

Construction clients and mediation: a follow-up study of attitudes and experiences

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1. Brief summary of what the research is about.	The principal aim of this project was to fill a gap in the literature and chart Scottish construction participants' awareness, attitudes and experiences relative to mediation. The construction industry is highly litigious and ongoing disputes can be costly not merely in a financial sense but also in terms of the breakdown of otherwise profitable relationships often engendered by conflict. While arbitration and adjudication are commonly deployed in the Scottish construction sphere as dispute resolution tools, the adversarial nature of such processes may hold deleterious consequences for parties in terms of financial costs, delays, risks and ensuing loss of business. Proponents argue that mediation is a cheaper, quicker, and altogether more harmonious method of dispute resolution than traditional, adversarial methods. Despite evidence of modest growth in the use of mediation within Scottish civil and commercial disputes generally (Clark & Dawson, 2007; Clark, 2009), and

	evidence of the growing use of construction mediation in other jurisdictions such as England and Wales (see Brooker, 2009; Gould et al, 2009), little evidence can be gleaned from the literature regarding construction mediation in Scotland. This project focused on the utility of mediation as a process of dispute resolution within the sphere of Scottish construction disputes, as well as the role of construction participants within the process. It builds upon recent research on the experiences, attitudes and perceptions of Scottish lawyers to mediation in construction disputes (Agapiou & Clark, 2010; Agapiou & Clark, 2011). A recent survey of Scottish construction lawyers has confirmed mediation a suitable forum for such disputes, the opinion being it can be effective across the spectrum of construction disputes irrespective of the relationships involved or dispute type (Agapiou & Clark, 2010; Agapiou & Clark, 2011). In most contexts, voluntary uptake of the process is low, however, and research into prospective client perceptions is particularly valuable. In particular, it can be questioned as to whether Scottish construction industry participants share the generally upbeat opinion of mediation expressed by their legal advisors. Indeed, one issue that arose from the previous studies was the possibility of clients' unwillingness to engage in the mediation process. For some time research into civil justice issues has been the Cinderella of socio-legal research, but some universities in Scotland are now showing a revived interest in the areas. Policy makers are similarly making it clear that civil justice is seen as an area of priority. There is a pressing need for academic research to inform and shape policy, but hitherto such research activity and active researchers have been relatively thin on the ground both in Scotland and in the UK as a whole.
2. What are the research questions?	Are construction participants are willing to shift away from traditional approaches

	to mediatory techniques? If they are, what are the drivers towards the adoption of mediation, and if not what are the barriers to change?
3. What, if any, outputs so far?	1. Agapiou, A and Clark, B (2010) An investigation of construction lawyer attitudes to the use of mediation in Scotland, Royal Institute of Chartered Surveyors COBRA 2010 conference, Université Paris-Dauphine , Paris, September 1-3, ISBN 978-1-84219-519-2. 2. Agapiou, A and Clark, B (2011) Scottish construction lawyers and mediation: an investigation into attitudes and experiences, International Journal of Law in the Built Environment, 3(2) ISSN: 1756-1450 3. Agapiou, A (2011) Scottish Construction Lawyers' awareness and experiences of ADR, Proceedings of the Institution of Civil Engineers – Procurement, Management and Law, 164 (4), 181-192, ISSN: 1751-4304. 4. Agapiou, A and Clark, B (2012) An empirical analysis of Construction Lawyers' interaction with Mediation: a qualitative approach, Civil Justice Quarterly, October, ISSN: 0261-9261 5. Agapiou, A and Clark, B (2013) A follow-up empirical analysis of Scottish Construction Clients interaction with Mediation, Civil Justice Quarterly, July, ISSN: 0261-9261. 6. Agapiou, A, Clark, B, Keegan, G (2012) Construction disputes and mediation: a study of the attitudes and experiences of Scottish contracting firms. Royal Institute of Chartered Surveyors COBRA 2012 conference, University of Arizona 7. Agapiou, A and Clark, B (2012) Construction Clients and Mediation: a follow-up study of attitudes and experience, Royal Institution of Chartered Surveyors, London 8. Clark, B and Agapiou, A (2012) Construction Mediation in Scotland: Lawyer and Client Experiences, Society of Legal Scholars Annual Conference, University of Bristol, 11-14th September.

	9. Agapiou, A and Clark, B (2014) Construction mediation in Scotland: A comparison of the views and experiences of lawyers and end-users In: Raiden, A B and Aboagye-Nimo, E (Eds) Procs 30th Annual ARCOM Conference, 1-3 September 2014, Portsmouth, UK, Association of Researchers in Construction Management, 583-591 10. Agapiou, A and Clark, B (2014) A reflection on Construction Mediation in Scotland, Proceedings of the Institution of Civil Engineers – Procurement, Management and Law, 167 (6), p 265-272, ISSN: 1751-4304.
4. What outputs are planned?	
5. What is the anticipated impact?	• Provide empirical data on the views and experiences of construction participants relative to mediation in Scotland • Assist legal and professional bodies to develop appropriate policies relative to the promotion of mediation to their members • Assist ongoing civil justice reform processes in determining the value of mediation • Identify important policy issues which require resolution in mediation's development • Identify barriers to mediation development and drivers for adoption
6. Comments / additional information / requests for data or input from the broader administrative justice community	