.

Whether you are an organisation, a practitioner of mediation or someone interested in finding out more we have a range of memberships available which can be viewed [here](#).

### Scottish Mediation Annual General Meeting

The Scottish Mediation AGM took place on Monday 16th October 2017.

Joining the Board are Julia Frost, Craig Cathcart, Fiona Cameron and Anne Inglis.

### Workplace Mediation Course

This practical two day course (13 hours of CPD) introduces mediators experienced in other fields to the problem of workplace disagreement and conflict. Participants will learn about the causes of conflicts to watch for, how to adapt their mediation styles, the use of written communication and other techniques over two enjoyable, interactive days with opportunities to practice their newfound skills.

The course will run on 11/12th December 2017 and be presented by Carol Hope and Jeremy Scuse. If you are interested in attending please click [here](#).

**Are you an experienced mediator or facilitator looking to diversify your skills?  
Do you want to take a business unusual approach to mediation?**



At Centre for Good Relations we are keen to broaden the awareness and understanding of civic mediation as an approach for responding to the root causes of societal conflict. We are looking to build a network of practitioners that can deliver civic mediation across the UK and beyond. If this potential opportunity interests you, join our four-day training course in February 2018.

**Civic Mediation – A Methodology for Conflict Transformation. Theory and Practice.**

**When?** Monday 5<sup>th</sup> February – Thursday 8<sup>th</sup> February 2018.

**Where?** The Bay Hotel, Burntisland Road, Kinghorn, Fife, KY3 9YE.

Click on the link for further information: <http://centreforgoodrelations.com/courses.php>

To register your interest please contact Abdul Rahim at Centre for Good Relations by email: [abdul@centreforgoodrelations.com](mailto:abdul@centreforgoodrelations.com) or Tel: 07960 683328.

## Board Profile - Scott Docherty

### What is your day job?

I am a mediator and partner at McArthur Stanton, Solicitors, Dumbarton and Helensburgh. Beyond that I am the founder of Mediation In Your Pocket, a project of innovation in conflict engagement that is being developed through 2017. Amongst other things I also provide online mediation training and am a convenor of CALM Scotland, the Scots organisation of family lawyer mediators.

### What motivates you to get up on a Monday morning?

Aside from an unhealthy dose of coffee, helping people from all walks of life take ownership of their conflict. The aim that drives me is to help bring about significant change in how we handle conflict, from the bottom up. This involves not only helping those in conflict engage with it effectively, but also spreading awareness of the mechanisms available to help them do so, and helping move forward discussions at all levels up to government about revolutionising our approach in conflict from early years onwards.

### How long have you been a Trustee, and why did you become involved?

I joined the board in 2016, having been aware of SMN's vital place in Scotland's developing conversation about conflict. As an umbrella organisation, it is well placed to provide a powerful national voice to those in conflict, to encourage

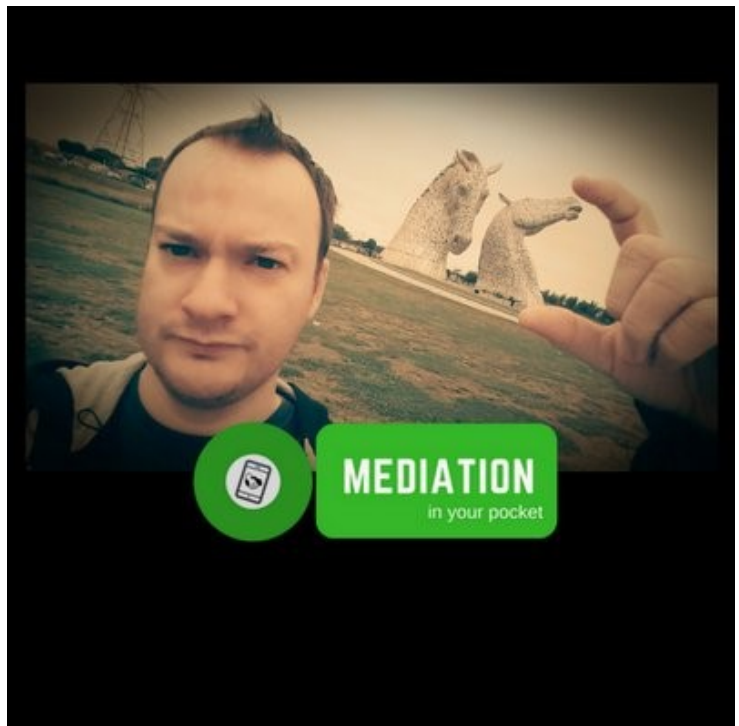
the state to listen and act more constructively in response, to help design less adversarial models of resolution, support and engagement around the needs of those in conflict rather than within a 'one size fits all' solution. Idealistic it may sound, but look at other jurisdictions and you will see that with a little drive and collaboration, actually it's reachable.

### Did you have any prior knowledge of or involvement with the Network before?

Yes, initially through its former chair Ewan Malcolm. However, check the Minutes of a whole swathe of meetings in Scotland about conflict engagement and you might conclude that SMN definitely gets around!

### What have been the highlights of your involvement with the Network?

Personally, getting to know my fellow board members. Professionally, being involved in the development of peer mediation in Scotland's schools, and in numerous discussions about strategy, awareness, civil court rule changes, mediation pilots, and the creation of resolution centres around the country.



## Board Profile - Scott Docherty

### What do you see as the main issues that Board has to address at present?

A change of culture, which has been ingrained over generations in pulling those in conflict out of the river rather than moving up stream to find out why they fell in. Historically, and this is my opinion and not necessarily SMN's, our government has funded a civil and administrative justice system that, intended or not, fails to respect and support those in conflict. From my discussions at that level, this appears to be recognised, but there is so much invested in the present system, so little priority given, that it feels able to tweak only the edges of this under-resourced and over-burdened system rather than to design something completely new, something that could help those in conflict, from school age and beyond, understand what's going on, understand how to get the support and guidance they need to take ownership of their issues rather than feel constrained to cede responsibility of resolution to others. The challenge, then, is to persuade the government to be brave enough to shift its funding priorities. If the government's strategic objectives really are to help us be wealthier, fairer, more healthy, safer, stronger, and greener, then conflict sits right at the heart of all that. Help us engage with it more constructively, and just watch what will happen...

### If you could change only one thing for mediators, what would it be?

To make their door easier to find, easier to open. OK, that's two things, but hopefully you get the point!

### What keeps you busy outside of work?

Family, friends, football, and no doubt more things that begin with "f".



## THE MEDIATION PARTNERSHIP SMR Accredited Mediator Training



First Course in Scotland to be accredited by the Scottish Mediation Register

**Dates: Weds 21<sup>st</sup>, Thurs 22<sup>nd</sup> Feb, Tues 6<sup>th</sup>, Weds 7<sup>th</sup> & Thurs 8<sup>th</sup> March 2018  
(includes assessment)**

This intensive five-day course is suitable for mediators, lawyers, managers, HR personnel and anyone with an interest in gaining or enhancing mediation skills. It will provide delegates with a clear theoretical and practical training course, in line with the Scottish Mediation (SM) *Guidance on Mediator Competency*.

***"Best training event I have ever been to. Excellent guidance. Great fun."*** Delegate from the University of Aberdeen

***"Previous training felt like learning the highway code and having a 'go' in a simulator, whereas with Linda and Aileen it was like getting to drive the car with two very able and encouraging instructors on board to make it a safe and enjoyable experience."*** Lili Hunter, Lili Hunter Consulting Ltd

Discounts available for self-funders and public/voluntary sector.

To book a place, or find out more information, contact Aileen Riddell on 07950 395276 or e-mail [enquiries@mediationpartnership.co.uk](mailto:enquiries@mediationpartnership.co.uk) [www.mediationpartnership.co.uk](http://www.mediationpartnership.co.uk)



# Workplace Employment Initiative Group

November 2017

Dear Scottish Mediation colleague

Our next meeting will be on Monday 15th January at the Anderson Scottish Mediation Office, 18 York Place, Edinburgh, EH1 3EP Our main meeting will start at 2pm with a CPD extra session starting at 12.45pm.

## **Marion Brown**

### **Mediating with Family Businesses**

Marion will cover an area of great importance to the Scottish economy as many of the businesses in Scotland are run by families and employ many people. Marion will explore the types of dispute that arise and what approaches are required when mediating with family businesses.

**The optional extra CPD session** at 12.45: to be confirmed but likely to focus on a recent mediation case with an opportunity to learn from how it went, how it could have been improved and the lessons to be learned.

All meetings are open to Scottish Mediation members and provide an opportunity for mediators involved and/or interested in workplace mediation to come together to network and share experiences.

Please email [admin@scottishmediation.org.uk](mailto:admin@scottishmediation.org.uk) if you are able to attend.

Looking forward to meeting up,

Slainte

Linn

Linn Phipps, Chair, SMN WEIG, 07917 564440