

## The Mediation Clinic at Canterbury Christ Church University

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### Report & Evaluation

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The purpose of this report is to summarise the progress made with the setting up and development of a mediation clinic at Canterbury Christ Church University. The report will consider the project in three main stages; the initial research stage, the second stage dealing with the setting up of the clinic to include the link with the curriculum and finally service provision and a brief evaluation of the work undertaken by the clinic.

## Contents

### Abstract

1. Mediation in the UK
  - The Context of the Mediation Clinic
2. Funding
3. The Aim of the Clinic
4. Stage 1- Searching and Researching
  - Experiential Learning
  - Visit to Boston & New York
  - Visit to Northumbria University
  - Visit to Kent University
  - Visit to Simon Fraser University
  - Curriculum Development
5. Stage 2 - Setting Up
  - Operating Protocols
  - Board of Advisors The Mediator's Panel
  - Civil Mediation Council Membership
6. Stage 3 - Mediation Service Provision

### Conclusion

### Abstract

In January 2008, with the assistance of funding from the Higher Education Funding Council for England (HEFCE) and after nearly a year of preparatory research, the Christ Church Mediation Clinic was set up. This is a unique project in as much as it is the first such clinic to be based within a UK university. This report will reflect on the progress made with the project, the contemporary relevance of a mediation clinic, it will include a summary of the clinic's main aims, the research required to establish the right model of clinic and an explanation of how the curriculum has been developed using dispute resolution as a focus. The report will conclude with a summary of the service provision element of the clinic and a brief analysis of the work undertaken so far.

## 1. Mediation in the UK

Since Lord Woolf produced his report on civil justice in 1996, developments have taken place to suggest that the alternative dispute resolution processes are becoming more popular. *The Access to Justice Act 1999* places a clear emphasis on avoiding litigation wherever possible.<sup>1</sup> The Ministry of Justice is now actively promoting alternative dispute resolution, particularly mediation for civil disputes where appropriate. A broad approach to dispute resolution is therefore arguably a fundamental part of a UK lawyer's education and for any undergraduate for that matter. The funding received from HEFCE has enabled research to be undertaken to reinforce the view that the worthwhile nature of encouraging students of Law and Legal Studies to understand about all kinds of dispute resolution, not just litigation, is reflective of the times we live in and has more relevance now than ever before.

### 1.1. The Context of the Mediation Clinic

The mediation clinic sits within the Division of Law and Dispute Resolution (DLDR) of Canterbury Christ Church University (CCCU). The DLDR offers two innovative qualifying law degrees (a single honours degree – LL.B. – and a combined honours degree – BA/BSc in Legal Studies); both aim to combine the theory and practice of law by following a clinical legal education model (CLE) or in other words curriculum delivery which has an experiential element. As part of this aim, CCCU decided to set up the first University run mediation clinic in the UK in order to provide students with the opportunity to learn more experientially.

## 2. Funding

In December 2006 the Department of Law and Criminal Justice Studies made a successful bid for funding support from the HEFCE *Teaching Informed and Enriched by Research* Initiative (RIT). It was through this funding bid that the project was awarded the sum of £18,000 to enable the project team to set up a mediation clinic.

The research RIT objectives of CCCU are fourfold: firstly to ensure that all students receive a higher education that is informed by research and scholarship, secondly to enhance teaching and learning through engagement with pedagogic research in all disciplines, thirdly to enhance the employability of graduates through engagement in research-based activities and experiences and fourthly to enhance the research profile of academic departments. The establishment of a mediation clinic at CCCU sought to satisfy these four objectives.

## 3. The Aim of the Clinic

The aim of the CCCU Mediation Clinic is threefold. Firstly to provide mediation services to the local and wider community by offering a pro bono dispute resolution service facilitated by a third party mediator in a neutral setting, offering the same service to those parties already legally represented based on a

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<sup>1</sup> See <http://www.opsi.gov.uk/Acts/acts1999/ukpga>. The Civil Procedure Rules Practice Directions came into force on 26<sup>th</sup> April 1999 and The Access to Justice Act 1999 came into force on 1<sup>st</sup> April 2000. In his Forward to the Civil Procedure Rules, the Lord Chancellor, Lord Irvine, stated that "we must not forget...that we should see litigation as the last and not the first resort in an attempt to settle a dispute."

competitive charging structure. Secondly, to enhance teaching and learning across curricula within CCCU by making use of the work undertaken by the clinic, involving students in the running of the clinic, enabling students to observe negotiation and mediation and reinforcing the theory which underpins practice in these areas. Thirdly, to encourage research in order to inform pedagogy; this will be achieved through projects undertaken by members of academic staff connected with the clinic and by partnering external bodies to assist in projects of mutual interest. The research aim will enable the clinic to act as a forum for knowledge sharing.

#### **4. Stage 1: Searching and Researching**

##### **4.1. Experiential Learning**

Institutions of Higher Education play a vital role in providing students with adequate knowledge to enable them to transfer to employment, which is crucial to creating employability. Employers will expect graduates to have a sufficient level of knowledge and adequate skills to enable them to fulfil their employment positions effectively. All UK degree subject benchmark statements include statements about transferable skills acquisition. With this firmly in mind, it was important for project members to consider how the clinic can link in with the knowledge transfer agenda.

When developing the curriculum with an experiential emphasis in mind, it is important to consider the most suitable type of clinic given a whole range of criteria. There are varying types of clinical programmes ranging from placements, role play simulation to the 'live' clinical experience.<sup>2</sup> At the outset, it was envisaged that the ultimate pedagogical aim of the clinic would be to provide students with actual experience of 'real life mediation'.

Clinical legal education (CLE) particularly focuses on enabling students to understand how the law operates by becoming involved in the process. The overall purpose of the mediation clinic in this sense has two particular elements. Firstly, from a learning perspective it aims to provide students with a good understanding of mediation as a process, which can be used effectively to resolve a wide range of disputes. Secondly, from a deontological perspective, it is envisaged that the study of both the Theory of Dispute Resolution and the Practice of Dispute Resolution will encourage students to consider moral, ethical, economical or sociological questions that arise within contemporary society. By using mediation as an appropriate dispute resolution process, students will learn that problems can be solved without the intervention of the court process. Students will therefore not only learn how mediation works, but they will also be able to appreciate the ethical dimensions involved in a dispute and how mediation, as opposed to other more litigious mechanisms, can often lead to a more satisfying and durable solution.

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<sup>2</sup> Stark J, *Preliminary Reflections on Establishing a Mediation Clinic* (1996) 2 (2) *Clinical Law Review* 457

It was important therefore to learn from those institutions of higher education already delivering a curriculum with experiential components. Model clinics both in the UK and abroad have therefore been visited.

#### **4.2. Visit to Boston and New York**

CLE is well established in many universities in the United States; most law schools in the US which are accredited with the American Bar Association have CLE programmes. US models in the area of mediation were therefore more likely to be the most useful from a research perspective given the lack of clinical mediation programmes of study at undergraduate level in institutions of higher education in the UK.

Extensive literature review was conducted, together with online research in order to determine the nature of the pilot mediation clinic and to design the curriculum using the clinic as a focus. To enhance this, visits to 5 institutions in the United States over a five day period between 21<sup>st</sup> to 25<sup>th</sup> May 2007 took place, during which time both the Director of the Clinic, Ben Waters and the Director of the *DLDR*, Dr Leonardo Raznovich, met professors involved in mediation pedagogy, had tours of their institutions and entered into discussions with senior academic practitioners, some of whom are very well known in their fields of specialism. Each institution presented differing models from 'live clinic' to role play simulation and provided valuable research material.

Whilst in Boston a visit was made to Harvard Law School. In New York visits were made to Columbia Law School, Fordham University School of Law, Ben and Leo were entertained by members of the academic staff at the John Jay Institute of Criminal Justice and had the chance to engage in informal conversation with current students of the mediation clinic of this institution. They also met the Chair of the NYC Commission on Human Rights together with members of her department.

#### **4.3. Visit to Northumbria University**

In November 2007 Ben Waters was the guest of Dr Philip Plowden, Dean of the Law Faculty, Clinical Professor in Law and director of the law clinic at Northumbria University. This was a very useful visit in that it provided an insight into how an established law clinic operates and Ben had the opportunity to sit in on a 'firm' seminar linking in the clinical aspects of the work of students studying for the Bar Vocational Course (BVC) with legal theory. Those students studying for the BVC at Northumbria have the opportunity to actively work on a variety of interesting 'live' cases.

#### **4.4. Visit to University of Kent Law Clinic**

In September 2008, at the invitation of Professor John Fitzpatrick, Ben Waters and Dr Sharon Hanson visited the UKC Law Clinic in Canterbury. The clinic is nationally, if not internationally renowned, as a successful example of how clinical legal education can be integrated into the mainstream undergraduate Law curriculum, through students assisting qualified lawyers in providing advice

on a wide range of legal issues. Some helpful advice was received and the possibility of future symbiosis suggested.

#### **4.5. Visit to Simon Fraser University Vancouver**

In October 2007, Leo Raznovich and Dr Dominic Wood Deputy Director of the Department visited the Simon Fraser University Vancouver, with whom links had already been made, to explore and develop further links particularly in relation to the area of victim/offender mediation and restorative justice. Leo spent some time during the summer of 2008 doing research in the Yukon Territory of Northern Canada, where he met with First Nation People to learn about their ancient Dispute Resolution techniques and to receive training.

The visits to these various institutions broadly revealed that students undoubtedly benefited from the exposure to a practically based curriculum. Transferable skills are learnt through an experiential curriculum and this undoubtedly assists employability. It was resolved following these visits that the clinic model should combine simulation with an element of 'live' experience.

#### **4.7. Curriculum Development**

Ben and Leo have worked with level 2(HE) and level 3(HE) Legal Studies students who elected to take the Dispute Resolution module which ran for the first time as part of the Legal Studies BA Combined Honours degree during the academic year 2007/08. The level 2 and 3 modules were combined during that year and co-taught by Leo and Ben. During the current academic year (2008/09), the level 3 Practice of Dispute Resolution module has been offered for the first time with two students having successfully passed the module.

Clinical pathways have been built into the degrees in Legal Studies and Law. An agreement has been reached with the local community mediation service about conferment of a mediation qualification through an Open College Network (OCN) course for students enrolled on participating mediation modules. It is proposed that for the academic year 2009/10, the OCN component will form part of the Practice of Dispute Resolution module at level 3, and this element of the module will be taught by the manager of the local community mediation service, with assistance of academic members of staff. Students will have the opportunity to manage their own mediation case under supervision and act as assistant mediators. Students who successfully pass the module together with the OCN component, will not only contribute 20 credits towards their degree, but will also be awarded a certificate of community mediation.

Links with national organisations are being developed. The Centre for Effective Dispute Resolution (CEDR) have agreed in principle to provide an internship to the student with the highest marks on the Level 3 module and a free place on their Mediation Skills Training course for the student writing the best dissertation.

Links with international organisations have also been forthcoming. As part of the DLDR's commitment to Clinical legal education, an invitation has been received,

at the proposal of the Simon Fraser University, for CCCU to become part of the Globus network (formed by 6 European and 4 Canadian Universities). The network has recently applied for funding from the European Union and Canadian government, to conduct research and student/faculty exchange during the triennial 2009/2012 period. The network of Universities seeks to promote the development of international peace building capacity. In order to achieve this, institutions of Higher Education need to work together to organise existing curricula and to develop new curricula that will meet short-term and long-term capacity for peace building. Themes for the curricula will include conflict resolution and peacemaking, restorative justice, development, social justice and human rights. The exchange will involve each institution sending and receiving 2 students per year for 2 terms and 2 students per year for the planned summer schools. Faculty exchange is also planned.

The project team continues to be open to exploring the ways in which students from other degrees (such as business and management related courses, as well as psychology) can be involved in the opportunity to learn about the theory and practice of dispute resolution and particularly mediation and negotiation. During the Michaelmas and Lent terms of the academic year 2008/09, important conversations took place with Programme Directors of Psychology, Business, Politics and Early Childhood Studies. Each Programme Director expressed an interest in developing the curriculum within their own programmes in order to include negotiation and mediation modules in their offering to students on their degree programmes..

## 5. Stage 2: Setting Up

### 5.1 Operating Protocols

Operating protocols of the mediation services aspect of the clinic (including equality, ethics and confidentiality policies) have been established and are contained in the Mediation Clinic handbook, a copy of which is available with this report. As the clinic is not in the business of providing advice, insurance cover for the mediation work undertaken by the clinic was a very straightforward issue to deal with and the university's insurers were happy to consider the service provision activities of the clinic within the existing scope of the indemnity. A venue for the clinic was required and as from September 2008, the clinic has been based in St Martin's Priory in Prf04 and Prf06. The clinic also has a website, which provides useful information about the work of the Mediation Clinic together with documents which can be downloaded in pdf format.<sup>3</sup>

### 5.2. Accreditation

Both Ben and Leo attended a mediation skills training course with the Centre for Effective Dispute Resolution in December 2006. They both successfully passed the course and in December 2007 they both achieved accreditation with the ADR Group. They now have undertaken sufficient assistant mediator positions to

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<sup>3</sup> See the Mediation Clinic website at <http://www.canterbury.ac.uk/social-applied-sciences/crime-and-policing/MediationClinic.aspx>

become Lead Mediators, and Ben led three mediations during 2008 and Leo one so far in 2009.

### **5.3. Board of Advisors**

During the conceptual stage of the project, it was considered that the Mediation Clinic would benefit from a Board of Advisors. The innovation of the project along with the institutional importance that its implementation, development and eventual success carries for the law degrees, has therefore led to the constitution of a Board of Advisors (BoA). The role of the Advisory Board will be to provide support and advice where required for the clinic, with a focus on three areas: (1) To evaluate the work of the Clinic, (2) To help formulate a strategy for its development and (3) To serve as a 'sounding board' for community involvement. The membership of the advisory board has been chosen carefully to reflect local, national and international diversity and to represent members of the judiciary, legal profession, mediation provision/training and academia.

The following have been approached and have agreed to be on the Advisory Board; Lord Jonathan Mance, Lord of Appeal in the Ordinary, Andy Grossman, Director Mediation Services Centre for Effective Dispute Resolution, Carol Liebman, Clinical Professor of Law at Columbia University, New York, Ewan Brown, Partner Slaughter and May London, Simon Gurr, Partner HSA Law Canterbury, Liz Elliott Associate Professor, Simon Fraser University, Vancouver, Richard Grimes, Independent Consultant (legal education) and William Jackson District judge, Canterbury County Court. For more detailed biographies of the board members please refer to the Mediation Clinic Handbook.

Approaches may well be made to others once further thought has been given to the composition of the committee. The first meeting of the Advisory Board is due to take place in May 2009.

### **5.4 The Mediator's Panel**

In order to provide a comprehensive mediation service, a panel of mediators has been created. Each member of the panel has been accredited with a recognised mediation provider. The current panel members are; Ben Waters, Leo Raznovich, Simon Gurr, Don McCue, Michael Beckman QC, Cheryl Dolder, Sam Passow and Jill Thomas.

We will be looking to expand the panel during the latter part of 2009 and into 2010.

### **5.5. Civil Mediation Council Membership**

The clinic is a member of the CMC and Ben Waters is an individual mediator member. According to the CMC's constitution, the purpose of the Council is to represent the common interests of mediation providers and mediators in promoting mediation; to do so through the performance of the Council's objects; and, generally, by improving the understanding of the uses and

applications of mediation<sup>4</sup>. The CMC is currently operating an extended pilot scheme for provider accreditation. The Mediation Clinic's application for provider accreditation is currently being considered. It is hoped that Canterbury Christ Church Mediation Services will become a registered organisation provider, which will then allow an application to become a panel member of the National Mediation Helpline which may be a source of work from the local county court.

## 6. Stage 3: Mediation Service Provision

### 6.1. The Work of the Mediation Clinic

The first mediation was undertaken in January 2008. Since then 4 more mediations have been concluded. The results of which are contained in the tables below.

Positioning of the Mediation Clinic in the market place as far as work type is concerned has been important, particularly with the existence of the Canterbury & Districts Mediation Service (known as The Mediation Service) which is based in Whitstable. The Mediation Service covers the Canterbury City Council district for community and workplace mediation, and the East Kent regions for Victim Offender Mediation and Restorative Justice Conferencing in Schools.<sup>5</sup> The area of work which the Mediation Clinic has chosen to focus on is in relation to those cases where there is a legal dispute and where the parties may be legally represented.

The clinic has developed close links with the University of Kent's Law Clinic (KLC). Cases have been referred to the clinic by the KLC and it is hoped that the relationship will continue and grow in the future.

Table 1 - Cases Mediated

<b>Number of Cases</b>	<b>5</b>
Pro Bono	4
Referred Internally	4
Referred Externally	1
Resolved on Day	4
Resolved Later	1
Unsuccessful	0

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<sup>4</sup> See the Civil Mediation Council's website, which can be accessed at: <http://www.civilmediation.org/>

<sup>5</sup> <http://www.themediationservice.co.uk/4436.html>

Table 2 – Cases Mediated By Type

Case category	
Internal Faculty	1
Student/Institution	1
Building	1
Company commercial	1
Family/Cohabitation	1

## Conclusion

The initial research undertaken during the conceptual stage of the project has enabled the project team to set up a mediation clinic, within the envisaged timeframe, situated within the DLDR of the Department of Law & Criminal Justice Studies. The clinic has been established with the view of informing curriculum delivery, introducing a mediation service and engaging in research at a time when alternative dispute resolution is becoming ever more popular in the UK. Two undergraduate modules have been created at level 2 and level 3 HE to link into the work of the clinic; the level 3 module enables students to learn in a more experiential way through which they gain valuable transferable skills. Discussions are ongoing both within the University and externally at local national and international levels, with a view to continuing to develop the curriculum. Five mediations, led by members of the newly created panel of mediators, have been successfully completed and steps to retain an increased level of mediation work are in place.