



# Y-Mediate

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### Royal Mail, Gordon Brown and Mediation

Oh dear, why have we got into such a pickle with this postal dispute? The issues revolve around pay, conditions and modernisation. One would have thought that with the collective wealth of legal and dispute resolution knowledge that exists within our shores, we would have been able to avoid this situation arising. Get round a table, talk and hammer out a deal. It sounds so easy. Even Gordon Brown suggested that the parties should 'negotiate and mediate'.

ADR Group intervened and wrote to the Royal Mail Board suggesting a private alternative to ACAS. No response was received despite a number of follow up calls. Perhaps they were inundated with offers of 'magical' solutions?

Both sides have to accept responsibility for the escalation of this dispute. Both sides set

various pre-conditions needed before dialogue would take place. These appear to have been the main obstacles to getting round the table in the first instance. Were they unrealistic?

In the grand scheme of things it doesn't matter. The reality of the situation is simple: enormous damage is and has been done to the reputation of the organisation and the livelihood of its employees. There is also the wider damage that is being wrecked on the huge range of businesses reliant on an effective postal service. Some have taken steps to ameliorate the damage, others are simply not able to.

As mediators we all know how effective the process is if people will simply give it a chance. We know it works. The evidence is indisputable. It is a great loss for Royal Mail, the Unions, the employees, the millions of customers and the economy. Perhaps a 'sudden outbreak of



common sense' will prevail and Crozier and Hayes will reach agreement.

Moving on, in this edition of YMediate we look at why mediation is not being accepted more in organisational disputes, which is highly relevant for Royal Mail. We also look at Landlord and Tenant disputes. ADR Group's international work is gaining pace and we share some of the experiences in this edition. Most importantly we are getting ready for the Annual Mediators' Conference due to take place in Oxford on 9th December. Please register to attend, come and learn and network with friends and colleagues.

We will invite Royal Mail to come to our conference to share their views as to why mediation didn't get used. Anyone prepared to take a wager on whether they will attend?

**Mike Lind**

### David Shapiro

October witnessed the sad passing away of one of ADR Group's greatest mediators and the undisputed global mediation heavyweight, David Shapiro. He passed away on 2nd October following a short illness. He was 81 years of age and still hard at work. David had a glowing career as a courageous and highly intelligent lawyer with a fearsome reputation. He built on his reputation as a thought leader by taking mediation by the horns and pushing it firmly into the American and British legal framework. He advised on the CPR reforms and was the man who was able to influence the leading UK judicial minds about the value of the mediation process in the context of the English justice system. His energy, vision and sparkling sense of humour will be sadly missed by all who knew him.



# Mediator Marketing & Development

This edition of Ymediate has two feature articles which can be viewed in full on our website.

## **Workplace Feature by Eve Pienaar, RICS**

This first article entitled 'Overcoming Resistance to Workplace Mediation' looks at how practitioners expected the floodgates to open in relation to workplace mediation following implementation of the ACAS Code and Guidance. Click [here](#) to read the full article.

## **Landlord and Tenant Feature by Jonathan Arkush, II Stone Buildings**

This second article entitles 'Landlord & Tenant Disputes - Is There More Scope for ADR Than You Thought' looks at the main areas of conflict between Landlord and Tenant that are amenable to ADR and looks at techniques for a successful mediation. Click [here](#) to read the full article.

### **Mediation Practice Development**

One of the biggest challenges facing mediators is how to market their newly acquired skills. We all know how tough this is. ADR Group continuously market our mediators, however their appointment ultimately rests with the parties.

We want to work with our mediators to help them better promote their own services. Therefore, on 11th November, we are holding an informal mediation practice development session facilitated by two experienced individual mediators.

For further details please click [here](#)

## **Getting Inside Business**

During September ADR Group hosted a business Round Table meeting through a leading business magazine, The Insider. Aimed at raising the profile of mediation to the 3000 plus business readership, a number of ADR Group mediators shared the platform with business executives to discuss the role and function of mediation as a tool to assist organisations emerging from the recession. The purpose of the event was to reach out to UK businesses about the benefit of mediation and give them the confidence to engage in mediation with their lawyers. Working with businesses and lawyers, we hope to increase the take up of mediation referrals. Each small step taken will get us further down the road to a more integrated mediation culture.

The panel comprised: Phil Smith, Managing Director of GWE Business West, Paul Spraven, Partner at Tuffin Ferraby Taylor, David Bale, Former Deputy General Counsel at Rolls-Royce, Sue Prince, Law Lecturer at the University of Exeter, Geraldine Gee, Monitoring Officer at the Avon Fire Authority, Paul Nedas, Principal at WealthManagementForce, Alex Bevan and Guy Hollebon, both Directors of Bevans Solicitors, Adrian Wheale of Wheale Thomas Hodgins and Mike Lind, MD of ADR Group.

During 2010 ADR Group will continue to work with Business West and other regional business networks to promote ADR Group and Mediation directly into the heart of business decision makers within SME's.

Click [here](#) to read the full article.

## Mediation Advocacy Skills Training Day

ADR Group recently completed the second in a series of practical interactive skills workshops with moderated role-play exercises and a discussion forum which took place in Bristol on 21st October 2009. Andrew Goodman QC, Barrister and Mediator from the SCMA spoke about preparing for negotiation in mediation. Mike Lind, MD of ADR Group spoke about the impact of the mediator on the negotiating process and John Burges concluded with the drivers for settlement. Following the training day there was an evening interactive session with drinks and canapés. ADR Group will continue working closely with the SCMA during 2010 with a series of programmes included in the ADR Net Corporate Membership package.

## ADR Group 20th Anniversary Celebrations

ADR Group continued to travel round the country in celebration of its 20 year anniversary by hosting the London economic road-show talk on the 24th of September. Presented in association with the CBI and the London Development Agency, the event was attended by over 80 mediators and business representatives including the CEO of Harvey Nichols, Joseph Wan. The purpose of the event was to raise the profile of mediation as a process to assist businesses to manage conflict more effectively. The event was summed up by one attendee who said: "fantastic speakers, fantastic venue and a great idea to round it off with wine tasting". For further information about the talk and to view photographs of the event, please click [here](#).

## Commercial to Family Conversion Training Course

ADR Group now offers an innovative Civil and Commercial to Family Mediator Conversion Course enabling mediators to become dual qualified in only four days with Henry Brown, one of the best trainers in the business. Hybrid Mediators do not simply bring commercial acumen to the resolution of family disputes but also offer objectivity and sensitivity to overcome the emotional dynamic often evident in these cases. They are highly skilled, dual qualified mediators who understand the commercial reality of complex family finances and family business disputes. With over 40 years of combined commercial and family mediation training and practice, ADR Group is uniquely placed to draw on the best of both. To view the course outline, please click [here](#).



## ADR Group Annual Conference

This year's annual ADR Conference will again take place at the Saïd Business School in Oxford on Wednesday 9th December 2009.

One of our keynote speakers will be Duncan Jarrett OBE, who has recently retired as the Metropolitan Police's former Commander and Senior Hostage Negotiator. Duncan was Director of Scotland Yard National Hostage Negotiator Training and he has personally negotiated British hostage releases in China, Chechnya, Yemen, Peru, Iraq and Afghanistan, leading the 7 National International Security Advisory Group to the Athens 2004 Olympic Games and heading up the Metropolitan Police involvement in the successful bid for London to host the 2012 Olympic Games. Duncan will discuss his considerable experience in mediation/negotiation of high pressure situations and will talk in depth about his personal negotiation experiences and dispute resolution techniques he adopts. He will round it off by outlining the lessons he has learned from the hostage situations he has been involved in.

There will be no formal dinner at the Bodleian Library however after the conference we will be hosting a free champagne reception with canapés and an opportunity to mingle and network.

To secure your place at this event, please contact [vicki.irwin@adrgroup.co.uk](mailto:vicki.irwin@adrgroup.co.uk)



# ADR Group Activity Updates

## University Mediation Initiative

ADR Group has always sought to nurture the next generation of leading decision makers and dispute resolvers. Our latest initiative is focused on university students registered on the University of the West of England's Bar Vocational Course and Legal Practice Certificate Course. Unlike other universities who offer modules or options in ADR or negotiation, we have developed with UWE a full mediation programme delivered as a core component of the above courses. The programme is not delivered by university academic staff but has been contracted out to ADR Group's specialist training faculty all of whom are qualified and experienced mediators. During 2009 ADR Group ran a pilot for the BVC students and full courses are planned for 2010.

## CMS Consultation 2009

The Civil Mediation Council continues to foster the growth of mediation in the UK and to act as a voice for the civil mediation community in its dealings with government and the public. The CMC has recently run an online Consultation which sought to canvass the views not only of mediators and mediation providers but also of clients, lawyers, judges and as many other people who are involved in the world of mediation as possible. ADR Group and a number of our individual mediators responded to the consultation and the results of the survey will be announced in the near future.

## Workplace Mediation First Anniversary

ADR Group recently celebrated the first anniversary of the launch of our specialist workplace mediation division. The first few months were slow, largely due to organisations struggling with the recession, however we are now handling an increasing number of assignments from clients including national charities, leading hotel chains, emergency services and national television broadcasters. In the same way that our commercial mediation panel is held in the highest regard for professionalism and integrity, we are building the same high standard of excellence through our workplace mediation panel. One of our specialist panel mediators, Eve Pienaar, Legal Director and HR Mediator with the RICS has written an excellent article on 'Overcoming Resistance to Workplace Mediation'. Perhaps the folk at Royal Mail will see some value in Eve's words of wisdom.

## Website

Six months ago, as part of ADR Group's programme of ongoing positive change and development in mediation, we launched our newly advanced website. The aim of the new website was two-fold, firstly to simplify the use for visitors and members alike and secondly it was used as a platform to openly and actively market and promote all our mediators to as wide an audience as possible. We are also investing significantly in Search Engine Optimisation (SEO) to improve our Google rankings on a number of key words. The feedback we have received since the launch has been extremely good and we have seen a slow but steady rise in traffic to the site. This month our statistics report a 30% increase in traffic to the site.

## Use of Mediation in Judicial Review Cases

ADR Group recently participated in a survey with Nabarro LLP and 39 Essex Street on the effective use of mediation by Local Authorities in judicial review proceedings. Unsurprisingly the results show that mediation does not get used a great deal in JR proceedings, but a number of interesting observations arose. The results of the survey will be presented on Thursday 19th November 2009 at The Spy Room, 10-11 South Square, Grays Inn, London WC1R 5ET from 6.00pm onwards. The Honourable Mr Justice Silber will launch the Report and he will be followed by speakers from Nabarro LLP, 39 Essex Street and ADR Group. To reserve your place, please view [our website](#).

## Recognition of Achievement

It is with great honour that one of ADR Group's mediators and trainers, Henry Brown, has received a Recognition of Achievement Award by the Danish Mediation Institute. Henry has been instrumental in creating a mediation culture in the region and has trained numerous lawyers and judges over the years. Henry currently runs the ADR Group [Commercial Mediator to Family Mediator Conversion Programme](#) which is part of the ADR Group Family Business Hybrid Mediation service. For more information about this programme or the business opportunities it creates, please contact our head of training at ADR Group [tina.kaulbach@adrgroup.co.uk](mailto:tina.kaulbach@adrgroup.co.uk)



# International Report

**In addition to the development work currently undertaken in the UK to secure more mediation referrals, we continue to develop the group's international profile.**

ADR Group has continued to stamp its presence on the international landscape with activities undertaken in seven countries in the last few months. Our Irish programmes led by Paul Gale, ADR Group's Senior Training Consultant, in conjunction with Friary Law in Dublin, have continued with three courses over the spring and summer.



Duncan spoke about his front line experience of negotiating in extreme circumstances drawing parallels to the processes involved in conventional business mediations. Two Swiss mediators Jeremy Lack and Birgit Sambeth Glasner contributed on the subject of the latest in neuro-biology research and negotiation.

In partnership with the Commonwealth Telecommunications Organisation (CTO) we delivered negotiation and mediation skills training to business leaders in the telecoms sector of Southern Africa. The week long programme was delivered in Mauritius by Dr John Fletcher, ADR Group's Projects Director, and a follow up programme has been scheduled to take place in February in London. In July, ADR Group was contracted to provide mediation awareness and advocacy training to Court of Appeal and High Court judges and lawyers in Barbados. This programme was funded by the Inter American Development Bank in a project managed by ADR Group's Italian partners, JAMS International ADR Centre.



In addition, ADR Group had a corporate stand which was visited by most of the delegates over the week long conference.



More recently Mike Lind was invited to Zagreb in Croatia to represent ADR Group at a Business Mediation Round Table meeting. ADR Group is a consortium partner of the EU funded Phare programme entitled 'Enhancement of Mediation as an Alternative to Court Based Dispute Settlement' which concludes on 30th November 2009. Project reports are available upon request through the ADR Group office.



In September, ADR Group delivered two sessions at the International Bar Association Conference held in Madrid in October which was attended by 4,600 lawyers from around the world. The first session was led by Jane Player of Bird and Bird and Jonathan Lux of Ince and Co and debated whether there is a trend nationally and internationally for users of mediation services to appointment specialist or generalist mediators. The second session was led by Mike Lind and involved ADR Group's invited guest Duncan Jarrett OBE, former senior international hostage negotiator of the Metropolitan Police.



Finally, ADR Group completed the delivery of their mediation development programme with two firsts. We presented the course in Sao Paulo, Brazil in early October to 18 lawyers from South America. The following week we delivered our programme for the first time in Johannesburg, South Africa. ADR Group's South African initiative is in partnership with Stellenbosch Business School at Stellenbosch University and the Africa Centre for Dispute Settlement (of which ADR Group is a founding partner).



# Member Profile - Mark Hacking

## What was your first job and how much did you earn?

I played the cello in a concert in my local cathedral. I was in my early teens and was really pleased to be asked to play with my teachers. The fee was a princely £2 - which shows how long ago it was!

My first regular job was as a choral scholar (singer) in the choir of Lincoln Cathedral. It didn't pay much (about £1,500 I seem to remember) but it helped keep body and soul together whilst I did my solicitors exams.

## What was your route to your present career?

The realisation that being a jobbing freelance musician, though immense fun, was not going to keep me in the style I would like to become accustomed.

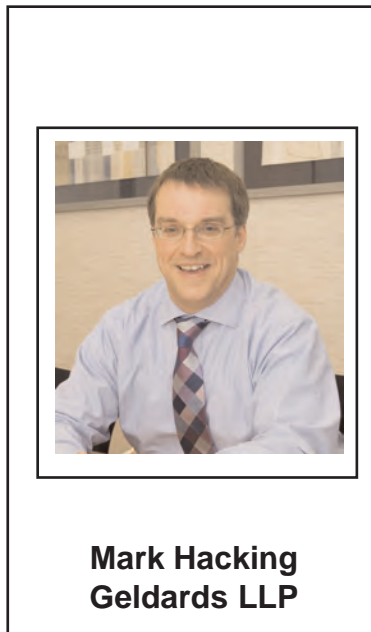
**What was the last book you read?**  
 'Revelation' by C J Sansom, set in the last years of the reign of Henry VIII - a reminder of my history degree.

**What football team do you support?**  
 Derby County - I've remained loyal to my home town team, and it really annoys my partners in my office in Nottingham who support Nottingham Forest. Following the fortunes of the Rams has taught me the true meaning of the saying "learn to live with disappointment".

**What actor would play you in a movie about your life?**  
 I don't know of anyone ugly enough who can play the cello.

**If you could be a superhero, what power would you have?**  
 Being able to read people's thoughts - I might learn things I'd rather not know, but it would mean I could get through mediations more quickly!

**What interesting hobbies do you have?**  
 As well as music (I still enjoy the concert stage) I play tennis and am a frustrated amateur calligrapher. I've always enjoyed messing around with pens and inks.



## What was your most satisfying mediation?

No one single mediation stands out, but those involving personal and family issues as well as commercial ones are perhaps the most satisfying. I have mediated quite a few probate and property disputes which involved more than just money, and some where whole families were at war. All too often, by the time they get to mediation, the parties are on a runaway train to disaster, with the prospect of the thing they are fighting over being lost to pay the legal fees and everyone being out of pocket at the end. To help them to focus on their wider needs, and to get off that runaway train before it is too late, is immensely satisfying.

## If you were given £1 million to donate anonymously, who would be your recipient?

I'd divide it between my local youth orchestra and cathedral choir. I enjoyed the benefit of playing in youth orchestras when I was at school, and now my daughter is playing and singing. The opportunities are terrific but funding is always tight.

## How do you approach and handle very acrimonious parties in a mediation?

I have found that really acrimonious parties are often not only firmly entrenched in their positions, but also on a psychological level they tend to attribute all manner of ills and wickedness to their opponents. I use the private caucus sessions to encourage them to let their guard down with me. I try to get them to recognise the risks and weaknesses of their case, and to acknowledge that their opponent has a valid point of view and has to be taken seriously. If all that fails and they are intent on litigating to the bitter end, I just thank them on behalf of the legal profession for the fees they are going to pay out for the privilege.

## Describe your approach to mediation in three words?

Creative, practical, persistent.