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53-54 Doughty Street
London WC1N 2LS

T: +44(0)20 7404 1313
W: www.doughtystreet.co.uk
DX: 223 Chancery Lane

MEDIATION NOW: TOOLS FOR TRICKY TIMES

Wednesday 7 December 2022

HEATHER ROGERS KC

Welcome to our mediation launch event: Mediation Now - Tools for Tricky Times.

I'm Heather Rogers and I'm chairing the event this evening. I'm a barrister and mediator.

Thanks to those who've come into the room for coming out on a cold night at all and braving the traffic. We know that some people are held up, but they can just come in. I think that we've got to start.

You may be able to tell that we've also got a Zoom attendance tonight. So, there are people who are attending remotely. Thank you for coming as well. If you're in the room, of course you're getting a free Doughty Street pen, which you won't get online, and you've also got a flyer on your seat, which has got some upcoming Doughty Street events which you're very welcome to sign up to. If you're online, then you can see the details of the upcoming events on the Doughty Street website, so you are not so deprived.

Why did we decide to have this event? Well, it came out of conversations that we were having within chambers. Obviously, these are very tricky times on all sorts of fronts, and in the litigation context in particular there are lots of challenges. We were having a lot of discussions and it came about that we learned that a lot of people in our group were mediating, to a greater or lesser extent, and we came together to have conversations about mediation, sharing our experiences. We've done some in-house training, which has been very useful, and having the kind of debate that you can have. There are a lot of issues that we thought were of interest and some of those we're going to be talking about tonight.

We were looking for what are the barriers to mediation? I mean sometimes, when working as a litigator, do you think it's a very strange way of trying to resolve disputes? It can be very costly, very stressful and, of course, very expensive. Mediation as a way of resolving disputes seems to be so sensible by contrast. It's so constructive, in terms of focusing on the outcome, rather than on the problems - getting people out of situations, rather than locking them in.

So, we thought we wanted to share and roll out the debate. We have put together a video which is available on the website, just about us and our team. And this conversation is partly to introduce us and, as I say, to roll out the debate.

Thanks to those who participated in the poll that we ran online in the run-up to this event. It was quite interesting to see. We asked: Why do people avoid mediation? What are the biggest barriers to advising clients to mediate. And in reverse order, the top three answers were:

- In bronze medal position: proposing mediation looks weak.
- The silver medal was: costs of mediation. So slightly surprising, compared to other costs.
- But the gold medal winner was: that the parties are too entrenched. That's seen as one of the big barriers to mediation.

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So, what a people's experience is on the ground as a mediator, as a party, is the kind of thing we hope to take forwards.

The plan for this evening is we're going to have speakers - as you see, we've got quite a big panel at the five People. We are conscious this is going to be a bit of a taster, because people are on very strict time limits. And that is so that we can have Q&A at the end, because we do want to have a debate.

Please save questions until the end. If you are online, you can put questions into the chat. If you're here, you can either wait and have a mic at the end, or even write something on a piece of paper and hand it up (a bit old tech).

This is the order that we are going to be going in:

- Althea, who's on at the end, is going to speak first about encouraging clients to engage in mediation and the path to success *[paragraphs 1-29 below].*
- Then Sophy is going to speak about developing mediation in medical cases *[paragraphs 30-49 below]*.
- Amelia is going to talk about the proposals to make mediation mandatory and what that is going to mean *[paragraphs 50-69 below]*.
- Louisa is speaking about mediation in the workplace *[paragraphs 70-85 below]*.
- And then, with the smallest topic of all, Lawrence is going to speak about mediating as a tool to tackle the climate crisis with an ambitiously subtitled talk: "can environment environmental mediation save the planet?" *[paragraphs 86-117 below].*

So, there are lots of cross-topic areas and also specific areas that we are all going to cover.

There's one thing I should say at the beginning, rather than before it gets too late. It is that no fire drills are expected tonight. So, if we hear a fire bell, it will be real. We hope it won't happen, but our fire marshall is Rai - who is over there. If we hear a fire alarm, she will lead us out to the Fire Assembly Point and make sure that we are all safe, so we will need to make our way out of the building. But with that safety reminder I will hand over without further ado to Althea, who is going to talk about encouraging people to mediate.

[recording time code: 6:08]

ALTHEA BROWN

1. Good evening to you all and thank you so very much for coming. I'm going to click my first slide - there we are.

2. I don't think that very many of us would disagree with a sentiment that's expressed by Lord Philips of Worth Matravers *[see slide]*. And I suspect that many of us on this panel, and many of us in this room today, have come to mediation through litigation. Either directly or indirectly, we will have seen the financial and emotional harm caused when parties expend time, money, and energy in protracted litigation.

3. The reality, as we know, is that most outcomes achievable in litigation can be secured more economically through negotiation and agreement. And the scope to achieve beyond what is possible through litigation, merits a seminar topic on its own, in my view.

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4. The benefits and advantages are as broad and as wide as can be imagined in any context. And yet.

5. And yet, despite all of this, we know that perfectly sensible, rational, even hard-nosed and commercially astute individuals find themselves submerged and entrenched in what are often bitter resource-wasting disputes.

6. The answer lies in ourselves. In recognising or accepting the truth that the driver that conflict plays in all our lives - the drive to win - sometimes irrationally and at all costs. It is necessary to acknowledge the significance of conflict, and then we can begin to work with it.

7. So, a positive take on conflict: conflict can prove necessary in affecting meaningful and needed change. And there is a reference to Hegel, an eighteenth-century philosopher who talked about the cycle of thesis - which is the *status quo* – antithesis - which is a challenge to the status quo - and then synthesis, which is the reconciliation of those two - and resolution.

8. So let's have a look at psychology in mediation, because it's all about people. And what tools does mediation offer? The first step is to recognize that there are 4 psychological elements that drive conflict:

- our emotions;
- our self-esteem;
- our values; and
- our perceptions.

And it's these very human traits that frequently create barriers to negotiation and to mediation.

9. **Emotions**, first of all. All disputes have a common thread. One party is demanding something, and the other party is unwilling to give it. Almost invariably, the demand will include a commercial element to it and an emotional element. And similarly, the refusal to give in - the refusal to cooperate. And so, as which is the more powerful dynamic, you might agree with me that if every dispute was approached on the basis of a purely commercial view or basis, dispute would be resolved sooner and more easily. But quite often in those disputes there are allegations - there are allegations of fault, which is highly emotive and inevitably involves considerable injury to feelings. To allege a breach of an agreement or an act of negligence creates deep feelings of hurt. And when that hurt is denied or disputed, it can result in greater insult, irritation and upset.

10. So, the first principle with which the psychologically informed mediation participant must engage is that, when parties are in conflict, they struggle to think or behave rationally, because they are also being driven by their emotions. The added problem is that we will all struggle with recognising the impact and the influence on our decision-making of those underlying emotions. We are utterly convinced that our demands and/or our resistance to agreeing to demands being made of us is entirely logical. Whereas, quite often, the underlying demand is driven by anger, hurt, or a desire to punish.

11. That's why, as mediators, and lawyers advising clients, and indeed as parties to mediation, it is essential to understand the force and the influence that emotions exert that can overwhelm logic, rationale, or legalistic

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arguments. We have heard and had those conversations: 'I just can't get through; it doesn't matter how many times I explain it, it's just not being heard'. And the greater and more intense the emotion, the scarcer the logic.

12. There is an anatomical and neurological explanation as well. The amygdala. This is the part of the brain which governs our instinctive fight or flight responses. As eloquently phrased, the amygdala "prevents paralysis through analysis". So, in a fight or flight situation, what is demanded is an immediate and urgent response, rather than careful analytical reasoning.

13. It is this hijacking of the rational mind that so frequently occurs in the highly emotional state that you have in a bitter dispute, where there are allegations of fault, or harm, or neglect, that in turn creates an emotional barrier to settlement. It is difficult to think rationally when we're upset.

14. Another human trait to be reckoned with powerfully is that we all have **self-esteem**. We all harbour a need to think well of ourselves, and to be thought well of by others. The problem is that self-esteem is not static. It can go up as well as down. And consequently, we expend considerable time, effort and energy in maintaining and protecting our self-worth, and in seeking the approval of others. This is the dynamic that also plays out strongly in the mediation process.

15. There can be little more damaging to self-esteem than to be on the receiving end of allegations of fault, or negligence, or criminal or even dishonest conduct. And, again, hearing the denials when those allegations are made. And so, our accusations of failure - a failure to act in a way that all other reasonable people would - or accusations of failure to abide by an agreement may well be perceived as nothing short of betrayal. And this may no less keenly be felt when the allegation is made against a corporate body. So, for example, a board of trustees, a board of governors of a school.

16. In any of these scenarios, the need to secure a good outcome is also related to the sense of self-esteem. The conduct of parties may be governed by the desire for approval, to maintain self-esteem, to protect against manipulation, exploitation, or even humiliation. And this in turn leads to certain behaviours in the mediation room. So what we will have is parties casting themselves as the good guys and the opposition as the bad guys. Neither party willing to go to go first in making proposals, for fear of getting it wrong, or pitching too high, or pitching too low. Parties want to keep their cards close to their chest, for fear that disclosure will be used against them for manipulation or exploitation. Having the last word, the need to be seen as having won.

17. It is important to recognise and address these behaviours in a non-judgmental understanding and empathetic way. Seen as one element of a suite of emotional and psychological responses that influence our decision making.

18. Another important aspect of self-esteem is the need to be heard. Being heard translates into being valued, appreciated and understood. And many disputes are the result of parties feeling undervalued, ignored, misunderstood, or misrepresented. And so it is essential in mediation that space is made. Investing time in active listening demonstrates not only that one has been heard, understood, and that what has been said has been accepted and acknowledged - even if not agreed with. And that's important, too.

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19. It's for these reasons that active listening, reflecting back, paraphrasing and summarising our essential tools in mediation for the path to success.

20. Next, I want to talk about **values**. Our values are linked to our self-esteem. For when our values and, in particular, those we hold most dear, are challenged or abused, we find our self-esteem under attack, and we become angered and in conflict.

21. But we have different values and different value systems, and so must be alert to the fact that we may not always share the same values, or feel as strongly as others may feel where those values have been compromised. So, for example: being on time, or even always early, may be very important to one person, and very much less so to another. We must respect the fact that our values differ.

22. Of course, values can also become sedimented, rigid, resistant to rationalisation. Any transition, transgression (even minor), can be viewed very seriously, whilst on the other side of the dispute there is little appreciation of the strength of feeling involved - leading to minimising the feelings of the other.

23. And so what's the path - what's the tools that we have to deal with these situations? Well, the mediators' toolbox involves encouraging the parties to focus on the values which they share. It could have a beneficial impact upon parties holding entrenched positions. So, for example, representatives of a business engaged in the bitter disagreement, can agree that both have been committed to the business's success and survival, but disagree on how to achieve and why. Divorced parents agree that it is important to safeguard the emotional and financial well-being of their children, rather than focus on the sadness and betrayal that caused the relationship breakdown.

24. The trick is to focus on understanding what are the respective value systems that are feeding into the discussions around settlement - how sedimented, and whether there is room for change, or respectful agreement to differ whilst finding a way through, based on what values are shared.

25. Finally, **perception**. Misperceptions are assumptions we all make about the people we meet. Their appearance, their intellect, their behaviour, and their motivations. Invariably, these assumptions are incorrect, but when allowed to fester, become fixed as established facts.

26. Many disputes are founded on an assumption about the conduct or motivations of another. One party will assume that they know exactly why the other person did or said something, or why they conducted themselves in a particular manner. And, sadly, the more tenuous the relationship the less likely that one will give the other the benefit of the doubt. This in turn leads to a descent into conflict, harbouring grudges based on assumptions created historically and reinforced over time, maybe years. So why X wasn't invited to Y's wedding, and then not encouraged to apply for promotion. Or whether J really was the best person for the job, or, in fact, was the 'yes person' that invariably supported D's back.

27. Often the assumptions may be very far from the truth, but are no less deeply felt and believed. The key to this difficulty is for there to be a conversation where there can be an open discussion around how and why these conversations are held and, where there are misconceptions, seeking to dispel them.

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28. Be willing to have difficult conversations. Ultimately mediation is a profoundly human experience. It's always about people and the various humanising and yet challenging human traits that drive human interactions. The essential tool, the essential path to success, is to embrace the reality that we all come to the table with our biases, and foibles, and misperceptions. And if we can do that, that will provide the room to start to communicate in a meaningful, constructive, and respectful way.

29. Thank you.

[recording time code 20.51]

SOPHY MILES

30. Thank you, Althea, and welcome everyone from me. My name's Sophie Myles. I'm a mediator and barrister at Doughty Street Chambers. I'm also a member of the Court of Protection and Mental Health team. I'm going to talk a little bit about mediation and conflict resolution, and conflict reduction generally, in medical cases.

31. I've got a little bit to say about the context - if the clicker works *[see slides]* - I've then got a bit to say about the challenges. not just in mediation, but in trying to reduce the level of conflict arising generally. And then I'm looking at some of the tools that may improve matters.

32. So, starting with the context. *[slide: context 1].* The kind of cases that I'm going to talk about are differences about serious medical treatment, either for children or for adults who lack the capacity to consent to that treatment. These are cases which tend to emerge either in the Court of Protection or, in the case of children, in the Family Division.

33. In some cases there are effectively two points of view. There's a point of view of a health body, a doctor that wants to deliver treatment. Then there's a point of view of a patient, who is refusing that treatment and maintaining their capacity to do so. The health body may say the patient doesn't have capacity, but the treatment is in their best interests. So those are the cases where there are really two viewpoints: a health provider, and a person who may or may not have capacity to consent to their treatment. And those cases, perhaps, are less likely, it seems to me, to be susceptible to resolution through mediation.

34. But perhaps the cases where mediation may have more of a part to play are those where there are three points of view. Again, the health body: a doctor that either wants to deliver treatment or believes that it's not in the best interest for treatment to continue, and that it therefore should be withdrawn. Again, the patient: a child or a person adult, lacking capacity. And family members as well. Parents - devastated parents who found out their child has a life-threatening illness - or other family members facing that decision.

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35. In many such cases, in many such situations, what takes place is a process of shared decision-making which may well lead to an agreed course of action. Even if that agreed course of action leads to the end of the life of the patient concerned. But there are also examples of protracted and often quite distressing litigation. There are some high-profile examples that I've put on the screen: the Charlie Gard case and then a little bit later, the case of the seriously ill toddler, Alfie Evans. And then there are other cases that are not so high profile, but are just as distressing, nonetheless.

36. Some cases will always require a resolution by a judge. But what can mediation do - and what are the challenges for the mediator - in this particular type of scenario?

37. The challenges very much go with the territory. In serious medical cases, you may well be working with a family who are facing an unimaginable trauma. Being told, out of the blue, that their loved one has a life-threatening illness and a decision needs to be made very very quickly about what, if any, treatment they're going to receive. It's readily understandable that in that situation there may be a real sense of power imbalance. What can parents do, when they are being told by a group of clinicians that they know what the answers are? How, to what extent, can families even participate in mediation in these cases? Legal aid is available to families in Court of Protection cases, and also in cases being brought in the Family Division about medical treatment. It's means tested, and there's a relatively small pool of practitioners able to take those cases on. How do you involve the interests of the patient themselves? The child or an adult who may lack capacity, who may be unconscious, in a coma. How are they going to be involved?. How are you going? How is the mediator going to involve sort of triangulating between the health body and the family? And what happens when there are third party supporters and advisors who bring their own point of view to the table?

38. Perhaps more fundamentally, how often is it even taking place? Anecdotal evidence suggests that mediation in serious medical treatment cases is, in fact, relatively rare. There was a report examining mediation in Court of Protection cases, and none of the cases examined in that report were medical cases.

39. I'm now going to look at broader challenges across the board and I'm going to talk a little bit about a briefing note produced by the Nuffield Council on Bioethics. This looks specifically at disagreements in the care of critically ill children. It's very well worth looking at. The briefing note asked the question: why do disagreements arise? They identified a number of factors, and I've put some of them up on the slide: poor communication; differing perspectives; feelings of powerlessness - and they identified that there might be feelings of powerlessness, not just simply in the family, but also amongst health professionals who are attempting to help a seriously ill patient; and, very importantly, delays in seeking help to resolve differences, so that, by the time a mediation or other resolution is being considered, the parties have become quite entrenched and it's much harder to start finding the common ground and having the constructive discussions that Althea has just talked about.

40. Another feature that the briefing note identified is our general wish to avoid the subject of death, to put off some of the difficult conversations that have to be had in in these circumstances.

41. The recommendations from the briefing note fell in the remit of policy recommendations to providers of health services, and also about research. In relation to policy, there was a recommendation that there should be more development about conflict management frameworks, increasing access to resolution, and

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that there should be gathering of data on how effective that is. A further recommendation was about increasing training on ethics and conflict management for paediatric healthcare staff. And I just want to mention in this context the work of the Medical Mediation Foundation, which has done a large amount of training of medical staff precisely in the conflict resolution skills. Making independent advocates and support, such as legal aid, available to parents in these disputes. And also for providers to provide the parents with appropriately trained communicators, to improve their support to professionals, and generally to improve the awareness of conflict, resolution techniques.

42. There is also a recommendation that there should be further research on the access to an effectiveness of mediation, as well as other mechanisms, such as getting second opinions and referrals to ethics committees.

43. So, what's happened - what's been happening - and what are the tools that are available at the moment?

44. The first thing that seems to have come to everybody's mind is: well, let's get mediation baked-in to the process, so that it becomes mandatory. In the Charlie Gard case, Mr Justice Francis said, at the final hearing, that it was his clear view that mediation should be attempted in *all* cases such as this, even if all it does is achieve a greater understanding by the parties of each others and of each other's positions. He went on to make the obvious observation that few users of the court system will be in a greater state of turmoil and grief than parents in the position that the parents of Charlie Gard found themselves in. He's recommending anything which helps them to understand the process and the viewpoint of the other side.

45. Following the Charlie Gard case, there was an unsuccessful attempt to pass what was referred to as Charlie's Law. This was a private member's bill put forward in 2020 called the Children's Medical Treatment Dispute Resolution Bill. That had a number of aspects to it, including increasing the weight to be given to parents' views, but also requiring mediation in the case of a dispute. Baroness Finley, palliative care specialist, and also the former chair of the National Mental Capacity Forum, put forward an amendment to the Health and Social Care Act - again, a specific clause on dispute resolution in paediatric cases, which would have put a duty on health authorities to take all reasonable steps to allow for a mediation process. Again, that wasn't accepted. But what did come into the Health and Social Care Act was a requirement for the Secretary of State to arrange for the carrying out of a review into the causes of disputes between, on the one hand, those with parental responsibility for critically ill children, and on the other, those responsible for the provision of care or medical treatment.

46. That's as far as we've got in terms of proposals for increasing mediation. But I also want to finish by talking about how we how we find out whether this is actually working or not, and therefore putting us in a better position to explain why mediation is a a good option in these kinds of cases.

47. I'd like to just mention a research project that is taking place at the moment called Mediation of Medical Treatment Disputes: A Therapeutic Justice Model. I've put the website address up on the slide for anyone to look up later on. it's a research project being led by the University of Essex and I'm very pleased to be one of the Advisory Board to the project. What it is proposing to do is to undertake a qualitative analysis of mediation in medical cases. Importantly, this will cover medical cases involving children, but also adults who lack capacity, and ask some questions: are there therapeutic benefits of mediation - or does it simply end up reflecting the same power imbalance that families can feel when they're in the grips of the dispute?

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Is there anything about the health care environment which either makes it particularly amenable to mediation, or does it make it more difficult? And, in particular, what can we learn about when and how to mediate in these kind of cases?

48. The project is in the process of obtaining ethical approval at the moment. I'd like to end by asking all of those of you who do become involved in mediations in this field to consider contacting the project and volunteering either to share your experiences or ideally have members of the project observe mediations in appropriate cases, because it seems to me that this is going to be extremely helpful in allowing us to recommend mediation with confidence in these very difficult and distressing cases.

49. Thank you all very much.

[recording time code: 35.05]

AMELIA NICE

50. Hello, everyone. My name's Amelia Nice, and I'm also a barrister and mediator here in Chambers. I'm going to be talking about making mediation mandatory. We thought it would be useful to touch on this issue at a point when the Government has proposed introducing mediation more widely. It announced in July a consultation regarding the expansion of the small claims mediation service to all claims of £10,000 or less. They are also consulting on making mediation compulsory in other areas, such as the SEN tribunal. And, more widely, there is growing commentary that after some years of incentives, and carrots and sticks, that maybe the time has come for a real push and an introduction of mediation in a more compulsory or mandatory sense.

51. What I've tried to do is synthesise the key issues arising from the literature on this, starting with the tricky issues that the debate will give rise to, and then looking at some of the tools that there may be to address those issues.

52. First of all, looking at what's to be gained: the benefits of mediation, probably, are old news. That's the first part of the slides, and I won't go over that. But in terms of making it mandatory - what might that achieve? Well, take up would necessarily be greater to some degree. Parties would not be able to argue about whether to mediate, because they would have to take that step. Mandatory mediation would also overcome the perception by lawyers that they may be seen to be weak if they advise parties to mediate, because they will have to give that advice. Conversely, any suggestion that lawyers would be able to block parties attempting mediation would also be prevented, which they might do or, arguably they do, for their own gain. And lastly, the point that's often made is that even reluctant parties warm up. The analogy used throughout the literature is that you can take a horse to water, and some of them will drink. And on the slide you've got an emoji of a horse. But it's not very big so I am not sure if you can see it.

53. Tricky questions then. The first objection is often referred to as the mediator's objection, which is that the voluntary nature of mediation is the hallmark of its success and of producing agreements which are

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sustainable. And so in that context, can people really be *made* to mediate? In the poll we conducted before this seminar, 70% of people were of the view that it's important for people to enter mediation voluntarily, or they won't engage.

54. The second objection on the slide is access to justice and rule of law, and that's often known as the lawyer's objection.

- The first point is that, under the rule of law, cases may be required to go to court. There may be a need for a new legal point to be decided, and if mandatory mediation blocks that, then that's fettering that process. But there are also worries that if there is an expansion of the mediation process, that government departments or other respondents can hide behind the confidentiality of the process and keep ongoing issues and problems secret.
- Access to justice relates to the fact that mediation as a mandatory process will bring in a constraint, and arguably that gives rise to a breach of Article 6 of the European Convention on Human Rights, and the right to fair trial, which should involve an unconstrained access to a court.

55. Issues of good faith. If people are forced to mediate, will they do that in good faith? If they do it in bad faith, what does that look like? Might they be willing to mediate just to force the other side to spend money on the process? Will they be using the process to try and gain disclosure which they will then use in litigation? And if bad faith is an issue, how is it monitored? Will mediators be asked to report back to a court or another body on the conduct of the parties and, if so, isn't that a breach of the confidentiality that is so important to the process?

56. Last of all costs and public confidence. Costs is obviously: who's going to pay for it? Litigants in person: are they going to be expected to pay for it themselves? And public confidence: the view seems to be that the public is still relatively unsure about what mediation is. So, how is that going to be addressed, if the government wants to roll it out more widely?

57. I've grouped together three sets of tools *[see slides].*

58. The first one is around language and concepts. There are two points here.

- One is time, perhaps, to stop referring to mediation as "alternative". You have the quote on the slide there from Sir Jeffrey Vos, who says it's time to start viewing it as an integral part of the dispute resolution process. I might also say that perhaps we can lose the word "mandatory" - or lose it as soon as possible. It's quite coercive, and, in fact, there's plenty of aspects of civil and criminal justice which are mandatory, but we don't use the term. We don't talk about "mandatory witness statements" or "mandatory grounds" – they are just rules that we have to comply with.
- The second issue is really the concepts. The big beasts in terms of the voluntary nature of mediation and rule of law. As I've just said, the mediation community has always argued that the voluntary nature of mediation is central to the success of the process, and that a party's right to self-determination should be respected. But a read of the literature brings up three key issues.
    - One is that mandatory mediation wouldn't remove the party's right to decide if they want to settle, or what the settlement would look like. It merely asks them to have a go, and so, on that basis, the central features of the voluntary nature of mediation are preserved.

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- The second issue is that although the voluntary nature of mediation is very important in some contexts, it can also be over-played. Parties often come to a mediation exhausted, worried - they've had some pretty cold legal advice about costs, prospects of success, the time taken in litigation. So, although it's voluntary, it's voluntary because it's not mandatory - and, actually, they know why they're there, and it's not the voluntariness that makes the process work, it's the process itself.
- The last point is that there are already elements of compulsion in the system. So, for example, there is an obligation to consider attending a MIAM - a mediation information assessment meeting - in family disputes; or in road traffic cases, the Small Claims Protocol requires insurers to make a settlement offer; and there are other examples. There's no research that I know of, anyway, or that's come out in the literature, to show that the settlement rate is lower in those contexts.

59. The third conceptual issue, then, relates to access to justice and the rule of law.

- In the summer, the Civil Justice Council (**CJC**) published a paper reviewing the access to justice issue. They have looked at the cases, domestic and ECHR cases, and they conclude that, provided the parties retain the right to proceed to court at all stages, participation in dispute resolution can be compulsory without there being a breach of Article 6. There isn't time to go into the whys and wherefores of that now, but the paper is there.
- The development of the rule of law is perhaps a trickier point. The anticipation is that mediation is rolled out more broadly, but the counterpoint to the worries about constraining the courts is that if these small cases and the iterative cases are moved into a dispute resolution process, then that will free up the courts to be able to have more time and energy to do with more complex points of law.

60. The last issue on the slide there is sanctions. Clearly that's going to be a huge part of the conversation, and the Government, in their consultation, asks questions, around whether conduct in a mediation can be monitored, and what would be appropriate sanctions for example, could cases be struck out for non-compliance with the rule, and others.

61. So moving on to the next slide, please: **funding and information**. The first point, as I've touched on earlier, is at the moment the perception is that the supply of mediators exceeds demand, but the market is unregulated. It is quite difficult to navigate for litigants in person, so, as a potential user, it is hard to know where you would go for, and who would be best suited for, the dispute that you're dealing with. Litigants, and especially litigants in person, need a reliable, perhaps centralised, source of better information. The second and related point is that it has to be paid for without there being a disproportionate cost on, in particular, litigants in person. Under the Government proposal at the moment, the parties to a small claim who want to go to a mediation will have a free 1-hour mediation with a mediator from the HMCTS service.

62. The second point there is the importance of pilots and consultations. Clearly the Ministry of Justice proposal will provide very valuable information, and the slide has a map or a flow chart of the proposal. So:

- A claim is lodged, then there is defence, then a directions questionnaire which may or may not consider whether the case should be “exempt”, because the Government is asking questions around whether there should in principle be a role for exemptions.
- Automatic referral, so automatic referral to mediation, if there are no exemptions. Then the case is paused for 28 days to allow that to happen. The parties will then have a discussion with the mediator about what

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the mediation will involve, and then, later on, a mediation. And then, if it settles, that's the end of it, and if it doesn't, then they can go back to litigation.

- In the middle there are options for sanctions and all compliance.

63. The broader point - I've also put technology on the slide. As a result of the pandemic, many mediations moved online, as far as we understand, with no discernible drop in settlement. So that will obviously be an important tool potentially. And the last point there on the slide is that there are plenty of other jurisdictions that have for some time used compulsory mediation in various contexts. Obviously, they will provide a valuable source and information. The CJC paper looks at the countries referred to on the slide, and the way that they've introduced it in different areas or jurisdictions.

64. The last slide then, is in relation to public confidence and the protection of disputants. There is a clear drive, I would say, to consider increased regulation and oversight of the mediation industry. There are concerns that it is unregulated, and that greater uniformity of standards is required, and a complaints mechanism. The Government seems to be looking at a more robust system of training, such as benchmarking training providers, or a chartered status for mediators, and a system of redress. And the Civil Mediation Council is mooted as a possible regulator, because it already has a decent and well-respected complaints system, and so on.

65. There are also some really interesting conversations around increasing the type of, or amplifying, the training given to mediators, particularly if they're going to be dealing with vulnerable litigants in person. There are some really interesting conversations around trauma-informed mediation and mediating with very vulnerable parties, and/or the use of screening questions by mediator at a pre-meeting, or at the start of the mediation itself.

66. That leads to the conclusion, which is that it is possible, or indeed probable, that the foreseen small proposals at this stage may give way to an intention to move the whole system to a default system of dispute resolution. That was first, I think, mooted - I don't know if it was first mooted, but certainly it was mooted - by Baroness Scotland when she was Attorney General, and she discussed the Government's then aspiration of moving to from ADR to mainstream dispute resolution, system.

67. I've also included on the slide a quote from a speech given in October by the President of the Family Division, who discussed, or who wanted to urge family lawyers to encourage their clients to opt for mediation or other forms of dispute resolution, and that they should see the family court as a last resort, not the first port of call.

68. The last quote on the slide there is from an article inspired by the book *Nudge*, which some of you may be familiar with, which is a book about decision making, and how our cognitive biases can get in the way. And the conclusion of the article is that if we want to move to a default system of dispute resolution, that is going to require a wholesale change in the architecture around justice.

69. The end.

[recording time code: 48.29]

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LOUISA WEINSTEIN

70. So hello, everybody. My name is Louisa Weinstein. I'm a mediator at Doughty Street Chambers and an associate tenant. Moving into the workplace and employment arena - and putting hopefully on what some of the fascinating things that we've already heard so far:

- I'm going to look firstly at the context, and we've had some of that already, but I'm just going to deepen it for the workplace;
- Then we're going to look at what we know;
- And then tools - the tools for tricky time.

So - and see how this works *[see slides].*

71. Conflict at work is extremely prevalent. There was an ACAS report that came out in 2021, so right in the middle of the pandemic, based on some very in-depth research. It was actually the first time that we really started - everyone felt like, well, there is conflict in the workplace, and it's affecting people, and it needs to be resolved earlier - but this research was really in-depth. The fact that close to 10 million people experience conflict at work each year - that was then. But, more importantly, the effect on mental health, so stress, anxiety, depression.

72. Obviously that report hasn't been an updated post Covid, but there has been, I think, universally acknowledged that the challenges with mental health did increase over that period and definitely impacting the conflicts that people are having. It's expensive. So cost of conflict in the UK to business is £28.5 billion. That's equivalent to £1,000 per employee per year. Not insignificant.

73. Very interesting also is a CIPD study talking about the fact that just over a third of respondents to that study - and it was a significant amount of people - experience conflict, whether that's isolated disputes or incidents of conflict or ongoing difficult relationships.

74. As well as that, we know that the employment tribunals have been heaving, particularly with a kind of three-month suspension, which means that, as matters proceed to tribunal, the individuals that are involved in them are undergoing huge amounts of stress, worries about their future careers. And the impact on the organisations is also significant, because the reputational damage, the ripple effect within the organisation on other employees, is significant.

75. Right. So, we've discussed the fact that compulsory mediation for small civil claims is on its way for under £10,000, and that compulsory mediation is also set to be in place for family mediation in all but the most serious of cases. We also know that we have in place systems to resolve conflict earlier. We've got ACAS, and that's used a lot, and early conciliation, which is different to mediation, but it's alternative dispute resolution, is used a lot, and when it's used matters often don't escalate. More often than not, 65% of early conciliation notifications didn't proceed to employment tribunal, and at least 77% of employment tribunal cases received by ACAS in a period April to March 2021 didn't go on to hearing. So, when there is an

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intervention, an early dispute resolution, it often works. As mediators, we also experience the I would say 90% of cases, even more, of workplace and employment mediations, the matter is resolved.

76. Thinking a little bit about mediation as we go into the disciplinary and grievance process, I sometimes look at the disciplinary and grievance process like a conflict escalator: once we get on it, it's quite hard to get off it, unless you kind of jump. In which case there can be a lot of collateral damage. As we go through the grievance and disciplinary process, as we go up that escalator, the parties themselves move further and further away from each other. The potential for a decent conversation, particularly because we're talking about careers, ongoing relationships, reputation damage, and many of the things that Althea was talking about at the beginning, if not all, are very, very important.

77. So, we have a system that we enter into to resolve conflict that escalates the conflict. And, so, what do we do? The other key factor is that failure to raise a grievance can lead, if there is a tribunal claim, to a reduction in the compensation. If I don't raise a grievance, or if I don't advise my client to raise their grievance, the risk is that they may lose out on compensation. What do we do?

78. There's talk. well, so, I'm a member of the Civil Mediation Workplace Committee, and constantly pushing the question of should there be - could there be - a change in the ACAS Code? Well, any change in the ACAS Code, I would imagine, would be quite unlikely. particularly today. Rishi Sunak has proposed that there be legislation in place to reduce strike action. So the trust - the people that need to agree, if there's a change in the ACAS Code to introduce earlier resolution - then all sorts of other things get thrown in as well at the same time, because the ACAS Code doesn't get changed that often. The appetite for a change in the ACAS Code is unlikely to be great, just on the basis of trust. So, realistically, there may not be any kind of change like that until possibly a change of government, probably at this stage.

79. And what would it say? Many mediators or specialists in early resolution talk about it quite a bit as taking away the grievance and disciplinary process, and replacing it with an early resolution scheme. Now, obviously, you would never take away the grievance and disciplinary process. But if you change the language, you change the psychological contract between the employer and employee. We enter into the grievance and disciplinary process, what is going to happen? We're going to be either aggrieved or we're going to be disciplined. We're either going to be upset, or we're going to be told off. If we enter into an early resolution scheme, or an early resolution process or framework - framework is a good word, I think - we are thinking about early resolution. We're preparing for early resolution. Which means, you know, we're already more empowered - we're already taking more responsibility, actually, in the resolution of these issues. Because the power dynamic is not always simple. So, again, how do we - how do lawyers in particular - support that process?

80. I think there's a key in the Employment Rights Act around “unless they have a good reason” not to raise the grievance. So, what's a “good reason” not to raise a grievance? You would raise something else - you might raise a formal concern. I think there's something in the possibility of maybe the ACAS guidance that can move people in that way. But actually, it's about looking at what we've got in place already, and seeing what we can put in place, for clients and organisations to enable that earlier resolution.

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81. What's also very interesting in the ACAS report is how essential conflict competence is in an organisation and in good management. And, of course, most of you, if not all of you, are going to be giving legal advice. But actually some of the good legal advice is going to be: ensure that your people have better conflict competence, and that that's quite a big deal, because it's an understanding, it's emotional intelligence, and it's a set of frameworks and capacity to negotiate. But it's worth bearing in mind

82. So, tools. Early resolution scheme, or early resolution framework. What does that look like? It could look like putting in place an early resolution policy, with the aims of providing individuals with alternative, impartial and non-judgmental framework, to address and resolve conflicts to the satisfaction of all involved. What it's doing, when you're introducing that kind of framework, is you're putting out an intention, you're already starting the conversation between the employer and the employee about actually before the conflicts even happened, let's look at how we want to resolve it, and what values are important to us. It's not a plug - but in my book *The Seven Principles of Conflict Resolution*, there are a few frameworks in there that look at how you might do that. But there are many ways to introduce those kinds of alternatives.

83. Then looking at contractual provisions for employment and workplace disputes. And also the thought about raising or pre-empting grievance and disciplinaries, through this raising of a concern, maybe a formal concern, and how you might do that - as long as it's a good reason. As long as you're creating a good reason not to create a grievance. Conflict competence is obviously really important. Also, you've obviously got the opportunities of internal and external mediators. But also, just having within the organisation, your resolution agents - people that are going to have the capacity, that aren't necessarily just in HR (in fact, sometimes it's good that they're not in HR) to move the conflict along, and increasing that capacity for managers.

84. To conclude, I'd say that the times, the pressure, the stress, the clear kind of escalation in mental health, also the increase in disciplinary in discrimination claims - people are upset about a lot of things and need to work them through. Even though we've got ACAS, we've got judicial mediation, we've got lots of things in place, it needs to be better. It can be better.

85. I'd be interested to know how you want to respond, and maybe we can address that later on, how you feel and think that you can respond in those circumstances to the way that we work and engage with each other. Thank you.

[Recording time code: 1.01.36]

LAWRENCE KERSHEN KC

86. Hello. My name is Lawrence Kershen. I'm a mediator, and I was a barrister until about 20 years ago – now a has-been barrister, if that's the right phrase. Can you hear me okay? Good. I asked that at one sort of presentation and a voice from the back said: "Yes. But I'm willing to change places with someone who can't".

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87. Look, there's a million things to talk about in the context of environmental mediation, and I've got about 15 minutes, so I'm going to skim over the surface.

88. But the first thing that I want to say is just to take a minute to look at where we've got to over these past few years, because I'm going to suggest that conflict seems to arise more quickly, and people are more passionate about it than ever before. People seem to form opinions as quickly and as passionately as they do their support for their favourite football team. And it becomes a kind of a difficulty in mediation that people are indeed very entrenched, very quickly. Conflict is, of course, an inevitable part of our lives. It's a natural result of human differences. But violence is not. And when we deal with conflict in an adversarial way, it generates polarisation and violence. And when we collaborate to resolve our differences, conflict can catalyse positive change, as I think, Althea said, at the very beginning of this presentation.

89. In recent years, conflict seems to have been ramped up, or maybe dumbed-down is a better phrase, by unique factors. There is the trauma of the worldwide pandemic that we don't have to dwell on now, but the restrictions of our freedoms of movement and speech have clearly been a fall-out from that. We've got a war in our time, and on our doorsteps. We have economic chaos and an erosion of trust in politics and politicians. You may not agree, you may have deep trust in them, so forgive me for making a controversial comment like that. And then there is the mixed blessing of social media which, of course, has created a more connected world, but with its sound bites and echo chambers, and the anonymity of what people can say on social media, it has given free rein to hate speech, discrimination, and a great deal more conflict.

90. And the greatest conflict of all, I suggest – you may have a different view, but I can't see anything more important than the climate and environment conflict. The crisis that we face that we are in - deep into - now. There seems to be no doubt anymore that the connection between our industrialised world and the conflict of the environmental crisis is established beyond reasonable doubt. I hope there's very few people now who still argue it.

91. At the heart of it is the fact that we Earthlings have a need for energy and, at the same time we have a need for a harmonious and a healthy and a happy life, living in the natural world. So, we, I, you - all of us - have mixed feelings about this. We depend on energy for everything that happens around us, and yet we want to preserve and protect our planet. So that could be said to be our internal conflict as a civilisation. But, of course, there is a clash between these different needs out in the world. These are indeed tricky times, and perhaps I need to say no more about it.

92. But how can we address these clashes, these conflicts, of which others have spoken so well, and of which the environmental issue crisis is the greatest? And the answer, predictably, is mediation. I know it is an extravagant claim to say that it can change the world, but the evidence that I'm going to turn to suggests that it can. It is a way to resolve these conflicting needs that we have.

93. There is a ton of evidence, and I have little time. But I want to say to you that people are happy mediating and using similar processes in environmental crises, in environmental conflicts. They are doing it at this moment. We are doing it at this moment, because, although I basically work as a commercial mediator, I have found myself more and more being drawn into the environmental world. And the examples that keep coming up.

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94. One that I was involved in was a simple case of harm to **land**, where a purchaser of land that included a former filling station, discovered that the land was contaminated by hydrocarbons, and sued the previous owner, who was an oil company, for breach of contract. And then there was a chain of previous owners who were joined in the litigation. And the long story short, they arrived at a resolution which, as well as financial compensation, had within it an undertaking to restore the land to a healthy condition.

95. There is the **air**. A recent case, not mine, of hydrogen sulphide emissions from a landfill site. The local council issued an abatement notice. The site owners appealed. The case was set down for a 4-week trial, and in 2 days there was a mediated agreement, with agreement not merely on how the site could be managed in the future, but also with financial compensation. I should put it the other way around: there was financial compensation, but there was also an agreement about how the site could be managed in the future, which you will know if you're familiar with mediation, is once again an example of what mediation can offer that the court, and the court's judgment, couldn't possibly offer.

96. And then there's the **sea**, and this is harm to the sea. The Brent Spar. Does anyone remember the Brent Spar in 1995, when Shell proposed to sink in the North Sea a redundant oil platform, and when we say an oil platform, I don't know if you have ever seen one of these things. It is massive - it's like a small town. The proposal was that the Oil Company would sink it in the ocean and, thank God, there was an energetic media campaign, there was a poll of the British public that showed that the majority were opposed to it, there were boycotts. To cut a long story short, again, there was a mediation when Shell withdrew their plan, and, in fact, later had the Brent Spar dismantled and it was upcycled as housing for the Stavanger Port Authority. That's perhaps going into a little too much detail.

97. That's mediation. It's happening all the time in environmental issues. But I want to open out the picture just a little bit to suggest that mediation - the formal idea of mediation - I don't know how many of you are mediators or have trained as mediators? *[show of hands*]. Great. Well, then, you will know that there's a formal process, of course, it's hopefully informal when you do it, but there is a mediation process. But I want to suggest that there are a number of different paths to resolution by dialogue, which could be said to be facilitated dialogue dispute resolution. They include things like stakeholder dialogues. They include things like victim / offender mediation in the criminal world. They include what is broadly called restorative justice, although I'll come to that in a minute, which is similar to victim offender mediation. Is anyone familiar with restorative justice? *[show of hands]* Great. Okay. So you'll know that it's used in typically in a case where there's a victim and an offender. But there's a much larger group than just a victim offender mediation. I could wax lyrical about the benefits of restorative justice. But I'd better stick to its relevance to the environment.

98. The definition of restorative justice – well, one, anyway - is that it's a process where all the stakeholders affected by an injustice have an opportunity to discuss how they've been affected by it, and to decide what should be done to repair the harm, which is a very explicit aim.

99. The classic example is one that took place in New South Wales in Australia, in 2006, where the owner of a mining company who had carried out some mining activities - or the mining activity the mining company had carried out - those activities had caused damage to a designated aboriginal place and destroying aboriginal objects. There was an RJ - there was a restorative justice process - forgive me. I may slip into "RJ" from time to time. You know what I mean, I hope. As a result of it - and this I found fascinating - was that

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the director of the company and his family, and representatives of the indigenous people and their families and State Government departments, were all represented in this process. So it was much bigger than just a mediation. And what came out of it was, first of all, that there was financial compensation, but, secondly, that there was ongoing contact between the mine owner and the local people who were affected - the Wilyakali people. And there was to be consultation before further works were undertaken. There was an agreement to foster indigenous employment opportunities at the mine. And the judge explicitly found that there was evidence of genuine contrition and remorse on the part of the mining company director.

100. So, there was a classic example in 2006 of how mediation, and in this case a restorative justice process, could be used within the framework of a court case to bring together parties to have the dialogue that we've been talking about over the last hour or so.

101. Some more examples, and then I'll come to two that really are the uptodate ongoing issues with which I'm concerned that maybe illustrate some of the points that I'm making. Because there are challenges to the implementation of the restorative processes, mediation and restorative processes, in the environment.

102. The first is to get the parties to the table - encouraging the parties to engage - the very question that Althea has already addressed. In restorative justice, as you will know, those of you are familiar with it, it is pretty much essential that the defendant, so-called, has accepted guilt, or at the very least responsibility, for what he or possibly she has done. Well, that's a pretty big ask if you are asking the director of a company to engage in a restorative justice process. And the question is: what would bring such people to the table? I suggest one answer, at least, is litigation. And I am sorry, because we are all here shouting the benefits of mediation. But I think that, just like mediation takes place in the shadow of the law, so mediation and environmental mediation and restorative process take place in the shadow of a growing body of legislation and litigation, both civil and criminal. And it is those factors, I believe, that are increasingly working on corporates - because it is usually corporates that we're talking about - to get them to engage in dialogue in resolving this clash of needs.

103. There is climate change litigation taking place, as a tool to strengthen climate action. Something like 2,000 cases have now been brought in multiple jurisdictions around the world, as well as in the European Court of Justice. So, there is a huge growing body of approaches to compelling a compliance with what you might call environmental issues, but also giving the possibility of a dialogue within those cases, whether civil or criminal.

104. There's the Crime and Courts Act 2013 in this country, which gives the court power to defer any trial of an adult for a restorative justice process to take place. That is a much forgotten, yet valuable, piece of legislation that could in many cases justify bringing, first of all, a prosecution, for example, the Environment Agency, and, secondly, to pause it for a dialogue, a restorative dialogue.

105. There is the International Criminal Court, which announced a few years back that it was going to include environmental crimes in its remit. There is the law, the international crime of Ecocide, which some of you may be familiar with, which is growing in support, where the definition is unlawful or wanton acts committed with knowledge that there' is a substantial likelihood of severe or widespread or long-term damage to the environment caused by those acts. And of course, simply speaking, ecocide means killing

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one's home. That is a law which is being considered by more than 25 countries, as well as the European Parliament, and a whole bunch of other senior figures, which I am not going to spell out, that even lawyers are involved in supporting the idea of a law of ecocide.

106. What would bring parties to the table? Well, being subject to legal proceedings, and having the opportunity to have a dialogue within them, is clearly one stick that might encourage them to engage with mediation and RJ. There's also the carrot of the business case which I'll come to in a moment. There's also the name which I find unhelpful to call it "restorative justice", because, as one commentator said, if you call it justice, it is very quickly associated in the business world with, as he said, court, tribunal, lawyer, penalty and sentence. Clearly, asking people to engage voluntarily in a process which is going to be "justice", and they are on the receiving end of it, is not very attractive.

107. I think it is really important to have flexibility about what you call the process, although the principle at the heart of it is the same. I was involved in one where a local council was holding an Air Fair – the largest air fair in Britain, an air festival, they called it. The local community were up in arms. The residents, and indeed, environmental groups were opposed to it because of the damage from pollution, traffic, noise, etc. And eventually what happened was there was a kind of a stakeholder dialogue, but it was essentially a restorative process, to find ways to meet the needs of the different interests. And we called it a "symposium". What a symposium is, I never quite bottomed out. But I know what it was in practice. Which was: it was a mediation. But I think, calling it symposium helped.

108. And the third challenge is: who are the victims in an environmental conflict? Well, obviously, there are the landowners, or whoever it is who own the resource that is the subject of the harm. There is the surrounding community. There is the local authority the government maybe, who have all had responsibility for bringing this into being. And there is, of course, the non-human world. And the question is whether we can shift from our anthropocentric view of our position in the natural world, namely, we are at the peak of it and others are natural elements there as a resource for us. Well, it may be that that is no longer a viable paradigm to work from, and the question is how, in a mediation, could you have representatives of what you might call the natural world?

109. I'll give you 2 examples that have actually taken place.

- In 2017, a New Zealand court granted the Whanganui River the status of a living entity. There was a dispute around the river and pollution of the river, and the court ordered that two guardians be appointed to act on behalf of the river, one from the Crown, and the other from the Whanganui indigenous people.
- In the same month, March 2017, in India, the North Indian Uttarakhand Court ruled that both the Ganges and the Yamuna Rivers should be accorded the status of living human entities, and they ordered a management board should be set up, with three officials as legal guardians to conserve and protect the rivers.

110. So, already you are beginning to see that the courts are - admittedly in other countries, other jurisdictions - are starting to recognise that the natural world is not necessarily without a voice; that it is appropriate - and indeed, I would say essential - that those elements are represented.

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111. Let me come to the last two things that I want to say, which are two cases I've been recently involved in. One is in the Balkans, the beastly Balkans, as it has been said. They are also home to the last free-flowing rivers in Europe. But what's happened is that thousands of small hydroelectric dams have been erected, some of them illegally in national parks, and so on, preventing the flow of water. It isn't just preventing the flow of water, but there is huge impact, say the local communities, on ecosystems, water sources, animal populations - there are secondary impacts from construction, from waste, from water abstraction. In other words, the river systems are being destroyed in the Balkans.

112. The challenge is: how do we get the relevant parties to the table? Because Government is not very interested in joining this discussion. Local government is reluctant. And we have been having, I say we – I am working with a person in the Balkans - are having a struggle to get those parties to the table, without which no mediation, no restorative process, is ever going to take place. However, there is one river system where the local community and the local government are both concerned about the damage to the environment, and there is very strong academic support for a process of mediated resolution. So there is at the moment no more than a prospect - but I would say a good prospect - that a restorative circle may be agreed.

113. Lastly, this: the oil company case. As you all know, oil extraction in Africa has been taking place for decades, probably 50 years, causing significant, environmental, social, and economic damage. People have lost their livelihoods. People have lost their lives in some cases. And there is conflict and litigation between some communities and the oil companies concerned. Last year in February, I was asked to facilitate a dialogue between communities in one particular region in Africa, and the oil company in question - we will call it OilCo. It was described as a restorative process, not restorative justice. And one of the first questions that came up was, and this was a learning point for me and maybe for you as well, which is, if OilCo was going to engage, it wanted to know: what's the business case? Which, when you think about it from the point of view of the corporate, is an entirely appropriate question. They are there to make money. They are there to do business. And so they wanted to know what is the business case. I spent some time with them, working through what the business case might be, and in due course they agreed to participate.

114. We had several online sessions, so it was all virtual. There was never a time when we met. It finished in October, so a couple of months ago, this year. And it has ended with a project being set up for the provision of off-grid renewable energy networks in some of the areas affected for short solar mini-grids. In other words: sustainable clean energy for areas that had been not merely deprived of reliable energy, but actually have been relying on what they call artisanal refineries, meaning small refineries that criminal gangs had set up, causing huge pollution. So, these solar mini-grids have emerged from this restorative process. And not only do they solve a question of clean, reliable, and low-cost energy - sustainable energy - but they also create productive use initiatives. Business ventures are now more secure, they can rely on a continuing supply of energy, and if they have a continuing supply of energy, they can build a business. A chicken-processing place that relies on refrigeration knows that it will have refrigeration. That in turn creates other business opportunities for the local community. It starts to rejuvenate the area. And there is an expectation that by or around the end of this year, the first solar PV - photovoltaic systems - will be set up and operational.

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115. I've probably gone over time. Forgive me. I say: for those of you who mediate, it's a no-brainer; for those of you who are not familiar with mediation, maybe it's not so obvious. But I would say: in the context of the environmental crisis that we face - what's not to love about a mediated restorative process?

116. Well, I first will invite you to ask questions and challenge us if we have still got time. I guess we have a bit more time. But also, I would strongly encourage you to look for any opportunity in the environmental world that you might be connected with, to see if there is a way in which you can instigate some form of mediation or restorative process that will enable us to - not to put too fine a point on it – to save the planet.

117. Why not?