

Regulating civil mediation in England and Wales: towards a ‘win-win’ outcome

Mike Whitehouse¹

University of Hull

m.whitehouse@hull.ac.uk

Abstract:

Civil mediation in Britain has rapidly moved away from being an option, for private choice, to becoming increasingly a compulsory or near-compulsory part of the public justice system. But regulation of the mediation industry remains minimal, and undertaken on an essentially private, self-regulatory basis. This raises a perception or actuality of risk that mediation and its regulation may better serve the interests of stakeholders in the mediation industry than the individual citizen who may come to mediation as a one-off player with no available alternative dispute resolution mechanism. This article argues that there are ‘public interest’ values and expectations of a constitutional and democratic nature at stake here which require recognition and protection via an effective and credible regulatory regime. It concludes that such a solution may in reality serve the interests both of the mediation industry and those individuals who may come into contact with it, offering a ‘win-win’ outcome.

Keywords:

mediation, regulation, interests, values

¹ Mike Whitehouse is a Professor of Law at the University of Hull, UK, and a CEDR accredited mediator. His previous academic research has focused on regulatory theory, values and institutional structure, and regulation in practice, especially in the context of the state schooling system and of mass media.

Regulating civil mediation in England and Wales: towards a ‘win-win’ outcome

Introduction

As mediation becomes ever more prominent as a form of dispute resolution in Britain, and an increasingly integral part of the civil justice system, it is proper to consider whether regulation beyond that which presently exists is necessary or justified. Roberts (2014: 138), points towards ‘serious, complicated and unresolved dilemmas of principle and practice’ as regards professional regulation of mediation including ‘the distinctive nature of mediation as a discrete and autonomous practice; whether mediation should be considered a separate profession at all; . . . [and] who should regulate mediators . . .’. Answering such questions will not in itself offer a prescription as to the institutional form or regulatory mechanisms required, but it will serve as an essential foundation for future consideration of possible institutional design. The intention of this article is to encourage a deliberative process, in which the objectives of regulation of mediation can be debated as a necessary prior step to detailed consideration of appropriate institutional form. Without such debate it should be expected that there will simply be continued drift along current lines.

Civil mediation in England and Wales presently occurs in a relatively unregulated context, apparently related to a historically voluntary basis for engagement with it. But in recent years mediation has become increasingly ubiquitous as an attractive primary means of dispute resolution in major commercial contracts (domestic and cross-jurisdictional), offering more flexible, less legalistic and more forward-looking approach to that offered by litigation or arbitration; companies and corporations, who have recognised advantages in terms of speed, cost, efficiency and promotion of positive future relations, routinely utilise it, and increasingly will have the potential for mediation as the primary dispute resolution mechanism written into contractual agreements. Likewise, as an alternative to conciliation and arbitration, mediation has become increasingly commonplace in the context of workplace and employment disputes. However, recent shifts towards compulsion or near-compulsion to engage with mediation in a range of contexts (via potential cost penalties in civil litigation, and Mediation Information and Assessment Meetings in family law) have changed radically the historic perception and claim that a central characteristic of mediation was its voluntary nature. Though mediation may presently retain its private form, with mediators being private individuals facilitating settlement rather than public officials empowered to impose judgement, it is proper to observe a shift in its function or nature, from being a genuinely private service or commodity, voluntarily engaged with or ‘bought into’, to becoming effectively an often near-compulsory feature of the public justice system.

At a theoretical level, many of the recent changes to the context of mediation seem to point to a very different, much more pragmatic and less idealistic, vision to that classically stated by Fuller (1970: 325), who refers to the ‘central quality of mediation’ in terms of, ‘its capacity to reorient the parties toward each other, not by imposing rules on them, but by helping them to achieve a new and shared perception of their relationship, a perception that will redirect their attitudes and dispositions toward one another.’ In this sense, it may be worth considering comparisons with the shift observed by Dezalay (1998) in arbitration, from a focus on ‘virtue’ to a more pragmatic approach, and one largely dominated by lawyers and legalistic argument.

The recent history of legal reform in Britain indicates a clear trend towards Alternative Dispute Resolution (ADR) becoming ever more central to the civil justice scene. The Woolf Report (1996), as subsequently implemented via the Civil Procedure Rules, in effect imposed on parties to litigation a requirement to attempt mediation at an early stage, subsequently reinforced by case law (such as *PGFII SA v OMFS Company 1 Ltd.* [2013] EWCA Civ 1288), as part of an overall agenda of establishing trial as a last resort. Further pressure on disputing parties to pursue alternatives to litigation arise from the Jackson Review (2010) of costs, and the Legal Aid, Sentencing and Punishment of Offenders Act 2012, which have a net effect of substantially limiting access to legal aid to fund civil litigation. Most recently, the trend towards rendering ADR compulsory was reconfirmed by Lord Justice Briggs’ recommendation for a new online court targeted at contributing to ‘making resolution rather than determination a culturally normal way of settling civil disputes’. (Briggs 2016) Though ‘taking the “A” out of “ADR”’ (Fouzder 2016) in this sense may be attractive, the historical reality that settlement rather than trial was always the norm in litigation must still be acknowledged. It might also be noted that there is also a case for introducing a new ‘A’, for ‘Appropriate’, which requires an adequate range of choice of dispute resolution mechanism which is accessible and appropriately responsive to the needs of different parties and circumstances.

Recognition of the increasing public significance of ADR, of which mediation is by far the pre-eminent form in civil disputes in Britain, is provided by the establishment in November 2015 of an All Party Parliamentary Group on ADR, which the Civil Mediation Council (CMC) claims to have played a key role in forming. (CMC 2015 and 2016) The nearer mediation comes to being part of the established justice system, the more it can be argued that ‘public’ expectations become attached to what has hitherto been thought of in terms of a private activity. But it is necessary to recognise the realities of the currently dominant political perspective on the proper extent of state intervention into ‘private’ activity. From the 1980s to the present, in Britain the legitimacy of state regulation has been challenged as part of a political perspective which presents the legitimate role of the state as more limited than was the case for much of the twentieth century. In the current era, responses to any possibility of regulation of a field such as mediation might predictably take the form of self-regulatory

or co-regulatory devices, though a further realistic alternative could be for regulation of mediation to be subsumed within pre-existing regulatory arrangements for a cognate field such as legal practice. The dominant deregulatory perspective quite reasonably places an onus on those proposing or engaging in regulation to justify their actions, typically via establishing and identifying with clarity the potential or actual harm which will flow, or interests which will be vulnerable if regulation does not take place.

What is clear, however, is that in relation to mediation and ADR more generally there is a diverse range of interests at stake which could be negatively impacted either by lack of regulation or inappropriate regulatory intervention. The national or state economic interests in a flourishing British dispute resolution sector may not necessarily sit easily alongside the interests of users of mediation, often identified as ‘consumers’ though this in itself may incorporate but mask a divergent range of interests. Beyond these interests, attention needs to be paid to the relationship of mediation to the constitutional, democratic and social interests associated with the civil justice system. On the face of it, there are competing interests here which cannot easily be reconciled in principle or in practice – it may seem that we are in a ‘zero sum game’, where prioritising any one set of interests would be at the expense of the others. Yet the mediator’s quest is for solutions that facilitate parties emerging from a dispute with what is of value to them recognised, intact and protected. It is worth exploring whether such a ‘win-win’ solution is available in relation to the future regulation of civil mediation in Britain.

The current context and the competing interests

There exists a clear perception of national economic interest in a thriving and reputable UK mediation industry, and encouraging the further development of the UK (and probably London in particular) as a dispute resolution centre as an aspect of a broader policy of seeking in inward commercial investment. In this context, ADR may actually appear as a threat. Thomas (2016) observes a threat to the popularity of London as a dispute resolution venue if the common law is not continually refreshed and updated, and identifies increased use of arbitration as an obstacle to ongoing development of precedent.

The regulation of mediation (and other forms of ADR) must be viewed in an international context. The UK government chose to implement the EU Mediation Directive 2008 (2008/52/EC) only in its minimal form, rendering it applicable only in cross-border contexts, and the Department for Business Innovation and Skills Consultation Document (BIS 2014) indicated the same approach in relation to the implementation of the ADR Directive

This is the accepted manuscript of an article published in *Mediation theory and practice*, 2017, v.2 issue 1.

(2013/11/EU) and Online Dispute Resolution Regulation (524/2013), relevant to cross-border consumer disputes. As with so much else, it is unclear what the future holds in this regard in the context of 'Brexit'. What is clear, however, is that British government has little taste for strong intervention in the short-term.

Historically, the UK's mediation industry has been subject only to a very loose form of voluntary registration. The CMC has maintained a voluntary register of members who have qualifications from a number of recognised training providers, and who are therefore expected to meet standards or codes of conduct established by the various bodies (which tend to be similar/parallel in terms of substance). However, it has not been and is still not necessary to be CMC registered to offer civil mediation services.

The CMC introduced in 2014 a new 'twin-track' approach to registration for those offering mediation services. Described by the CMC as 'a basic system of registration that can offer useful information to consumers', (CMC 2013: 3) it constitutes an effort to offer reassurance as to accredited training and qualification, continuing professional development, experience and adequate insurance. Mediators may seek registration either as a result of working for a 'recognised mediation provider' which in effect acts as a guarantor of such standards, or as an individual meeting the requirements for registration. This might best be described in terms of an 'accredited voluntary register' (AVR), akin to that in place in certain other 'emerging professions' such as counselling and psychotherapy. These fields lie beyond the regulatory scope of well-established bodies in medicine and nursing (General Medical Council and Royal College of Nurses), or even the 'light touch' regulatory function exercised by the Health and Care Professions Council (2016), where 'arms length' oversight of AVRs is undertaken by the Professional Standards Authority (2016). To be clear, beyond publicly funded family mediation (where Legal Services Commission requirements apply) there is no binding requirement for mediators to register in order to practice, and the scheme itself is, as the CMC properly acknowledges, strictly limited in its scope. Under the new scheme, though the CMC 'will provide for the possibility of removing or suspending the registration of a training course where on investigation it appears that registration has been obtained on an inaccurate basis', it acknowledges explicitly that it 'is not in a position to set up a fully independent mediation standards board that could act as a full-blooded disciplinary procedure, even if that was thought desirable'. (CMC 2013: 5)

How can we judge whether the regulatory regime is appropriate or adequate?

In the absence of clearly established and expressed rationales for regulation, it is difficult to gauge whether the new scheme of registration constitutes appropriate or adequate regulation of civil mediation. Prior to establishing the new scheme, the CMC stated that ‘If in due course, say after two years, the schemes do not prove to be useful the Board will not persist with them. Equally if it is clear that the schemes need to be strengthened or deepened then the Council will obviously be sensitive to that also.’ (CMC 2013: 3) Though this public commitment to review the operation of the schemes is to be welcomed, it tells us little about what the criteria are against which judgement of success or failure will be made. Given the lack of clarity about what interests it is intended to serve, or what harms guarded against, how will ‘useful’ be measured? In particular, it is necessary to ask ‘Useful to who?’ or which of the competing and potentially conflicting various interests in mediation will be prioritised?

In considering regulating a fast-developing field such as mediation, debate may be complicated further by the presence of strong pragmatic reasons which may lead certain stakeholders to argue, in pursuit of their group interests, for or against regulation or any particular form of it. The focus of the CMC Conference 2015 titled ‘Mediation – meeting participants’ expectations?’, immediately identifies the interests of participants as one such stakeholder group. While this seems to have been intended in that context to refer essentially to repeat users of mediation services, such as large companies who actively and regularly choose to use it as a form of dispute resolution, it is apparent that ‘participants’ could indicate a far from homogenous group. The interests of commercial stakeholders in the mediation industry may differ substantially from those of individual users, one-off players who may in effect be forced into mediation in the absence of access to the legal system or availability of any other form of dispute resolution.

An examination of the mediation industry and its current regulation may reveal a system which serves well the interests of providers, trainers, and large corporate repeat-users of mediation, within and outside the legal world, operating and protected under the umbrella of CMC which consists largely of representatives of such stakeholder groups. If it is left to a ‘private’ organisation such as the CMC, lacking substantial representation from beyond ‘the mediation establishment’, to carry out whatever regulation takes place, there will always be concern that whatever processes, practices or principles may be developed will likely reflect primarily views and interests from within the groups inside the mediation industry which come under its umbrella.

What is at stake?

The most prominent claims, relating directly to the values which currently dominate mainstream politico-economic thinking in the Western world, are threats of damage to consumer interests and to the effective operation of free-markets. Pursuit of such individual interests can very clearly be seen as the emphasis of the EU approach as manifested in the Directives and Regulations noted above. While such measures tend to reflect and emphasise potential risks to the financial interests of ‘consumers’ of mediation, Boon, Earle and Whyte (2007: 33) point also to potential injury resulting from disclosure of damaging information and/or psychological harm. Though almost certainly not as relevant in civil mediation as in the context of psychotherapy or counselling, or other emerging therapeutic contexts, these issues of adherence to standards of sound and ethical practice, though remaining strictly individual interests, in the context of dispute resolution mediation may also relate to expectations of justice.

It can be claimed that the low level of risk or potential harm is evidenced by few law suits against mediators – Boon et al. (2007: 35) identify no cases in England where dissatisfied parties have sued a mediator, though anecdotal evidence from the US does indicate the potential for significant problems to arise. (Hinshaw 2012) It might also be argued that the relatively small cost of indemnity insurance available to mediators serves as a further indicator of the relatively slight risk of harm which mediation carries. Those pricing insurance policies will be astute judges of the level of risk, but what they are ultimately concerned with in this context is the risk of any successful claim against a mediator, rather than the risk of harm *per se*. The risk of a mediator being successfully sued is very substantially limited by reference to the usual terms written into mediation contracts, and a lack of documents other than a settlement agreement evidencing what went on in the course of a mediation, plus the very substantial costs attached to pursuing legal action. Lack of lawsuits and/or low cost of insurance therefore cannot serve as a sound proxy indicator of the absence of problems arising for parties to mediation. Recognition of the potential for harm to the interests of vulnerable parties can be assumed to underlie the more interventionist and regulated approach adopted to mediation practice in the field of family law where we do see some state recognition that mediation can touch on values that go beyond the protection of economic and consumer interests and which require intervention and regulation.

While risk of psychological harm or distress would not be relevant to corporate parties to mediation, guarantees of ethical practice will be crucial as regards, for example, confidentiality and disclosure of information. Other concerns may arise about how mediators deal with, or are unable to deal with, power inequalities as between parties, though whether this is in reality any more of a problematic issue in this context than in the ‘mainstream’ judicial system is debatable. There is no shortage of academic and practical consideration of ethics for mediators (e.g. Waldman 2011), and indeed ethical codes do form a small part of the training and framework for accreditation established by major mediator trainers. But there is little by way of complaint or disciplinary procedure adequate to address breaches of such

codes or guidance, given the accepted inability of CMC to undertake such activities, and indeed ultimately the lack of compulsion for mediators (outside family mediation) to be registered at all. As is apparent, the voluntary nature of mediation looks increasingly challenged, and as Roberts (2005) observed, referring to family mediation but also of wider application, concerns relating to fair process and outcome ‘magnify in respect of mandated mediation where the parties, finding themselves in a forum and with a mediator not of their choosing, may be both vulnerable and placed under unacceptable pressure to settle.’ While some commentators will advocate the sufficiency of longstop supervision by the courts, the adequacy of, and access to, legal remedies (arising from, for example, contract, torts or fiduciary duties) available to parties unhappy with their experience in mediation is questionable and requires scrutiny. All this may form the basis of an argument against regulation though it may be that the absence of clear routes for complaints, and the difficulty of suing under mediation agreements combined with the potential substantial costs involved is actually suppressing the pursuit of legitimate claims and complaints; it is simply impossible to be sure.

Beyond such matters of concern to individuals coming into contact with mediation, there is also a broader set of collective and citizenship related interests that are invariably ignored in debate about the future of mediation and its regulation. These would include questions relating to the phenomenon Genn (2010) raises forcefully of how, as mediation becomes ever more significant within the justice system, values of substantive justice may be threatened by the focus on settlement – vitally important matters, but beyond the scope of the present piece.

If the state begins to exert its power or influence to persuade (or force?) parties to mediate, then mediation moves from the private realm to the public, and expectations relating to the public justice system begin to come into play. A possible line of justification for regulation emerges here, drawing on constitutional ideas of good administration and qualities associated with the public justice system which might include matters such as accountability in the exercise of power and the absence of unlimited power, equality of treatment for citizens, consistency and justice itself, and (within a common law system) precedent, plus potentially a need to ensure/confirm that mediation procedures or agreements do not cut across human rights or serve to produce unconscionable agreements. Some other potential justifications for intervention already touched upon could also be included in this group, for example the need to deal properly with complaints relating to mediation, and to driving-up standards and professionalization of mediation practice, with high expectations properly attaching to any part of the justice system.

As mediation becomes increasingly the only available option for dispute resolution, whether as a result of powerful pragmatic reasons such as consideration of cost or it being effectively rendered compulsory, so it should be expected that adherence to procedural expectations and

ethical standards would require statement, maintenance, and where necessary enforcement or remedy, via effective regulatory mechanisms. There is little doubt that the general point is established that in as far as mediation moves from being a genuine 'alternative' to the mainstream legal system to being part of it, it will need to prove its constitutional and democratic legitimacy via the same sort of approaches that apply to any other part of our established constitutional framework – via adherence to both substantive and procedural standards, against which those who exercise power within it do so accountably. With mediation crossing a divide from commodity to constitutional feature, or from the private realm to the public, it would seem almost impossible to argue against robust and transparent regulation of some kind.

This may be the direction Boon et al. (2007: 34) point us when they claim that 'Regulation secures ADR in the public interest', or when Roberts (2014: 137) talks of 'a majority consensus, across fields of practice, in favour of a limited form of basic regulation in order to ensure that the quality of service provided be monitored and improved in the public interest'. But the absence of any definition or specification of 'public interest' in such discussion is problematic; it is always necessary to ask anyone using this notoriously slippery phrase to define precisely what they mean by it in any particular context. Without rehearsing in full complex debate regarding understandings of 'public interest', always properly to be regarded as a contested concept, it can reasonably be stated that damage to interests of society or individuals (*qua* citizens rather than *qua* consumers) individually and collectively which extend beyond the economic interests associated with consumerism, and especially where it impacts on expectations associated with equality of citizenship and legitimacy in the exercise of public power, might properly be called 'Public Interest' rationales for intervention. (Feintuck 2004) Such claims, if identified with reasonable clarity, might serve as a useful basis on which to prioritise claims, forming a category of claims which may be considered to 'trump' others.

Conclusions – going beyond the zero-sum game

Regulation of mediation, as in any other field of activity, must be appropriate and proportionate relative to the objectives of regulation and in particular the actual or potential harms it seeks to address. But what is found to be proportionate, the degree and nature of regulatory intervention that is indicated, may depend crucially on which set of interests is prioritised. An emphasis on national economic interests may suggest the lightest possible regulatory touch in order to avoid obstructing growth in the sector. If the interests of individuals as 'consumers' of mediation are prioritised then the conclusion could be that, in the absence of demonstrable harm, such interests are already adequately served by existing

arrangements. But if collective and citizenship interests relating to justice and democracy are prioritised then a powerful case emerges for much stronger regulation, proportionate to such important claims and adequately robust and separate from the interests of the mediation industry, in order both to ensure a sense of legitimacy and to guarantee these vital social, democratic and essentially constitutional values and expectations.

‘Public Interest’ issues at stake involve a range of questions relating to justice and settlement. These range from mediation’s potential impact on precedent and development of the common law, accountability of mediators in an inherently confidential process (for example in how they address power imbalances, or in the difficulty in raising complaints about mediators’ actions), to the desirability of permitting the ongoing development of multiple practice models which permit creative solutions for parties beyond the win-lose model incorporated into litigation, to greater state involvement, and effective compulsion to use mediation as the only available dispute resolution mechanism in many cases. It may be that in practice civil mediation rarely produces democratically problematic outcomes. But given their potential impact on the ability of citizens to encash their expectations as citizens (expectations intimately connected to those of ‘justice’), the range and kind of ‘public interest’ matters just referred to, may serve as claims which could form a principled basis for intervention. Even if they do not all point towards the same manner or degree of regulatory action, if they are neglected or inadequately protected it is reasonable to conclude that the public interest is threatened and potentially diminished. Though economic and consumer interests may already be adequately protected, a very strong *prima facie* case is established for regulation of mediation in pursuit of the protection of citizens’ interests individually and collectively – a ‘public interest’ properly-so-called. The conclusion has to be that this range of interests are not presently protected by existing regulatory arrangements, and nor do they feature prominently in debates led by those within the mediation industry.

Given the democratic importance of this group of values, if they are not adequately protected and served in regulatory arrangements, the legitimacy and credibility of the mediation industry will be fundamentally challenged. Simply put, as mediation becomes increasingly near-compulsory so greater regulation, going substantially beyond a scheme of AVR, seems indicated. But in the absence of informed and open debate about the principles and priorities involved we can expect only further drift down the current route.

Of the four primary approaches to regulating mediation which Alexander (2008) identifies (market regulation, self-regulation, formal framework and formal legislative approach) in the current British context it seems clear that aside from the possibility of mediation being wholly absorbed into the regulatory framework of a cognate field such as law, the first and second approaches are the only realistic routes forward, though the second may culminate in something more-or-less resembling the third. It is also clear that if a claim of

professionalization as a basis for self-regulation whether (tacitly or actively supported and given legitimacy by the government) is to form a major plank of any structure for the defence of mediation's independence, this will necessitate going well beyond the CMC's AVR model. As mediation becomes effectively compulsory, any registration or accreditation scheme must logically expand into a transparently effective regulation scheme, incorporating complaints and disciplinary mechanisms, and such a scheme would need to be compulsory. If the CMC as presently constituted was found to represent predominantly major 'players' within the 'mediation industry', there could also be a strong case for the locus of regulatory authority to rest elsewhere than at the CMC, with an alternative body which more obviously reflects and prioritises public interest concerns.

Though direct state regulation remains highly improbable in the present climate, some robust self-regulatory or co-regulatory response might well be indicated. There is clearly a risk that the CMC in its current form will attract a perception of risk of fusion or confusion of the roles of overseer of and trade association for the civil mediation industry. Such perceptions matter - it is hard to believe that in relation to the medical profession, anybody would consider it acceptable for the 'trade association' role of the British Medical Association to be fused with the regulatory role of the General Medical Council, yet this is precisely the position that the CMC presently seems to hold as regards mediation.

There may be much worth defending in a mediation sector operating further beyond the mainstream legal world than does the other most prominent form of ADR for civil disputes, arbitration; Roberts and Palmer (2009: 363) note that ' . . . it will only be through the survival of the "mediator" as an independent professional that distinctive standards and institutions of quality assurance will crystallise'. Defence of its independence will be stronger if based more on public interest values and less on consumer interests or perceptions of industry self-interests such as those manifested in an approach which may appear to emphasise the expectations of corporate users and the mediation industry that serves them. If a credible regulatory regime drawing legitimacy from incorporation of 'public interest' values is not achieved, much of what is actually and potentially of value in an independent mediation sector will be under risk of takeover from or absorption into the established processes of a cognate industry such as law.

Mediators routinely use a device of inviting parties to reflect on the Best and Worst Alternative to a Negotiated Settlement, and the mediation industry or its representatives might usefully engage in this process now. If they reflect on the likely outcomes if they do not create an effective and credible regulatory regime for themselves, the potential for loss of credibility and the independence of the sector being diminished by regulation of mediation being absorbed into the regulation of the legal professions, this should logically serve as a sufficient 'nudge' to persuade them to pursue what is the best alternative to this. Fortunately,

this situation does not have to be viewed as a zero sum game in which only one set of values or interests can prevail at the expense of the other; the classic mediator's objective of a 'win-win' solution presents itself by way of an alternative. Based on what has been argued in this article, it is in the interests both of those parties who use mediation services, and of society collectively, for the public interest values involved in mediation to be properly prioritised and protected within an effective and transparent regulatory regime; a regime which to be legitimate must be clearly separated from the interests of 'the mediation industry'. This may appear to run counter to the interests of presently powerful groups such as the CMC and the large scale providers and users of mediation services which it seems to represent. However, in as far as such a move would protect the ongoing credibility, and hence further the development of mediation, in reality it would serve their interests while simultaneously protecting the public and democratic interests in civil justice and mediation.

References

Alexander, N. (2008) Mediation and the art of regulation *QUT Law Review* 06/2008 8(1). doi: 10.5204/qutlr.v8i1.60

Boon, A., Earle, R. and Whyte, A. (2007) Regulating mediators? *10 Legal Ethics*: 26.

BIS (Department for Business, Innovation and Skills) (2014) Alternative dispute resolution for consumers: government response to the consultation on implementing the Alternative Dispute Resolution Directive and the Online Dispute Resolution Regulation. Ref: BIS/14/1122. Retrieved 12 September 2016 from <https://www.gov.uk/government/consultations/alternative-dispute-resolution-for-consumers>

Briggs, M. (2016) The Online Solutions Court. Affordable Dispute Resolution for All: A Reform Case Study. Tom Sargant Memorial Lecture 2016. Retrieved 29 November 2016 from <https://2bquk8cdew6192tsu41lay8t-wpengine.netdna-ssl.com/wp-content/uploads/2016/10/Lord-Justice-Briggs-JUSTICE-lecture-Oct-2016.pdf>

CMC (2013) 'Registration of Individual Mediators and Mediation Training Courses', Document for CMC AGM December 2013. Unpublished

CMC (2015) Press Release 25th November: Civil Mediation Council plays a key role in establishing All Party Parliamentary Group. Retrieved 12 September 2016 from <http://www.civilmediation.org/news/press-release/104>.

CMC (2016) All Party Parliamentary Group on ADR. Retrieved 12 September 2016 from <http://www.civilmediation.org/newsletters-online.php?f=362>.

This is the accepted manuscript of an article published in *Mediation theory and practice*, 2017, v.2 issue 1.

Dezalay, Y. (1998) *Dealing in Virtue: International Commercial Arbitration and the Construction of a Transnational Legal Order*, (2nd edition), Chicago: University of Chicago Press.

Feintuck, M. (2004) *'The Public Interest' in Regulation*. Oxford: Oxford University Press.

Fouzder, M. (2016) 'Briggs: online court will take the A out of ADR' *Law Society Gazette* 26 September 2016. Retrieved 29 November 2016 from <https://www.lawgazette.co.uk/law/briggs-online-court-will-take-the-a-out-of-adr/5057914.article>

Fuller, L. (1970) 'Mediation – its form and functions', 44 *Southern California Law Review* 305.

Genn, H. (2010) *Judging Civil Justice*. Cambridge: Cambridge University Press.

Health and Care Professions Council (2016) Regulation of Further Groups. Retrieved 12 September 2016 from <http://www.hpc-uk.org/aboutregistration/aspirantgroups/>.

Hinshaw, A. (2012) Regulating the Rogue Mediator. Retrieved 12 September 2016 from <http://www.indisputably.org/?p=4133>.

Jackson Review (2010), Review of Civil Litigation Costs: Final Report. Retrieved 29 November 2016 from <https://www.judiciary.gov.uk/wp-content/uploads/JCO/Documents/Reports/jackson-final-report-140110.pdf>

Professional Standards Authority (2016) What we do. Retrieved 12 September 2016 from <http://www.professionalstandards.org.uk/what-we-do>.

Roberts, M. (2005) Family Mediation: the development of the regulatory framework in the UK 22 *Conflict Resolution Quarterly* 4: 509.

Roberts, M. (2014) *A-Z of Mediation*. London: Palgrave HE UK.

Roberts, S. and Palmer, M. (2009) *Dispute Processes: ADR and the Primary Forms of Decision-Making*. Cambridge: Cambridge University Press.

Thomas, Lord Chief Justice, (2016) Developing commercial law through the courts: rebalancing the relationship between the courts and arbitration. Retrieved 12 September 2016 from <https://www.judiciary.gov.uk/wp-content/uploads/2016/03/lcj-speech-bailli-lecture-20160309.pdf>.

Waldman, E. (ed.), (2011) *Mediation Ethics: Cases and Commentaries*. London: John Wiley and Sons.

Wolf Report (1996), *Final Report to the Lord Chancellor on the Civil Justice System in England and Wales*. London: HMSO.