

Interview with Susanne Schuler

The commercial mediator profession should reflect the community that it serves

Since 2018, the CEDR Foundation has been working on a major initiative to improve diversity and inclusion in civil and commercial mediation in the United Kingdom.¹ Susanne Schuler, Director of Training & Consultancy, shared some personal insights and experiences from the *Diversity and Inclusion Project* at CEDR. The second part of this article has a summary of the CEDR report that identified the major barriers to diversity around gender, race and age in (commercial) mediations, followed by a series of recommendations based on research and experiences in the England and Wales.

BY TABITHA VAN DEN BERG

Launching the latest CEDR podcast series on diversity and inclusion, Susanne Schuler said: 'The big question for us mediators is: Can we turn the current confusion and anger into constructive action, and how?' A powerful start to a Zoom-call, we had a deep conversation about the work already carried out in the UK.

What was your role in facilitating the discussion on diversity and inclusion at CEDR?

For several years, myself and other faculty members have been asking ourselves and our organisation how we can reflect the makeup and diversity of society in the choice of CEDR-accredited mediators we propose to our clients. Since Black Lives Matters and the work of DiAngelo on white fragility, in recent years we have seen a sense of urgency and action in society and now have better tools and labels to address the issues related to systemic racism, inequality and representation.²

How did you start your research? What did this journey at CEDR look like?

We started our work with a baseline study. We interviewed several focus groups of experts and

mediators to explore the issue and came up with recommendations for where we could improve. After an initial research phase of two to three months, we started to distribute our findings and recommendations from that research. I must say, the response has been far more positive than I expected. For example: I presented our report to an audience of about two hundred mediators at a conference of the Civil Mediation Council in London, to, predominately white males of a certain age so I expected some discomfort.³

How can we reflect the makeup and diversity of society in the choice of mediators we propose to our clients?

I started by telling them they were brave to be there, and managed to really engage them, as we mediators always should. Of course, some said 'I am born a white male, should I apologize for that?' To which, quite frankly, I can only offer a polite response: 'You have inherited many



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unearned powers and privileges, so now may be a good time to realise that.' However, the majority of feedback was better than I thought; many of these 'privileged men' were really thinking more about legacy than confrontation. I found them quite willing to brainstorm on 'how do we make space for younger mediators, what can we do to increase the opportunities for co-mediation' and so on. When working towards greater diversity and more inclusion, I think it is necessary to choose to include those who would exclude you. How can we get those who own the privileged space to become mentors, and consciously open their space and invite others in? We cannot just tell or ask people of colour or from a minority group to earn or claim their space if those in power are not opened up and ready to welcome them at all. Additionally, we work closely with major law firms. In the UK they often are the ones who propose a list of mediators, or advise their clients on the choice of the mediator, so it is key to have them on board.

It is crucial to train and educate yourself

What have you learned along the way, and can we take back to the Dutch context?

We have learned a lot! It is crucial to train and educate yourself, like I did, for example attending a number of workshops on racial healing. I learned not to be silent, and to use my position as a director to influence the decisions we make on who we send to clients, who we invite to train or speak, etc.

We must not just tick boxes or keep it theoretical, but start applying it. We have asked experts to train our staff and have made (unconscious) bias, diversity, equity and inclusivity part of our mediation trainings.

And it starts with dialogue. With partners, with clients, with colleagues in the industry...

Our advice: Address the issues, name and label them but also use humour and kindness, engage using the tools you've got as a mediator like nonviolent communication. Share your own vulnerability and feelings in an honest manner. I often start a dialogue with 'I am myself a white female mediator, I am here because some doors were opened for me because of that.'

Has addressing these topics brought any added value to your organisation?

CEDR has always been a quite diverse organisation, if you look at the background of the trainers we employ and people we work with. However, I believe this work has helped us identify areas in which we were perhaps unconsciously blind. We now have a better understanding of the collective knowledge and talent of people that perhaps we didn't look at before. It also functions as a clearer compass in our work outside. We have deeper conversations with our business partners, know which questions we need to ask each other, to learn and explore together. For some clients like the United Nations it is actually mandatory to have gender neutral trainings. It is not just about feeling better about yourself as an organisation but about actually living the values of inclusion. And as an added bonus: that makes us more attractive for certain clients.

This project started in 2018. What has happened since then and what are CEDR's plans ahead?

After the initial research report we have chosen to make diversity, equity and inclusivity an integral part of our foundation. Each year we focus on a specific theme to support that process. Last year we reviewed all our trainings materials. We had someone come in and really look closely at the videos we

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use, the pronouns we use, the examples we give as part of our training curriculum, etc. We also monitor and report on diversity. Where we see progress and where we do not is a specific chapter in our biennial Mediation Audit, that surveys

both commercial mediators and lawyers' attitudes and experiences in the UK.

Society seems to become more and more polarized, a pandemic, climate change, racial injustice, we have quite some challenges ahead. How can we move beyond differences and collaborate?

As a society, we need to return to a more thoughtful and deeper conversation on so many issues. Social media trends have severely influenced the way we talk to each other. It's time to move beyond cancel culture. Explore beyond the notion of like versus dislike on multi-layered topics. If I look at our sector, diversity, equity and inclusion (D&E&I) is certainly not mainstream in the context of commercial mediation, but we are advancing. In the future I sincerely hope we can move beyond identifying differences between groups of humans. I truly think we should strive for all people to have access to more equitable solutions!

Summary of CEDR rapport on improving diversity

CEDR states that it is important that the commercial mediator profession reflects the community that it serves. That's why the CEDR Foundation has launched a research project – including desk research – and engaged with focus groups of mediators, lawyers and users of mediation to look at possible barriers to diversity and inclusion; the research focusses in the first phase on aspects of gender, race and age in commercial mediation. CEDR collated the results of this research in a report.⁴ Within commercial mediation a lack of diversity is negative for clients and mediators. For clients, there is potentially a lack of reflection of the clients' own personal characteristics, less ability to accept a range of mediator styles and a lesser diversity of ownership of their life experience of mediators working with parties. For the mediation profession, a lack of diversity blocks women, people from black and (middle) eastern backgrounds and younger mediators from gaining work and negatively affects all mediators through the creation of stereotypes as to who should be a mediator.

The 'problem' became apparent when looking at the statistics at the start of the project:

- Just 33.6% of commercial mediators are women, and the average commercial mediation panel has 28.7% women.
- 96% of commercial mediators are white, compared with 86% of the general population. The proportions of Asian and black commercial mediators are significantly below the general UK population.
- 5% of commercial mediators are over the age of 50 and whilst 56% of those training is under 50, this group makes up only 22.5% of those getting work.

In order to understand the specific barriers faced when a mediator is being selected to work in commercial cases, CEDR looked at the overall progression path of a mediator from deciding to become a mediator at all, through to getting regularly selected as a mediator by parties for commercial

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work. For each major stage of the pathway, with the aid of focus groups and secondary research of other professions, they identified six potential barriers to progression and proposed possible recommendations for improvement in commercial mediation profession in the UK and Wales. The six (perceived) barriers to achieve greater diversity and inclusion are:⁵

- getting selected for cases;
- getting early experience;
- choosing to become a mediator;
- getting put forward for cases;
- selection for panels;⁶
- gaining accreditation.

Recommendations

Based on the outcome of the initial report in 2018, CEDR formulated a number of recommendations to increase diversity and strive towards inclusion for both the organization



itself, as well as the UK mediation community at large. A few highlights:

- Increase the use of diverse role models to challenge stereotypes.
- Clearer pathways for progression for mediators from accreditation as a mediator to joining mediator panels.
- Unconscious bias training for mediator assessors, panel selectors and providers.
- A commitment to diverse mediator recommendations from providers and an increase in the use of blind CVs.
- Mediation providers and clients should measure and record how diverse mediator selection is.

Monitoring progress

The 9th bi-annual CEDR Audit 2021 explores whether any progress has been made on the particular indicators and established barriers that are hampering the intended process to achieve more diversity and inclusion.⁷ Though the number of female mediators in commercial mediation grew significantly. Of the 'advanced group' of mediators, i.e., those mediating regularly, the proportion of women rose from 24% in 2018 to 41% in 2020. However little progress was made in other areas, particular advancing the number of mediators under 50 and growth of the number of mediators with a more diverse cultural background (e.g. non-white). As an example: compared with lawyers (17%), only 8% of mediators are non-white. This also falls markedly below societal representation.

More initiatives to foster inclusion and diversity

In addition to the reports, CEDR started a podcast series, *Tackling Challenges within Diversity and Inclusion* to empower society to hold courageous and powerful dialogues on diversity and inclusion. This interview series invited international scholars, peace builders and mediators from diverse backgrounds, and has two aims. Firstly, to hold challenging and stimulating discussions with inspirational and influential people who have made a considerable difference in the field of diversity, equity and inclusivity at a local, national

and international level. Secondly, to inspire and equip mediators and other listeners to confront these difficult issues and take action in their family, community, business and society.

Listen to all six episodes of the podcasts via www.cedr.com > Foundation > Current projects > Tackling challenges within diversity and inclusion. ■

NOTES

1. The Centre for Effective Dispute Resolution (CEDR) specialises in mediation and alternative dispute resolution (ADR). It's an independent non-profit organisation and a registered charity in the UK that aims to inspire people to look differently at conflict and to provide society with skills and solutions for effective dialogue and conflict management.
2. White fragility refers to feelings and behaviours that occur when white people face racial stressors. They may deny white superiority but live a segregated life without any concerns about the absence of people of color. Many factors contribute to white fragility, and although it may not be racism, it supports a racist culture.
3. The Civil Mediation Council is a charity which aims to promote the resolution of conflicts and disputes by encouraging the use of mediation and other dispute resolution techniques and methods and to advance the education of the public in matters related to this.
4. Find the full report *Improving diversity in commercial mediation* at www.cedr.com > Foundation > Current projects > Diversity and Inclusion in Commercial Mediation.
5. Read *Improving diversity in commercial mediation*, page 15 and further for a full explanation of each of the barriers and recommendations.
6. In order to get commercial mediation work, mediators will often want to join professional panels of mediators, for example the CEDR UK panel. The issue with panels from a diversity and inclusion perspective is often that it's unclear how an individual would progress from being an accredited mediator, through to joining a panel.
7. The CEDR Mediation Audit is a biennial report on the development of the commercial mediation market in the UK. Conducted by way of a survey, open to the whole UK mediator population, its primary focus is to assess how the mediation marketplace and mediation attitudes continue to evolve.