

# REBECCA CLARK KEYNOTE SPEECH.

REBECCA CLARK GIVES A KEYNOTE SPEECH AT THE PRESTIGIOUS ARCHBISHOPS AND BISHOPS DINNER AT MANSION HOUSE IN FEBRUARY 2024.

## Keynote Speech

As a mediator, you are taught to do less speaking and a lot more listening. To be honest, that suits me. When I was doing my law degree, my mum really wanted me to be a barrister, but I told her there's no way I can stand up and speak to people about things that are very important.

But as you get older, you realise it is important that you do speak up about things you believe passionately in. And so here I am speaking to you as the volunteer chair of the CMC which is both a charity promoting and encouraging the use of mediation in the resolution of conflict and the regulatory organisation for practising non-family mediators in England and Wales.

So let me speak to you about my passion. And firstly, I'll just quickly explain what mediation is – fundamentally it's a process where a third party neutral (the mediator), helps parties explore options to resolve their differences. It is a flexible process which essentially takes the form of a number of meetings over a day, or a series of days – sometimes with the parties together and sometimes with the mediator alone. It works because it is a confidential process – what happens at the mediation stays at the mediation. I was once asked if it was like a stag do – I mean I've never been on a stag do, but I'm hoping they are a little more fun. On the same theme, it's also without prejudice, which is an archaic legal term which effectively means nothing you say can be used in evidence. I mention these legal protections because they make it work - they provide a bubble around the process, or a pause in the dispute, enabling people to have difficult conversations without being concerned that if they don't reach a resolution, they will have said something which can be thrown back at them in the future.



Archbishop Justin Welby, Lord Mayor Professor Michael Mainelli and Rebecca Clark

And the real benefit of mediation is that it works. And it works across so many different areas of modern society. And that is what I really wanted to focus on because in times where there is so much conflict and pain, we can feel helpless and that nothing we do can make any difference. And I am not saying mediation is the answer to everything. Of course not. But the breadth of mediation taking place in this country and the impact it is having is amazing.

So, let me start by talking to some of the City of London guests tonight. The sort of mediation I do for my paid work is commercial mediation – this covers the full gambit of claims you might see issued in the civil courts – claims for damages to property, breach of contract, professional negligence and the like. The total value of commercial cases mediated (by which I mean the amount at issue) in England and Wales each year is approximately £20 billion and that's excluding the impact of one – off mega cases. And a further £6bn is saved in wasted management time, damaged relationships, lost productivity and legal fees. And in recognition of this, the MoJ is in the process of introducing a system of automatic referral to mediation when any small claim (i.e. a claim under £10k) is

issued, reducing the burden on our overstretched courts and allowing parties to access early solutions to their problems. And the vast majority of claims issued in this jurisdiction are these small claims – which are not small to the individuals involved.

Then inside these City of London offices and indeed across the country, 870,000 employees are estimated to take sickness absence each year as a result of conflict at work, at an estimated cost to their organisations of £2.2bn. Just under 500,000 employees resign each year because of workplace conflict and the cost of recruiting replacements comes to £2.6bn per year. Workplace mediation is being used to mend relationships when there is a disagreement at work, finding solutions that everyone agrees to and avoiding escalation and staff turnover or employment claims. Where formal tribunal claims are made, the early conciliation schemes run by ACAS, or employment mediation using a third party mediator can avoid the costs of a full tribunal hearing.

But again to the London guests here, did you know that mediation is being used following the devastation of the Grenfell Tower disaster. Of course those still taking place cannot be discussed because they are confidential. But what I can tell you is that in April 2023, 900 bereaved family members, survivors and local people who were affected by the fire agreed a settlement of their civil claims arising from the blaze.

Of particular note here is that the settlement reached was not just monetary. The defendants agreed to contribute to a restorative justice project to benefit the community affected by the fire. The parties also agreed to hold Testimony Week which took place in January of this year and was attended by Representatives from the developers, the builders, Whirlpool, London Fire Brigade and local and national government.

And which provided people with a chance to share the devastating personal impact of that disaster – as one participant put it, it was an opportunity to *try to give some of the organisations that I hold responsible an insight into the horror faced by my brother and his family.*

These are imaginative solutions, designed to help people with their grief and anger. They are not solutions which could have been ordered by the court. And just for the avoidance of doubt, the settlement does not affect either the public inquiry or the potential for any criminal charges to be brought in the future.

And Grenfell leads me on to wider community mediation. Something that will certainly resonate with the religious peacemakers here. The UK's community mediation services are currently run on a shoestring, relying primarily on volunteers. We know that in 2005 there were over 250 community mediation organisations and that this has now reduced to under 50 today.



Why? A number of factors including the impact of austerity in 2008 which saw many community mediation organisations lose funding from local authority providers. At a local level, these services are dealing with things as diverse as neighbour disputes, anti social behaviour, homelessness after family breakdown, noise complaints, housing disrepair, and the integration of migrants. The power of community mediation to lend a listening ear, show empathy, and support reconciliation should not be underestimated. One volunteer reports being in the office on Christmas eve speaking with a man on the telephone who could not see his children over Christmas. Another was worried for someone who was sleeping in a car and who had apparently lost all hope. There are countless other examples. We have a project at the CMC mapping out all the various routes to community mediation providers which will be downloadable from posters in GP surgeries around the country. Deliberately at GPs because where these issues are not resolved, it is often the GPs who carry the burden because of the mental and physical health effects. But maybe these could be disseminated more widely, to your churches and to your community centres.

In addition to helping support policing with known conflict, community mediation helps to prevent conflict from arising in the first place. For example Wandsworth mediation works with organisations associated with the knife crime unit providing 'how to communicate in conflict' training sessions.

And where matters do escalate, or where crimes have been committed, volunteer Restorative Justice practitioners use mediation to manage a dialogue between a victim and perpetrator of a crime. I am a trained RJ practitioner and before volunteering for this Chair role, spent time in prisons in the north of England talking to individuals who really wanted

an opportunity to say sorry to those whose lives they had impacted. And for many of the victims, it is about understanding “why me” and an explanation, for example, that it wasn’t about them personally, but an opportunistic grab of money to fund a drug habit and this, whilst not excusing the offence, provides some reassurance that it is random and that there is not something particularly vulnerable about them which means it is likely to happen again.

Or it may be through the NHS claims mediation service which was set up in 2016 and which has outperformed its targets since inception. Using this service, many people report wanting to ensure that what has happened to them or their loved ones doesn’t happen to anyone else. Mediation provides a forum for these discussions that a court cannot.

Or it may be through accessing a mediation before appealing to the SEND Tribunal – the tribunal which deals with Education, Health and Care plans for children with special educational needs.

And for those who despair about the very stark realities of being a young person within our current society, we have this amazing development called Peer mediation which has now come within the CMC structure. Peer Mediation is when a young person is trained as a mediator, usually within an educational setting, and then mediates conflicts that other young people have. A teacher at a Primary School where peer mediation is used says “Initially I was really sceptical of it; I thought, No, this is not going to work with seven- and eight-year-olds, talking about peace! But actually, just within the space of a few weeks they were able to discuss what their conflict was, what their arguments were, and they had some strategies to be able to solve those. They are going to be our citizens of the future and they will need to know how to manage conflicts, how to work together, how to be resilient, how to support and listen, and actually, teaching them from an early age, really does do that.”

An example for older children is provided by the Peer Mediation initiative at Bacon’s College in Southwark which has been in place for over a decade. This inner city secondary academy is rated by OFSTED as ‘outstanding’ for ‘behaviour and safety of pupils’ and has seen a significant reduction in school exclusions in recent years. The peer mediators, aged 16-19, have a high profile in the school and help other students address challenging issues including name-calling, bullying and fights. Some even join adult mediators working in the community.

One 6th form mediator summed it up as follows:  
“I’ve learnt invaluable skills for life... Why doesn’t every school have peer mediation”

And coming neatly back to my law degree, we have a university working group, working on mediation being taught in degrees – not just in law, but in business courses too. I didn’t learn about the cost of conflict in my law degree. But since then I have learned that the impact of conflict is immense but also hard to measure. I’ve talked about some statistics and costs implications but of course the greatest cost of conflict is the deep personal distress it brings. The hurt experienced, the rupture of relationships, the inability to move forward.

And I didn’t learn about mediation in my law degree either. But I now understand that by concentrating on the listening rather than the speaking, and by providing people a process and a safe space to enable them to speak out and to be heard, you empower them to find their own resolutions. History has shown us that imposing solutions on people and forcing them to comply has limited success, yet for many, and at many levels of society across the globe, this is the default. Helping people find their own solutions might be hard, and inevitably will involve a compromise, but people are much more likely to comply with the solution because they found it themselves. I am immensely proud of the work that the CMC does as a charity and I would be delighted to speak to any of you about it or if you wanted to support our application to the Privy Council for a Royal Charter, which we feel will really raise the profile and accessibility of mediation for the public across all the areas of mediation I have told you about, I would be very happy to hear from you.

The most important thing I have learned is that when you do have to speak, rather than listen, it’s the words that you choose to say, and the way you say them.

We can’t stop conflict, but we can find ways to disagree agreeably.



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