

# Training bar

With increasing numbers of mediators, some trained for as little as 24 hours, pouring into an already saturated market, **Amanda Bucklow** asks how we can develop the mediation education process to benefit both new mediators and their client base

Some years ago, I had the motivation and the opportunity to devote myself to learning to play the tenor saxophone, and within three months, I was playing solo in a band. Then I moved to an apartment block in London and practice became impossible. If you asked me to play now, I might struggle with the fingering! Training to be a mediator can be very similar. The process starts with total immersion for 40 (and sometimes only 24) hours, followed by a solo performance in the guise of assessment. When newly accredited mediators leave the 'band' of their training, they land in the equivalent of an apartment block. It is a hard job to keep practising.

A good deal of the focus of discussion about mediation training is from the trainee perspective. However, there are two markets for mediation training: the market for aspiring mediators; and the market for mediation users. We confuse them because of who pays for the training, and yet I say the real customers are those who appoint mediators and, generally, they are solicitors.

## SHOULD WE LIMIT TRAINEES?

A well-rehearsed argument is that we should not continue to launch hundreds of new mediators every year into a market which is already saturated. The implication is that we should be limiting the number of people trained, either because it is not fair to take their money when there is little chance of their ever becoming even part-time mediators, or because it increases the risk of 'mischief', which prompts the call for regulation.

The counter-argument is that there should be no barrier to training to be a mediator. This view may be born of a fear that, in laying down the criteria, one group would eventually prevail: lawyers. The no-barrier argument is frequently accompanied by 'the skills are good for any professional life'. This may be true, but people don't invest in mediation training in the hope that the skills might be good for life generally; they invest because they aspire to earn a living as a mediator. I think we should help people establish whether that is what they really want to do, and whether they have some basic aptitude for the profession. If they want to ignore the results of that process, then so be it. Just like in mediation.

Another assertion to back up the no-barrier argument is 'the cream will rise to the top'. It may well be a logical assertion that the best mediators are the ones who are mediating, but it is equally valid to say that they may be mediating for reasons other than being the 'cream that rose to the top'. Some have seats in the 'dairy'.

There is, however, an alternative to these two arguments – not excluding or including on the grounds of who you are and what you do, but simply giving people some direction in identifying their

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training needs and aptitudes. We should, at least, be prepared to say that the foundation course is not an event at the end of which they may become an accredited mediator, but that it is the start of a process which will last for the entire time they choose to practise. We might tell them that they should reckon on a significant outlay of time and money before seeing much of a return – £10,000 over four to five years would not be unusual for a commercial mediator, and with no certainty that it will mean anything in the business of being appointed.

## LOSING SKILLS

For many mediators, it might be months or even years before they get their first lead mediation. The lack of opportunity to mediate can mean new mediators lose the skills they gained during their training, and develop bad habits and poor standards. Without an opportunity to practise and assimilate the new skills and behaviours, there is a risk, especially when under pressure, that much of what was learned will be forgotten and that in the 'forgetting', inexperienced mediators will rely on those skills and behaviours which were part of their professional persona in a previous 'life'. Since most professions have a 'fixer' or advisory emphasis, I suggest that that this approach is likely to dominate. If enough people practise mediation in this way, then the benefits of mediation as a process that works best when it is about party autonomy will be eroded.

## EDUCATING NOT TRAINING

The education of a mediator is partly craft and partly art. From my experience, the great majority who come on my courses have to work very hard to make the transition from the expert knowledge / advisory role to the role of mediator. It is for this reason that I think the standard of training is more relevant than any kind of regulation of practice standards. Competence is firmly rooted in



the quality of the training and is supported by the ability of the trainer to teach candidates. The proposition that a mediator can be a trainer just because they mediate or have written a book about mediation is a risky one, because it has no regard for the teaching skills required to convey knowledge so that it is really assimilated by the individual. Those skills are distinct from mediation skills.

Many consider that just 40 hours of foundation training, without any post-training supervision, falls short of what is needed for proper development of the subtle skills required to be a professional mediator. The argument that many good mediators have succeeded on courses just like that is no longer convincing, simply because the market has matured and we know so much more now than we did 10 or 15 years ago. Nevertheless, the commercial realities are such that it is very difficult to propose a longer educational programme: people don't want to pay for it. The commercial pressures are significant. Some trainers are tempted to train large groups on their own to keep the costs down. Inevitably, corners are cut. Learners need personal attention. They need to test out their understanding with their tutors, and the tutors need to be alert to each student's needs, so they do not end up providing training which is processed and formulaic. So what if we proposed a course of 100 hours at a cost of, say, £12,500? What might the end user think of a course like that?

### THE CUSTOMER

The difficulty we have in proposing a good standard of education – as opposed to a good training course – and what that might look like, is that we lack the evidence that buyers of mediation services actually care. There is a strong sense among practitioners that they do not. I believe this is a myth. I base my point of view on the results of my own research, conducted in 2006 and published in *The International Journal of Arbitration, Mediation and Dispute Management* in November 2006 and February 2007.

Of 30 responses from regular users of mediators, over half mentioned training as one indicator of quality. Interestingly, this was more often a view in response to the question about the benefits and risks of regulation, which none thought a good idea. One lawyer who regularly appoints mediators said: "I think, to some extent, there is a sort of regulation by virtue of the organisation with which a mediator trained. You wouldn't go to a mediator who

hadn't had any training ... if training is good, additional regulation is not really needed."

For buyers of mediation services, the quality of training is a reasonable part of mitigating the risk of making a bad choice. However, appointers of mediators might not be conscious that the accreditation organisation influences their decision-making, and that might be because it is taken for granted. If a mediator was trained by a well-known training provider, then you can be sure it will be referenced on their profile or CV.

### REGULATION

Like the respondents to my research, I do not support regulation. I do not see how it would manage the risk of bad practice and give a sense of comfort to the appointers of mediators, simply because it is an 'after the event' transaction. Given that most mediators are selected by 'informed' consumers, who have a responsibility to satisfy themselves that the mediator they propose is up to the job, then the risk is minimal if appointers have confidence in making their choice. We need to give them that confidence, and we might do that by (among other things) making training and education something they can rely on.

If you take into account all the 'allowances' that we would generously make to include everyone and not put up unreasonable barriers to entry, then we would probably arrive at a set of standards that are less than we think they should be. If we want to build a well-educated profession, then we need to start at the beginning, with excellent foundation training and a route or pathway that a professional can sign up to. What if we signed up to a professional education programme with a commitment to buy training credits as part of our membership, instead of paying a fee to a regulator? What if we could spend those credits on appropriate courses according to our needs, and if we didn't spend them within two years, we lost them? What could a training organisation do if they had that kind of certainty and how might the end user view that kind of commitment? ■

**Amanda Bucklow FCI Arb (Mediation)** is a leading independent commercial mediator and trainer practising in London and internationally (<http://blog.amandabucklow.co.uk>).