



**TYNWALD COURT
OFFICIAL REPORT**

**RECORTYS OIKOIL
BING VEAYN TINVAAL**

**PROCEEDINGS
DAALTYN**

**SELECT COMMITTEE
ON THE
CARE AND UPBRINGING
OF CHILDREN
(PETITION FOR REDRESS)**

HANSARD

Douglas, Friday, 13th June, 2014

PP2014/0092

CUC, No. 5

Members Present:

Chairman: Mr J R Turner MLC
Hon. P A Gawne MHK
Mrs K J Beecroft MHK

Clerk:

Mr J D C King

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Select Committee of Tynwald on the Care and Upbringing of Children (Petition for Redress)

*The Committee sat in public at 10.30 a.m.
in the Legislative Council Chamber,
Legislative Buildings, Douglas*

[MR TURNER *in the Chair*]

Procedural

The Chairman: (Mr Turner): Good morning. Welcome to this public meeting of the Select Committee on the Care and Upbringing of Children.

I am Juan Turner MLC, I chair this Committee. With me are the Hon. Phil Gawne MHK and Mrs Kate Beecroft MHK, and our clerk is Mr Jonathan King.

5 Please ensure that mobile phones are switched off here in the Chamber, and not just on silence as it interferes with the *Hansard* and the internet feed. Also, for the purposes of *Hansard* I will just remind, including the Committee, that we do not wish to have two people speaking at once.

10 The background to this Committee: we were established by Tynwald on 10th December 2013 and it was resolved on that date that a committee of three Members be appointed with powers to take written and oral evidence pursuant to sections 3 and 4 of the Tynwald Proceedings Act 1876, as amended, to consider and report to Tynwald by June 2014 on the Petition for Redress of Mr Philip James Walmsley presented at St John's on 5th July 2013, seeking a review of the law relating to the care and upbringing of children, especially in cases of broken marriages and other relationships.

15 In accordance with the Standing Orders we have heard evidence from Mr Walmsley but, given the subject matter of his petition, we did hear that evidence in private.

Today is our fifth public hearing.

20 We have heard oral evidence in public on Friday, 7th March; Monday, 31st March; Wednesday, 7th May; and Wednesday, 28th May.

I did mention in there that we were due to report to Tynwald at the June sitting. The work of the Committee is ongoing so I will be making a statement to explain that we are not quite ready yet to do that and we hope to be reporting in due course.

EVIDENCE OF Mr Frank Hanna, Mediator

25 **Q198. The Chairman:** At one of our previous meetings on 31st March, we heard from Mrs Tina Hall, a mediator. She explained to us the current arrangements for mediation in the Isle of Man.

A member of the public who heard that evidence, Mr Roger Tomlinson, wrote to us and suggested we contact Mr Frank Hanna and Ms Nancy Peterson, internationally renowned

30 mediators, resident in Port Erin. Mr Tomlinson thought they could provide us with a broader perspective about the important issue of mediation and conflict resolution.

So I am grateful to Mr Hanna for joining us here today.

35 Mr Hanna, as you can see we are in a public session and it is also live on the internet. If there is anything which you would prefer to say to us in private you are welcome to stay on after the session, if there is anything which you wish to discuss. But if you do, the microphones do remain on and the transcript is made for the record.

So, again, thank you for coming to see us, and welcome.

First of all, for the record, if you could just state your name and outline your experience of mediation.

40 **Mr Hanna:** My name is Frank Hanna, I am a retired solicitor. I practised in Belfast in Northern Ireland throughout the totality of the 'Troubles', as they are known. During the 1980s and into the 1990s I became, I think, somewhat disillusioned by the way issues got resolved within the legal profession and contemporaneously with that I was spending some considerable time in America on a committee that I was a member of. I learned in the late 1980s and early 1990s
45 about the development of mediation as it was happening in the United States, and I got very interested in it and I thought it was very appropriate to the situation as it was. It did not take me very long to realise that mediation was, in fact, the future – and that is how it has turned out to be in the United States of America.

50 My passion for it was such that I took time out from my practice in the early 1990s and went to Harvard Law School to look more closely at it. It piqued my curiosity. I subsequently went to another university in California, in Malibu: Pepperdine University. Harvard and Pepperdine are probably regarded as the top two schools in the world for mediation studies. That equipped me in such a way that I wanted to pursue it because I thought it would develop into the way the future of the legal profession would work in the UK and in Ireland.

55 I had the opportunity, because my son was part of my practice, to take early retirement from my law practice in 1999. I went to the United States, and by that stage I was with my partner, Nancy Peterson. We settled in Arizona and my purpose was to expand my experience and knowledge of mediation. I did that, and I joined many volunteer organisations just to understand and learn more about it.

60 I was then approached by the United States government through their Equal Employment Opportunities Commission, as they were running a mediation pilot scheme for discrimination and workplace mediations. They asked me to participate in that, and I did. That pilot scheme lasted six months and was regarded as a great success.

65 The government then decided to introduce it across all the states in the United States – which they then did. They wanted, apart from staff mediators, independent contract mediators. They had two vacancies for the south-west states of the United States – that is Arizona, Nevada, New Mexico and Utah. They advertised for independent mediators to apply for these two positions. I applied and was successful.

70 From the year 2000 until I left the United States in 2006 due to ill-health, I mediated on a daily basis and a weekly basis for that particular programme which, I think it is fair to say, is probably regarded as the most successful mediation programme in the United States of America. And that probably means the world.

75 The success ratio of mediations within that programme were in or about 90%, 91% or 92%, which took a huge burden off the court systems. I should say that my own personal success rate was 93%.

80 In 2003 I was approached by a group of people and asked to let my name go forward as a candidate in an election for the presidency of the Arizona Dispute Resolution Association, which is the governing body of mediation in the state of Arizona. I allowed my name to go forward and was elected president, and became the first elected president in the history of the state. I remained president for two years and during my presidency I introduced two major schemes

throughout the state of Arizona: one was peer mediation in schools and the other was community mediation throughout the length and breadth of the state of Arizona.

As well as that both Nancy and I were given the contract of installing a peer mediation programme within the city of Phoenix, within the city of Mesa, within the city of Chandler, and within the city of Gilbert – different states. So we taught and trained mediators and we installed systems which continue to this day. In fact, just within the last couple of years we were brought out again because through retirements and people leaving and moving, the mediator pool had depleted. They brought us out and we trained, I think, two consecutive courses. We trained 40 new mediators, which will keep them going for some time. So those programmes run very successfully.

In addition to that we were employed by many different companies to install peer mediation programmes within the actual companies themselves, so that organisations could deal with conflicts rather than have to call in lawyers all the time. Again, they work very successfully and have done.

My partner, Nancy Peterson, was subsequently appointed as the Director of Education for New York State Dispute Resolution Association – NYSDRA, it is called – and she had the responsibility of developing educational programmes throughout the state of New York. She held that position for two years and resigned that position to return to the UK with me, again which was a health thing.

That pretty much brings us up to date.

Q199. The Chairman: Well, thank you for that very interesting background and an outline of your experience in mediation. Obviously we want to explore... you have sent us a submission, we want to explore mediation in the Isle of Man and the experience that you have of it and your comments. We have got until just before 12 noon to do that so without further ado I think if you do not mind we will get into the issues here on the Isle of Man.

It may be worth mentioning: how did you come to the Isle of Man?

Mr Hanna: Well, in 2007 – and it is quite an amusing story – I got a call from the Positive Action Group, who were keen to know more about mediation and I was asked if I would come and give a lecture on mediation. At that point we were living in Belfast, and we still have a home in Belfast. At the airport on the way across to the Isle of Man – my partner Nancy had never been to the Isle of Man – I said, ‘You know the problem with this trip is that once you see the Isle of Man you will fall in love with it and you will not want to leave it.’ We laughed at that, but in reality that is exactly what happened – and that one trip was instrumental in us buying a home in Port Erin which we have enjoyed ever since.

In terms of mediation in the Isle of Man, apart from that, I have given a number of lectures, I have assisted the Government in a whole variety of different ways and disputes and what have you, and I have made my views known about what I feel that mediation should be in the Isle of Man. I would like to think that I had spelled out the problems and the mistakes that it is likely that organisations will make – and I suspect from everything I have heard that a lot of those mistakes have, in fact, been made.

The Chairman: Okay.
Mr Gawne.

Q200. Mr Gawne: Just on that, because I remember when you first came over – I am not sure if I attended the Positive Action Group meeting – but did you give a presentation to Tynwald Members? (**Mr Hanna:** I did.) Yes, I remember that and remember being inspired and thinking, ‘This sounds really good.’ Then it seemed to disappear off and nothing seemed to happen.

So it would be interesting, I think, for me to know what actually happened and why you think that we did not make the progress?’

135 **Mr Hanna:** Well, I mean I would be very interested too. I do not know: somebody said to me very knowingly, 'It is not what you know, it is who you know.' And I believe maybe there were people who were more connected than I was.

140 My passion – and I want to make this absolutely clear, I have no criticism of anybody who engages or seeks mediation as a solution, it is *very* powerful. It is a much maligned skill set and I do not think people fully understand just how powerful it is, and the extent of it. To put it in very blunt terms it brought peace to Northern Ireland and to many other places too – and the same set of skills that brought peace to Northern Ireland are the same set of skills that I am talking about.

145 **Q201. Mr Gawne:** Did you actually speak specifically to anybody in Government when you were trying to – ?

150 **Mr Hanna:** I believe there was a tender, we made submissions and what have you, but... If I could make one point, sir, it is hugely important and it is a mistake that has been made throughout the United States, throughout everywhere that tries it, people latch on to mediation and dig into it. It tends to get hijacked. But for mediation to be pure it needs to be independent; it needs to be independent of government; it needs to be independent of the legal profession.

It simply needs to be independent, so that the public learn to trust it because of its independence, and do not see it as a wing of government, do not see it as another tool that lawyers use.

155 I am a lawyer myself, I know exactly what I am talking about, but the reality is that the legal profession do tend to get a grip on it and use it when they feel like it.

Q202. Mr Gawne: So how do we make it happen, I suppose, is the thing?

160 Bearing in mind that you have got a system in place already which is that legal system for most of the... well, certainly in the specific area that we are looking at, we are looking at how the courts deal with disputes in relation to children.

So how do we overcome the system that we *have*, to introduce the system that you are talking about?

165 I presume that you would still need to have some kind of court system in place in the cases where mediation would not actually work, but ... do you know what I mean – ?

Mr Hanna: I know exactly what you mean.

Can I answer it in a slightly roundabout way, and I do not mean to be obtuse, I am trying to make this as clear as I possibly can.

170 Let us say for the sake of argument you have a large company, a major multinational company, that has a base here. They decide, 'We want to have a peer mediation programme within our company so that we can deal with conflict as it happens.' And they approach me, or they approach my organisation and say, 'Well, how do we do it?' And I say, 'Okay put me in touch with who you want to be in charge of it.'

175 Invariably they will send the HR Department – *invariably*. And the first thing that I will say to them is, 'You are the last people I want to talk to' – because the perception of the HR department is that they are management; they are the people who determine right and wrong; they are the people who punish. That is the perception of the public.

180 So, whatever the establishment is, it has to be apart from that so that the workforce can look at this and say, 'I am confident with that organisation because it is *not* part of management, it is not a wing of the company, it is not just another tool that the company uses.' So it has to have that level of independence.

Now, take the Isle of Man, for example. It is really quite simple.

What I believe should happen, and again it is just my opinion, is that there should be established – and I did notice that the evidence of the mediator, Mrs Hall, earlier on, said

185 something very similar to this. There should be an independent building somewhere, a
mediation centre, where people can come to, people off the street can come to. You see, there
is nowhere on the Isle of Man. If you have a row with your neighbour there is nowhere to go on
the Isle of Man.

I get phone calls... I got a phone call last week from somebody on the Isle of Man who has got
190 a problem with his neighbour. But there is not anywhere that is a central base that people can
go to.

Q203. Mr Gawne: So, effectively, what we do have in the Isle of Man – I do not know if you
are aware – we have the Industrial Relations Office and they manage disputes between
195 Government and unions, or unions and employers. But I am not sure there are any other
examples of that really. There may be one or two, but it is that kind of thing, it is the Industrial
Relations Office that does sit outside of Government. I think it is funded by Government but it is,
I think, trusted by both sides, trusted by Government and by the unions to reach that right
conclusion.

200 But you are talking about a much broader thing for everybody who has this –

Mr Hanna: What I am suggesting is that this should become... ultimately, and I think probably
ultimately it means within about two years, this could be self-supporting.

Ironically in 2007, or whenever I came over to speak for the Positive Action Group, they had
205 me record a video which is on YouTube, and I say exactly this in that video. I believed then that
the Isle of Man could have led the way in Europe, in mediation. What I perceived then was –

Q204. Mr Gawne: And could we still?

210 **Mr Hanna:** Still? It is a lot of time wasted.

I envisioned a mediation centre where people could bring their problems to, where
mediators could be trained, where a *standard* could be set, and where a standard could be
maintained. Where eventually it would develop into an Academy which would form a reputation
where people would come to the Isle of Man to learn.

215 That was the vision that I had, and it still holds good to this day. There is nothing like it, and
that is why I said the Isle of Man could lead the way in Europe.

Loads of places are like it in the United States: each different state in the United States has
their own centre and their own organisations. They are accredited and they are recognised by
the public – and *trusted* by the public.

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Q205. The Chairman: Yes, and – just before we go to Mrs Beecroft – how are those centres
funded in the United States?

Mr Hanna: Probably in the initial stage by the local city, the local government and they would
225 do that simply by providing the premises. The vast majority of people – and this defines the
purity of it – are volunteers. I spent my first year, two years maybe, in the United States doing
mediation after mediation after mediation. Absolutely free: *pro bono*.

You would go down to the court system, all the court systems had mediation systems which
are peopled by volunteers. And I would go down... this seems like a staggering thing to say but it
230 is true. On two separate occasions I actually did four mediations in the one day, because I went
at eight o'clock in the morning and made myself available.

The courts would say, 'Has this been to mediation?' and refer it to mediation. We would go
down the hall and we would mediate – and you would mediate until it was finished; and if it
finished quickly, moved on.

235 Whenever I say that mediation just is not understood or really known... whenever I was asked
by the cities of Gilbert and Mesa and Phoenix to teach, I actually took six weeks off and sat down

to think about whether I could do it or not. I asked myself a question – this sounds very theoretic in many ways – but it is true. I asked myself the question, ‘What do I know about mediation?’

240 My answer was very clinical: was I a mediator because I had been a solicitor? No. Was I a mediator because I had been to Harvard? No. Pepperdine? No. Many other courses? No.

I was a mediator – and I was a good mediator, a skilful mediator – because of experience; because I had been there and done it; because I had looked into people’s eyes, I had seen their reactions, I had learned. I learned the hard way, I learned at the coal face. That is what made me a mediator – and that is, I think, what the Equal Employment Opportunity Commission saw in me, was that someone who had taken that.

245 That is where I believe the weakness in the UK, and in Ireland, and in the Isle of Man is: that people just do not have experience, and they do not have a route to get experience.

What I was proposing in terms of a mediation centre would go a long way to curing that.

250 **The Chairman:** Mrs Beecroft.

Q206. Mrs Beecroft: Yes, thank you

I have just a few questions, but if I could give you them all at once because I think you can probably roll them into the one answer, rather than keep coming back to you.

255 You have mentioned Harvard and Pepperdine: did you actually attend a full-time course there? Is it a degree in America? Or how does it work there?

You say that now there are new courses for mediators. How long are those courses? What is the depth of them? Do they actually specialise? Do you get mediators in the States that specialise in family matters, as opposed to different things? Are you just general mediators or has it come to be a speciality?

260 Then coming back to the Island: how would we get the level of experience here that you are talking about, even if we had the same standards of the courses and all the rest of it, because I think you said 40 hours was not really enough in your submission for just even the course itself. But even if we had the extended courses, how would we get the experience here if we do not have the number of cases?

265 I hope that is not too many is it, all at once?

Mr Hanna: No, that is okay.

270 First of all, in terms of Harvard and Pepperdine: the courses are substantial, they are not 40 hour courses, they are month long courses, and they would be spread over two or three different periods of time.

I went beyond that: I carried on with my studies and eventually I wrote a thesis and I got a doctorate in mediation from the Graduate Theological Foundation in Indiana. I wrote a book on the subject called ‘Conflict Resolution and Mediation in the Real World’, and that was my thesis for my doctorate.

275 Getting to how you would get the experience: what happens in the United States is people go on a course which a lot of organisations call ‘basic course’, which offends me greatly because you never hear of a basic doctor, or a basic lawyer, or a basic architect, so why should you have a basic mediator? The idea of that initial course is to learn about the theory or the academic side of it.

280 What I did whenever I was training in the States, I introduced something entirely different into the way that was taught, by introducing actual mediations role plays. All courses do role plays but these were different role plays, these were actual cases and they were very complicated cases, they were deep-end cases. The people on the course would be given their details and they would be asked to go away and think about it overnight, and come back in and be that person, and just do whatever they felt like doing – in other words, be themselves.

285 So they were not playing a role, they were playing themselves within a role, which is a very powerful way. The mediation experiences were very powerful and very valuable. Everybody on

290 my courses... nobody leaves until they have actually mediated one of these on three different occasions.

Now, what we have done over there and what we would do here if it came to that, would be to have this centre where people would come and maybe two, three, four days a week we would have experiences like that where actual mediations would be played out. Not people acting, but people being themselves, so that you could see...

295 The class that I taught here, I have a CD at home which I could show you – it would be quite interesting – of such a mediation taking place, where two of the qualified mediators that you have been talking about within the Isle of Man are actually participants. I trained two of them and they are actually participants in this role play, and it is very powerful. The experience teaches people, and it teaches people to have confidence – and as that grows and word spreads, people will come to it.

300 Being a volunteer organisation it has a credibility and we make sure that it does not become the touchy-feely kind of thing that a lot of people think that mediation is. We make sure that it is hard-bitten and hard-edged and that it deals with problems, and we carry that on.

305 I noticed the organisation in England, 'Family Mediation' – I have forgotten the precise name – I noticed one of their continuing professional development points is that they have to do 10 hours a year. To me it would be more like 10 hours a week to get people to the level that they should be at. I simply believe that with a passion.

Q207. Mrs Beecroft: Sorry, my fault, I did give you too many questions at once.

310 The one that you missed was: do you have specialist mediators now?

Mr Hanna: People will drift into mediation within their own field. I have trained mediators in the United States. I have one hugely successful person who was an airline pilot and he was laid off, and he now probably does extraordinarily well resolving airline disputes among staff. And why would they look to him? Because he is credible, because he knows, and he has got what I would call a niche market.

315 I have another two people in Indiana who run the most successful 'elder mediation' programme in the United States. They are not lawyers, but they have experience of working with older people – and their websites, if you look at them, you can see them. Again, they were graduates of ours. People in the human resources side of life come in, who use the skills that they have to make their work in human resources a lot better –

Q208. Mrs Beecroft: So the training would not actually target people to a certain area? That is something that would develop because of their own natural inclinations afterwards, is that it?

325

Mr Hanna: They follow their own skills.

Mrs Beecroft: Yes, thank you.

330 **Q209. The Chairman:** You have obviously explained the importance of experience and the number of cases, so part of my question you have answered.

But what is your view on the way mediation is used in the Isle of Man, and how is it different apart from what you said about the number of cases?

335 And if I may link on to that: the Isle of Man has adopted an English-based accreditation regime. Do the weaknesses you described apply to England as well as the Isle of Man?

Mr Hanna: One thing that I omitted – Ireland, England, Isle of Man – I was invited about four or five years ago to join the board of the Irish Mediation Association, which I did, I was happy to. You have probably gathered by now that I say what I mean and I mean what I say – which I did when I was on the board. Eventually I began to realise that I was part of a board which was

340

making the exact same mistake that I was talking about, and the whole process was being hijacked by the legal profession. I made it clear that I was not prepared to stay at that, and they tried to talk me out of it, but eventually I just resigned, on principle.

345 Again, ask yourself... stop somebody in the street and say, 'What do you know about mediation?' Invariably they will say, 'That is something that you get either through the government or you go to your solicitor or you can go to your advocate.' That is the *identity*.

If you are in the United States of America and you ask the same question, you get an entirely different answer. You would be directed to somewhere where there are no lawyers involved, there is no money involved, and you get answers.

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Q210. The Chairman: You mentioned a bit earlier that there were cases where the court would actually say, 'Have you done mediation? No? Right, we are sending you down there.'

355 Is that almost like a compulsory...? Because we have had a discussion about mediation and whether it can be compulsory and there was a view, I think, given to us, that, 'Oh, you cannot make it compulsory, it has to be voluntary.'

What would you say to that?

Mr Hanna: I think both of those points make the point for me, that it is not understood.

360 A mediation should be desired by people, not forced into it. Ideally people go to mediation because they want to go to mediation and want to get resolve.

But here is the point: the experienced mediator will know within minutes whether or not... and the word 'compulsory' is not the relevant word, the word is 'good faith'. That is what mediators are interested in: whether or not the parties have come in good faith. And an experienced mediator will spot that within minutes.

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Q211. The Chairman: You will obviously know why our Committee was formed and you have had an opportunity to read the petition. What we are obviously looking at is disputes where we have children in a broken relationship and the parents are fighting over the children.

370 Most of that – we have found in the evidence we have had – is actually not connected with the children, it is the war between the two parties.

One of the suggestions is that because of the cost of going to court, the unaided party is saying, 'Mediation should be compulsory because I am being taken to court by my partner; my partner is legally aided; I cannot afford it; therefore I do not want to go to court, I want to try this.'

375

So how do you deal with one of the parties who is saying, 'We should try mediation'. The other party does not want to do it because they are being funded to go to court, so they can do that anyway, and there is always that argument that because the other person suggested it they do not want to know it. They seem to see that there is a game on here.

So how do we deal with getting over that hurdle to try and change that message?

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Mr Hanna: Let us say that you had the idea that I proposed earlier on, that you had a mediation centre which was funded. That would be voluntary, and whoever was in charge of the mediation centre... they would not just liberally give a volunteer mediator. Mediators would be picked because they were appropriate and because of their skill set.

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I think the notion should be that is a volunteer programme and that people... The reason why I say that is you get people who want to be mediators for the right reason. As things stand at the moment if you go on a course and you get a certificate in mediation, there is nothing whatever to stop you from coming to the Isle of Man, or going to Belfast, or London, or anywhere and putting a notice up on your door saying 'Professional Mediator' and charging £500 an hour. Nothing to prevent that.

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I think I raised the point in my submission to you: do they have insurance cover? Do they have professional indemnity?

395 Does anybody know the damage that a bad mediator can do? The answer is that bad mediators who fail in mediations come away blaming the parties, and the parties go away blaming each other still.

Q212. The Chairman: We are dealing with an investigation here where we have clearly got an issue between the parties, and you were saying there is a lack of understanding of what mediation is and maybe this is part of the problem.

400 How do we move to a model where we get some of these cases out of court?

I am trying to explore the whole compulsory/voluntary side of people attending mediation. Can mediation be made compulsory?

405 Let me just explain this in a different way: if we were to say, for example – and I am not trying to pre-empt what our report is going to say – we recommend that in family matters you cannot attend court until you have attended mediation, or at least attended initial sessions. Does that go against the spirit of mediation or is that a possible solution we should be exploring in our report?

410 **Mr Hanna:** I will give you an example: in most states in America if you go to court and you lose the case and you want to appeal, you *have* to go to mediation before they will allow you to go to appeal. If you go to mediation and you still then go on to appeal and it goes to the Supreme Court, you *have* to go to mediation before it can go to the Supreme Court.

So at every step of the way mediation intervenes. It is not regarded as compulsory, it is just a step that is exploratory more than anything else.

415 The interesting point from a court's perspective... let us say that you have this independent body, this independent mediation centre, and the court says, 'Has this case been to mediation? No? Let it go to mediation.'

420 The report from the mediator to the court will be of great assistance to the judge because it will say, 'We tried, we failed'; or it will say, 'One of the parties came in good faith, the other one did not.' And that would be telling to the judge as well.

The Chairman: Okay.
Mr Gawne.

425 **Mr Hanna:** I do not think the word 'compulsory' is really appropriate.

Q213. Mr Gawne: Yes.

430 One of the disadvantages, I suppose, of being a politician is you have to be a bit pragmatic and you have to look at the practicalities. I just want to wave a magic wand and walk out of this meeting and find that we have got a mediation centre down the road and it is working in the way that you suggest.

But that is not going to happen because I do not have a magic wand. So I am trying to understand a bit better about the practicalities.

435 One of the things that springs to mind is this 'chicken and egg' thing. Which comes first, the mediation centre or the cultural change? It sounds to me as though you need a cultural change in understanding about what a mediation service is before you have your mediation centre; but until you have got your mediation centre, you are not going to be able to get that cultural change.

440 Or am I over-complicating it?

Mr Hanna: The mediation centre is a room. It is a place. The most expense that the Government would have initially would be publicity to make the public aware – and make it aware that here is a place where you can go to have issues resolved.

445 You mentioned about mediators. I have run, I think, two or three training programmes. There are very good mediators on this Island who have never done a thing.

You mentioned at the beginning Roger Tomlinson that referred to... Roger is a trained mediator. There are other people who came and were educated. Here is one very interesting point: the first case in the Isle of Man that I was asked to look into was a very similar case about a broken relationship and child custody. Unfortunately, we uncovered a few things that were not terribly happy.

450 The husband in that particular case – this was back in 2007 – was so impressed with the mediation process, that subsequently he contacted us to see what would happen... how he could learn more about mediation. He eventually became one of the participants in the class and he is a qualified mediator. He does not live in the Isle of Man today, but he is a qualified mediator.

Q214. Mr Gawne: So, basically what you are saying is we would have to do a fair amount in terms of explaining to the public what this new mediation service actually was, if we were to make it work. In the first instance anyway, it is getting the message out as to what you are trying to do for a mediation service?

Mr Hanna: And I think also people should be made aware that you do not have to be a doctor, you do not have to be a lawyer, you do not have to be anybody in particular to come and be a mediator and to learn about mediation. We would happily run courses for people as close to being a volunteer-type of thing as possible, just to help develop the interest.

Q215. Mr Gawne: And then, of course, going back to practicalities again, I suppose there are two questions: why would anyone volunteer to be a mediator? And how would they live if they were volunteering rather than being paid to be a mediator?

Mr Hanna: There are a lot of people not working at all; a lot of people who are intellectually curious. That is the price that you pay. That is the price that I have paid. As I say, I spent maybe a year or two years, getting up early in the morning and going down to courts, and hanging around waiting for mediations.

475 The programmes that we taught in the United States of America, people travelled from all over the place. A minister in the British government came out and attended our course, and went down and sat in the courts the way I did and did a lot of volunteer mediation just to learn, just to know. That was Sir Nicholas Bonsor.

Q216. Mr Gawne: Right, okay.

So – **(Mrs Beecroft:** Sorry...) I know, I have got a list here...

As someone who has regularly set things up and believed that people will come, effectively, that is what you are saying here, aren't you, that we have got to have a bit of faith that the service is going to work and that we will attract volunteer mediators to make it happen?

485 But you have also mentioned that you would be picking who would be the best mediator for which particular case. Presumably you would have to pay somebody at some point to administer all this, would you?

Mr Hanna: Yes, you would imagine so, but again... I was President of the Arizona Dispute Resolution Association and nobody paid me a penny. I ran the state-wide... To put that into perspective: Phoenix metropolitan area has a population of 4.6 million. So 84,000 is not a huge amount.

There are people... I know people who would love to be involved.

495 **Q217. Mr Gawne:** I am trying to get my head round this... Effectively, what you are saying is that the centre would provide people with the experience to allow them to develop their skills as mediators, which means that in their professional lives they could potentially hire out their services as professional mediators and make money that way. Is that a possible scenario here?

500 **Mr Hanna:** The purpose of the centre would be to elevate the credibility of mediation, to elevate the standard of mediation, to promote the public interest of mediation. At any stage anybody can drift off and open their own business, and that is the way things happen. It might well be that if a particular case came in, you would refer it to somebody who is now a professional and doing their own business. But they would be a proper professional with proper
505 professional indemnity insurance cover and properly set up as a business – but with the experience.

Q218. Mr Gawne: Yes, I am trying to understand how this works because I think it sounds like a really good idea, it is just how you make the idea happen.

510 I could see potential conflict between people who say, 'Right, okay, I am going to become a professional mediator; I am going to go away; I am going to spend years training; I am going to get all this experience'. Then they come back to the Isle of Man and there is a volunteer-led service down the road and they do not get any money – because why would you pay to get mediation if you can get it for free?

515 So is that a conflict?

Mr Hanna: Not necessarily, in every city in the United States there are volunteer mediation programmes and there are professionals.

520 **Q219. Mr Gawne:** Would the volunteer programme tend to be for the people who can obviously not afford to pay for mediation? Is that how it works?

Mr Hanna: The volunteer programme would be people who are probably on the learning curve.

525 **Q220. Mr Gawne:** Right, but I mean in terms of clients, are we talking about people who would not have the financial ability to pay?

530 **Mr Hanna:** Again, you would have someone like me, or someone like Nancy, or some director who would filter. So if a serious case was referred from a court you would not give it to... obviously, you would be discerning about that.

Mr Gawne: Yes, okay. Thanks.

535 **Q221. Mrs Beecroft:** It is just picking up on a point... I can understand the voluntary thing, but I am sure it cannot be just for people who are not working. People who *are* working, I am sure, would like to be able to volunteer their time, as they do to lots of other things. So they might say, 'I can give a Thursday afternoon or a Friday morning, or whatever, and still retain my profession to carry on making money, because I still need to make money.'

540 But when you start mediation you carry on until it is finished, there is no cut-off time. You cannot say, 'Well, my Thursday morning or Friday afternoon allocated slot is finished now.' You have got to keep going.

So how would you deal with that on a practical level, if somebody said, 'Well, I can volunteer on a Thursday morning', and you allocated them a case, but that was running on?

545 Would they have to be prepared just to wait until it was finished if they are volunteering? Is that how it would work?

Mr Hanna: If you undertake something, you do it.

To pick up on what you said earlier on, people have to do their work and do not give up. You would be amazed.

550 Comparatively recently I had an approach from a young lawyer in the Isle of Man who wanted to know when I was next teaching in the United States so that she could come over and attend that course, and go and attend some court mediations. It was someone has heard me speaking in court, I had no idea who she is, it is all done on e-mail.

555 But it is not the first time that has happened. The Head of Daytime BBC in London came to Arizona to do exactly this; a lot of other people travelled from the UK to do exactly that, sit and understand and learn about it.

560 One of the things that – and, again, I stress please do not take anything of this as being critical of anybody – but when I read in your report about some reference to an hour and a half mediation session, that just grates with me. Mediations last as long as they last and if you sit down with the notion that, ‘Let’s have an hour and a half worth of mediation’, it is contradictory.

565 I had a personal experience, once upon a time... Professional mediators do not as a general rule co-mediate, and co-mediation is used to help to teach and develop people. I had an experience in America where a lady came in and sat down, it was a *very* involved case, very tricky, very emotional case, and at one stage this lady interrupted and said – this is the mediator – ‘Come on now, I have to hurry you along because I have got to pick up the kids at 3.30 p.m.’

Can you imagine that? By putting time limits or suggesting time limits, that is devastating. And that is experience and knowing. She did not think she was doing anything wrong – in fact she probably thought she was helping the process along. It is very hard to know.

570 **Q222. The Chairman:** I just need to explore the funding element a bit more because I do not think we are entirely clear on the funding mechanism. You said about it becoming self-supporting...

In terms of our brief we are looking at, particularly, family matters.

575 If there was a facility established where people could go, would it be the parties that attend that would pay for the mediation session, or are you envisaging that would be provided free of charge?

580 **Mr Hanna:** That really depends on whether or not the Government wanted to put any money in it. If funds were required other than for the rent of the accommodation and the furnishing of the accommodation, it might well be that you might charge some amount. But sitting here I would hate, I would absolutely *hate* – and I would rather not practise on this basis – to think that anybody who was in need was deprived because of lack of money.

585 **Q223. The Chairman:** I think this is part of the problem that we are trying to address: the issue of legally aided parties and non-legally aided parties in the court process. We are getting more campaigning from the non-legally aided parties to say, ‘We want to go to mediation.’

590 That is why one of the suggestions possibly is they will not get their legal aid to go to court unless they have been to mediation – that brought us back to the argument we explored before about compulsory versus voluntary. But there is also, I understand – and I will just check with the Clerk – that legal aid can be used to fund mediation?

The Clerk: Yes.

595 **Q224. The Chairman:** We have a case where at the moment mediation is being charged for. So it is whether the model would be almost like a citizens advice bureau where you can go and get a level of free advice – in this case the parties can turn up.

But surely there is a cost and the idea is to make the cost affordable rather than the huge costs of a court case. So there are models where the parties who attend pay and there are models where they do not pay.

600 Have I got that right?

Mr Hanna: Absolutely.

Q225. The Chairman: And it would be up to us to find the best model for our community?

605

Mr Hanna: Well, yes, there is a lot of talking and thinking to be done about things like that before we would get to that stage.

One of the things... I can give you an example... one of the problems I have with cases like this is co-mediation. Co-mediation means two times the fee, generally speaking, but co-mediation is

610 *terribly* difficult –

Q226. The Chairman: Sorry, co-mediation: is that where each party has a mediator?

Mr Hanna: No, it is when there are two mediators.

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Q227. The Chairman: You explained that there may be two because one is in training?

Mr Hanna: Co-mediation is where two mediators work together.

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Q228. The Chairman: Right, not necessarily in training?

Mr Hanna: No, the model that Mrs Hall describes in her evidence is co-mediation. Personally I would never do that.

625 Before coming to this meeting, in the last couple of days I contacted two colleagues in Arizona, both are retired judges, both professional mediators. I asked a simple question. I said, 'Are there any circumstances where you would ever use co-mediation in a professional mediation?'

They both emphatically said, 'No.' And neither would I.
It is too dangerous, it is too difficult.

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Q229. The Chairman: So what are the drawbacks?

Mr Hanna: Well, first of all it is confusing to the parties: they come in, they see two people, and invariably you will have, 'Are you mine?' or, 'Which one do I get?'

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It is confusion.

Secondly – it is very hard to say this, but it is true – it is a battleground for egos. Mediators get involved, they both want to be the one that cracks it, they cut across each other. You will have, for example, a mediator going off on a particular line of thought. It is like a lawyer: a lawyer will start a questioning process here, but the answer he is looking for is down there. Well

640 if you have got somebody who interrupts in the middle of that... that is what happens all the time in co-mediation.

Again you have mediators who give up more readily than others. Before co-mediation, mediators should meet the day before and devise a strategy. One of them should be a leader and the other one should be an observer, or what have you. It is too complex and too confusing.

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Q230. Mr Gawne: Bearing in mind what you have been saying, really, about setting this mediation centre up. What would stop you just doing that anyway? What would you actually need from Government?

650 **Mr Hanna:** Approval.

Mr Gawne: Right, well that should not be too –

Mr Hanna: Support, publicity, encouragement – all of those.

655 **Q231. Mr Gawne:** And what, tangibly, does that mean?

Mr Hanna: You will notice I did not say money. That is what it means: support means a government *wanting*...

660 I would love the Isle of Man to be a model for Europe. I would love people to come, and I would see it developing this way. I would see it becoming a place where people came to learn.

That is how I would see it develop and I would see that develop, not over decades, but over maybe two or three years.

665 **Q232. Mr Gawne:** Well taking as read that I am already convinced and think it is a great idea, what do I need to do to make this happen? (*Interjection by Mr Hanna*) Right! But in terms of me convincing others, I need to be able to say, ‘These are the steps that we would need to take if we were to make this happen.’

This person... I suppose that is the next obvious question then... would you be prepared to take this on and work with us to make it happen?

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Mr Hanna: I was prepared in 2007 to do that. I wanted to do it and then I suppose... It was somebody who came to me and said, ‘It is not *what* you know, it is *who* you know.’

I thought, I just do not want to be a part of that, I have spent a lifetime contesting those sort of things.

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Q233. Mr Gawne: I know there are people who believe that is how Government and how society works in the Isle of Man – and then there are others who do not. I would probably count myself in the, ‘I do not believe that so much.’ Or, if it is happening, I believe we should still continue to battle through it and make it happen the way we would want.

680 So, on that basis, assuming that the Committee decides that we want to recommend that a mediation centre is established, without wishing to pin you down, do you think that we would be able to find somebody who would work with us to make it happen?

Mr Hanna: Absolutely, absolutely.

685

Q234. The Chairman: Can I ask a further question about...

We have a situation where – and most of the representations come from fathers who are not legally aided – there is free access to legal aid, as I outlined earlier, to certain people with regard to family matters.

690 Would it be appropriate for us to consider changing the law so the law provides that, certainly in these cases, they *must* attend mediation?

695 How does the outcome of that become binding? And would it go against the principles of mediation if the parties were refused court, went to mediation, came up with a solution to that, and then one of the parties reneged on that. Would it go against the principles if they were then refused any further legal aid to go to court because they had taken part in the process, agreed, and reneged? Or would that go against the principles of mediation?

Mr Hanna: No, it would not go against the principles of mediation. Let us say, for the sake of argument, that in my vision people would apply to court, and court would say, ‘Have you been to mediation?’ ‘No.’

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Then refer to the mediation centre.

Q235. The Chairman: And they will not entertain it until, that is where the court process they say –

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Mr Hanna: That is the way it happens in America: ‘Has this case been to mediation?’ Down the corridor... And you would have your volunteer mediators.

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Part of... it is what the mediators here call ‘an intake meeting’ – I think that is a bit grandiose – mediators will sit down with people and explain to them exactly what mediation is, and thereupon they enter into a mediation agreement. The agreement is a legally binding agreement which says, ‘We will take part; it is confidential; we are here in good faith; and we make various promises about violence and... standard agreements.

715

Then a mediation takes place, and that mediation will either lead to one of three things: it will lead to a failure to agree; it will lead to an agreement in which it is recorded as a legally binding contract; or it will lead to a report from the mediator which says, ‘I spent two and a half or three hours, I found Party A very workable, very keen to resolve the issue. I found Party B obstructive, destructive, and I am satisfied he did not come in good faith.’ And that goes back to the judge.

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Then the judge comes to a decision; he knows a whole lot more about that case now than he did before he started. He can then make whatever decisions about...

Q236. The Clerk: Sorry, may I come in, Chairman, on the three options, because that is very interesting.

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I noticed that there was not an outcome which said, ‘Both parties are here in good faith, but we have not reached a resolution.’

Mr Hanna: That was the first one I said.

730

The Clerk: Oh I am sorry, I missed that.

Mr Hanna: Yes, no agreement.

Q237. The Clerk: So, they did not resolve it, they did resolve it, or one party is not in good faith?

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Mr Hanna: That is right: did not resolve it, did resolve it, or it blew up because somebody did not participate.

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The Chairman: Okay.
Mrs Beecroft.

Q238. Mrs Beecroft: Yes, thank you.

745

This is not specifically about mediation but, given the fact that you were a lawyer before, you may have an opinion on it.

We have been asked to look at cases where one party has legal aid and the other does not, because it is seen as a bit of an unfair playing field here at the moment, because the party who has got legal aid can do whatever they want knowing it is going to get paid for, and the other person may be just over the limit but really cannot afford everything that the party that is being state funded has access to.

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It has been suggested to us as an area that we need to look at, that if one party does not have a lawyer, then the other person should not have a lawyer when they go to court, so that

the legal representation is a level playing field. So if one cannot afford it, the person who is on legal aid does not get it either when they go to court .

What would your feelings be on that? What is your opinion?

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Mr Hanna: That is a *very* good question and the principle behind why you asked it in the first place is one of the reasons why I explored mediation as I did, because the inequality of the legal process and the legal profession, some of it had affected me quite dramatically – it is the law for the rich and the law for the poor.

760

It again comes back to experience. In the States you are entitled to have whoever you want with you, within reason, be that a family member, a friend, or a lawyer. Lawyers will come into mediations and will try to be lawyers, and try to take over. The experienced mediator knows exactly how to deal with that and will isolate the lawyer – not isolate him in a nasty way. I will give you an example of one of the ways that I would do it.

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I would see, let us say, Party A and his lawyer coming in. The lawyer would immediately want to sit next you. I would, before anybody had any sense, have done my research and I would know who the lawyer was, I would know who his firm was, and I would shake his hand and say, 'Ah, Mr Bloggs, how are you, nice to meet you, I have heard a lot about you, I have heard a lot about your firm...' and I am moving him into the other chair.

770

Immediately I would turn to his client and say, 'You are the lucky man to have this guy.' So I am appealing to his ego and I am saying the right things to him.

Then I say to him, 'It must be nice for you to have a day off, sitting here, with nothing to do, just with your client...' and I'm talking to the client and I am telling the client...

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And in the space of two minutes I have put that attorney sitting there. I have appealed to his ego, I have told him that he is not going to be required – and I have told the client it is all about him, and I have got him to sit beside me. It is a very smooth process.

It takes years to learn I have to tell you, but it is very effective. That isolates without offending anybody.

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Q239. Mrs Beecroft: Could I ask about the cases that actually proceed to court, where you are in a formal court situation. Would you be in favour of the level playing field? So if one person has not got legal representation the other person cannot have it either?

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Mr Hanna: I think you are dealing with a constitutional matter rather than something –

Mrs Beecroft: Okay, it is just an area we have been asked to look at, and I am not –

790

Mr Hanna: It is a constitutional right, to have representation in court, and I think if there was any attempt... I think that would be dangerous.

Mrs Beecroft: Okay, thank you.

The Chairman: Well, we would like to sum up and conclude. So I will ask the Committee if they have any further points they might like to add.

795

Mr Gawne anything else... ?

Mr Gawne: No, just thank you very much for your evidence.

The Chairman: Mrs Beecroft?

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Mrs Beecroft: No, thank you very much indeed.

Mr Hanna: If I may... ?

805 **Q240. The Chairman:** Yes certainly I will just see if –

Mr Hanna: It was just on the actual petition that you are faced with.

I have come across this before. I fully appreciate this is one side of the story, but to my mind there is no suggestion of violence, there is no suggestion of unsuitability as a parent. I was shocked by this, I was shocked that a father was deprived of access to his child for as long as he has been.

810 There is something wrong somewhere and I do not know where you start looking to find out what is wrong but, again, that is with the proviso that is one side of the story. I was quite shocked by that.

815 **The Chairman:** Well, I think, a petition that comes to Tynwald Court has to convince Tynwald Court that it is worthy of investigation and clearly that is why we have been established. So thank you for your views on that.

I will give you an opportunity just to give us a final thought if you like, but I will just ask Mr King: do you have anything?

820 **The Clerk:** No, thank you.

Q241. The Chairman: So, before we finish then, is there anything else you would like to add? Everybody else who has given evidence too, as I have always said to them, if after this session there is something you wish to raise then please feel free to write to us and get in touch.

825 But is there anything you would wish to add before we conclude this morning?

Mr Hanna: I think, from my experience, that a country benefits to an enormous degree by the proper, controlled use of mediation and the proper understanding of mediation. I have said it already and I will say it again, mediation simply is not understood.

830 The power of it is not understood; the techniques of it are not understood; the skills of it are not understood.

And any professional process which enables people to spend a couple of weeks on a course and spend an amount of money and get a certificate, and then put themselves out there as being professional people – there is something terribly wrong.

835 If I felt that the Government was taking a very cold, hard look at that – do not take my word for it, there are plenty of other people have views – but it would benefit the Isle of Man enormously if they had such a facility.

840 **Q242. The Chairman:** Okay, thank you very much.

Finally, you submitted a paper to us which we found most useful. Are you happy for us to publish that paper as part of the annexes to our report?

Mr Hanna: If, having considered everything, that is what you want to do, by all means.

845 **The Chairman:** Thank you very much.

Can I thank you sincerely for coming in this morning and joining us. I understand you have had to travel, so thank you very much.

That is the end of this public session, the Committee will now sit in private.

The Committee sat in private at 11.53 a.m.