



# Improving diversity in commercial mediation

Full Report



Foundation Initiative

March 2019

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# Introduction

2019 sees 30 years since CEDR brought commercial mediation to the United Kingdom. In that time mediation has grown significantly as a field and where legal matters would once only have been dealt with by a court, commercial parties are now routinely using mediation to resolve their disputes.

Despite this richness in the use of mediation, there is, however, not the same richness of diversity in those who are mediating.

Being aware that diversity matters, CEDR is committed to taking an active part in creating a more inclusive culture in our profession.



## Why Diversity matters?

### Diversity increases business performance

Studies show that organisations with higher levels of diversity are more successful. Their employees feel more included and are able to reach their full potential and be recognised. Research conducted by McKinsey illustrates that companies “in the bottom quartile both for gender and for ethnicity and race are statistically less likely to achieve above-average financial returns”<sup>1</sup>.

### Diverse teams are smarter

Psychological studies<sup>2</sup> prove that people from diverse backgrounds can change the behaviour of a group’s social majority in ways that lead to improved and more accurate group thinking. The results of this study showed that the diverse panels raise more facts related to the case than homogenous panels and made fewer factual errors while discussing available evidence. If errors did occur, they were more likely to be corrected during the deliberation process.

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<sup>1</sup> <https://www.mckinsey.com/business-functions/organization/our-insights/delivering-through-diversity>

<sup>2</sup> <https://www.apa.org/pi/oema/resources/taskforce-report.pdf>

## The legal profession in the UK

How much does diversity matter within our legal profession in the UK? According to the Solicitors Regulation Authority 21% of lawyers working in the UK are from BAME backgrounds but just 8% of partners from large city firms are BAME<sup>3</sup>. Christina Blacklaws, the President of the Law Society, in her inaugural speech as President in October 2018 commented “The challenge of intersectionality faced by women, BAME, LGBT+ and solicitors with disabilities increases the difficulties these groups face. [...] Gender equality is not just an issue for 50 per cent but 100 per cent of us. It liberates us from our stereotypes and enables us to thrive in a diverse and supportive environment.”<sup>4</sup> Diversity and inclusion therefore has been recognised as in critical need of change within the legal profession.

## Diversity in the Commercial Mediation Profession

### How diverse is the commercial mediation profession?

The commercial mediation profession is lacking in diversity. There are significantly fewer women (33.6%) working in commercial mediation than men (66.4%). The proportion of BAME commercial mediators is lower than the general population and comparable professions, such as law. Commercial mediators are also generally older than other professions, with the majority (77.5%) of active mediators being over the age of 50.

Commercial mediation as a profession is stereotypically older, white and male. As mediation progresses to its next 30 years, we want there to be no stereotype as to who a mediator is

### How can we change that?

It is not sufficient to merely train more diverse cohorts of mediators. Despite having focussed on diversity in our training programmes, mediator panels in the UK are still some way behind when it comes to equality and diversity.

This is why CEDR has launched two initiatives to look at Equality and Diversity in the commercial mediation profession. We want to break down barriers and give access to a diverse spectrum of mediators reflecting our society.

### CEDR commits to Diversity and Inclusion – internally and externally

The first initiative is this research project which involves looking at the barriers to entry in the progression path of the development of a mediation career for a more diverse selection of mediator professionals. This report sets out the first part of this project, identifying the challenge and identified barriers, as well as proposing some potential solutions. In 2019-2020, we aim to take this project to the next stage by working with parties, law firms and the mediation community to look at how to implement recommendations.

The notion of client choice is a fundamental tenet within our mediation practice. We will not deliver on that principle unless we can offer our clients a full range of qualified and experienced mediators from whatever social, cultural, sexual oriented, professional or personal background they wish to appoint. Creating a more diverse profession is a key priority. We want to enrich the mediation space for all, and make sure that the profession reflects the community it serves.

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<sup>3</sup> SRA, How Diverse are Law Firms, <http://www.sra.org.uk/solicitors/diversity-toolkit/diverse-law-firms.page>

<sup>4</sup> Christina Blacklaws, Inaugural Speech, 1 October 2018, <https://www.lawsociety.org.uk/news/speeches/president-christina-blacklaws-inaugural-speech/>

The second initiative is signing up to the Inclusive Culture Pledge - a special initiative by the diversity consultancy EW Group - that will provide CEDR with a focus for building our own skills, awareness, confidence and maturity around workplace diversity over the coming years.

Through these two initiatives, CEDR commits, internally and publically, to the sustainable implementation of diversity and inclusion in our company culture; and also to take the lead in promoting similar values within our profession.

# Scope and Methodology of the Diversity Project



## Scope

The aim of the Diversity project is to look at improving diversity within civil and commercial mediation in England and Wales.

Our reason for focusing on civil and commercial mediation, is that we recognise that there are differences in the diversity of the profession between the civil and commercial mediation fields and family and community mediation, which tend to have more female mediators and a greater proportion of BAME mediators. Civil and Commercial mediation is also a distinct area from family and community mediations, with different training routes, providers, procedures and clients. Civil and Commercial mediation is also CEDR's key area of practice and expertise. Therefore, this project will focus only on mediators working in the civil and commercial field, including employment and workplace disputes and those working on civil or commercial schemes.

We are focussing on three areas particularly for diversity:

- Gender
- Age
- Race/ethnic origin

Our reason for focussing on these areas is that our research shows that these are the protected characteristics (as defined by the Equality Act 2010) where there is the most discrepancy between the civil and commercial mediation profession and the general population. We are interested in other protected characteristics (disability, sexuality, religion) and aim to look at these in further iterations of this work.

Finally, whilst this project is being researched by CEDR, it is important that our work looks at more than just CEDR's own experiences. Therefore, the project is intended to reflect the wider Civil and Commercial mediation market and its findings to be relevant to all.

## Methodology

The project has been conducted in the following way:

- We created an internal working group led by James South, CEDR's Managing Director and Susanne Schuler, Director of Training and Consultancy to work on the project. The working group were tasked to look at identifying the barriers to diversity first before looking at any solutions.
- To understand the nature of the problem, we first conducted and analysed the CEDR Mediation Audit 2018 ([CEDR Mediation Audit 2018](#)) of 290 commercial mediators working in the United Kingdom for diversity characteristics relevant to the Equality Act 2010, regarding age, gender, race, sexuality and disability. Of this figure, approximately 40% work as current CEDR panel mediators and so we can say that the statistics are applicable to the mediator profession, beyond those who are CEDR panel members as 60% of the respondents are from other organisations. We also looked at the make-up of commercial panels (CEDR and others) and compared statistics on mediation selection within selection of CEDR mediators by external clients for mediations. All characteristics in the mediation audit were self-identified by participants for accuracy and ethical reasons.
- Simultaneously, we convened focus groups to discuss the barriers that they had encountered. These focus groups were selected from volunteers and were split into a working group of mediators; a working group of internal client advisors and commercial staff. Following the publication of this report it is intended to also convene a working group of clients. Each focus group was asked to consider the stages that a mediator goes through in their career and from their own experience and observation to discuss in facilitated groups, the potential barriers that were experienced at each stage. In order to reduce unconscious bias and group think, participants were selected to have a difference of age, experience, gender and race to try and give different perspectives. The facilitators for the sessions acted as neutrals to allow the participants space to think.
- Additionally, we looked with a researcher at understanding the secondary literature and research around diversity and what others in comparable professions have done.
- This research was carried out over summer 2018.
- In compiling the report we have focussed it around the following structure 1) Identifying

the problem; 2) Barriers to diversity across the mediator life cycle; 3) Potential solutions to these barriers which are identified at each point of the life cycle.

The next section will look at identifying the statistics on diversity in the mediation profession.



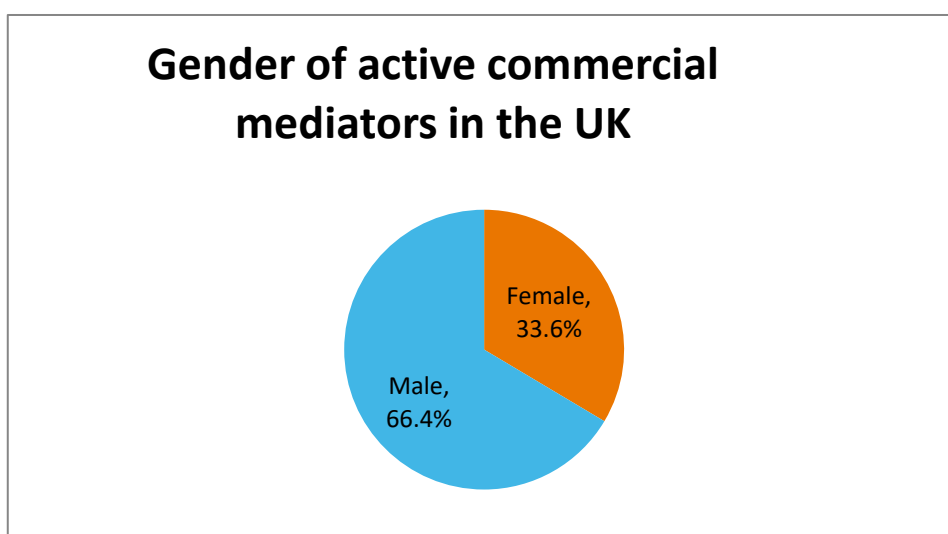
# The State of Play – Current Statistics on Diversity in Mediation

## Overview

As the CEDR Mediation Audit is the only survey of commercial mediators in the UK it is the primary data set for this research. This is supplemented by additional data from CEDR's panel and dispute resolution. Our review of the CEDR Mediation Audit 2018 of 290 practising civil and commercial mediators revealed the following trends.

## Gender

In looking at mediators who are actively working (defined as conducting more than one case a year) in the field of civil and commercial mediation, 33.6% are female. When focused on mediators who are leading more than 10 mediations a year, the percentage is smaller with 30.4% of mediators being female.



This data can be contrasted with the gender characteristics of both the general population (which is 50.8% female, showing a -17.2% gap in the percentage of female mediators compared with the general population) and the percentage of women undertaking civil and commercial skills training (45% of CEDR mediation training participants in 2017 were female).

The ratio of women and men on Commercial mediation panels also shows a disparity. The average commercial mediation panel has 28.7% female mediators<sup>5</sup>. The results from the Audit also reveal that a greater proportion of male mediators identify as being legally focussed (81%) than female mediators (56%). When looking at mediators working in purely commercial contract work, there appear to be more men than women working in this field. By contrast, employment and workplace mediation has a greater proportion of women working as mediators than men. For example, of CEDR's UK panel of mediators who are listed under "commercial contract" work, 77% are male, whilst of those mediators working in Employment & Workplace mediation, 68% are female. These statistics can help to reinforce gender stereotypes as to the type of work that men and women undertake.

When working the Mediation Audit shows that there is little discrepancy between men and

<sup>5</sup> This is based on an average of the panels of CEDR Chambers, CEDR UK Panel, In Place of Strife, Clerks Room, Brick Court Mediators, Independent Mediators and ADR-ODR International, in March 2019.

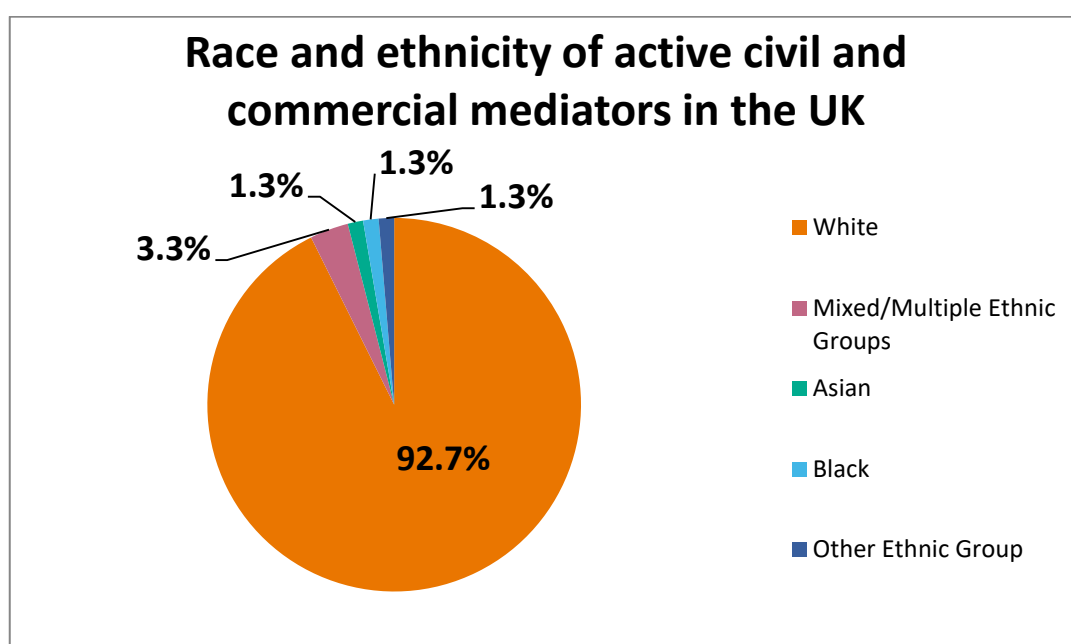
women in terms of earnings or level of cases. There is a ratio of 70:30 men to women, at both the top end of the market and the bottom end. This indicates that the gender imbalance is consistent across the field.

Therefore, based on these results we assume that there are attrition points in terms of gender for women training to be mediators; particularly getting selected to be on panels; and for men and women in getting selected for certain types of cases.

## Race/Ethnic Origin

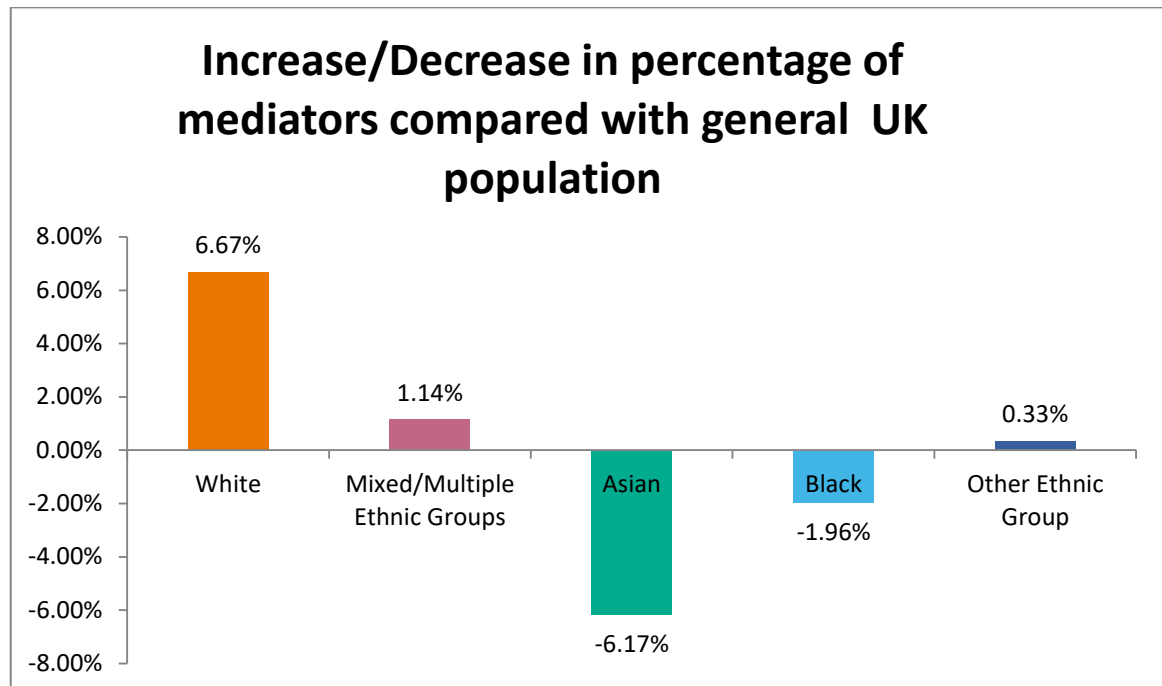
Lack of diversity in terms of race and ethnicity is an equally important factor in the civil and commercial mediation space as shown in the statistics below.

Of the working mediators in the UK, the following characteristics can be seen.



92.7% of civil and commercial mediators are white, whilst just 1.3% are Asian and 1.3% Black. This contrasts with the general population statistics<sup>6</sup> which show that 86% of the UK population is white, 7.5% is Asian and 3.3% of the population is Black. Therefore, in charting the percentage of UK mediators compared with the general population it can be seen that there is a significant deficiency in the percentage of mediators who are Black or Asian (especially). Even if the percentage increase from those who reported as being from mixed/multiple ethnic groups was redistributed, it would not make up for the drop in Asian and Black mediators.

<sup>6</sup> Office of National Statistics, Data on UK Census 2011, Race and Ethnicity <https://www.ethnicity-facts-figures.service.gov.uk/british-population/national-and-regional-populations/population-of-england-and-wales/latest>



These figures can also be contrasted with race and ethnicity profiles of other professions. In 2017, 14% of lawyers working in law firms in the UK were Asian and 3% were black. It is worth noting that there is a smaller percentage of BAME lawyers working in mixed work (12%) and commercial work (19%) than working in criminal law (33%) and private client work (39%). 20% of law firm partners are BAME, but in law firms with over 50 partners (generally the larger commercial Firms), this decreases to 8%. However it is looked at though, the figures for mediators are far lower than in a comparable profession.

Statistics on the race and ethnicity of those training to be mediators are not available but it would appear that the percentages of both those training and of those on panels in the civil and commercial mediation field is low, and significantly lower than comparable professions.

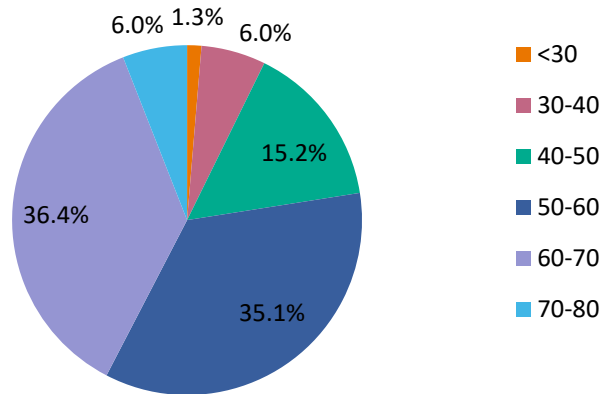
Therefore, we take from the above statistics that there are potential attrition points for race and ethnicity both of people from BAME backgrounds of choosing to become commercial mediators through to selection of panels and potentially mediator selection.

## Age

Mediators are also significantly older than workers in other fields<sup>7</sup>. The majority of civil and commercial mediators (77.5%) are over the age of 50.

<sup>7</sup> Office of National Statistics, Age of UK Population November 2018, <https://www.ons.gov.uk/peoplepopulationandcommunity/populationandmigration/populationestimates/articles/overviewoftheukpopulation/november2018>

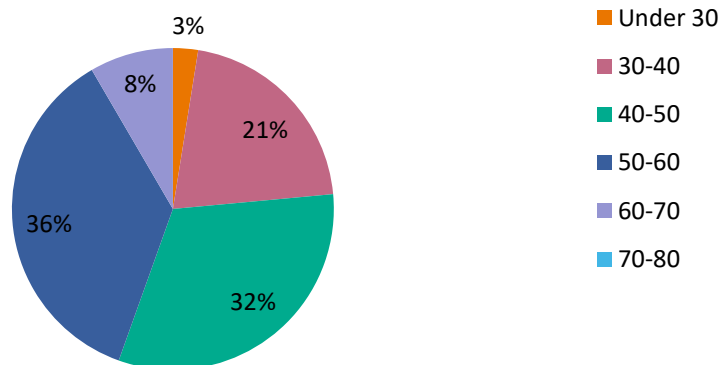
### Age of working civil and commercial mediators in the UK



These ages of mediators can both be contrasted with the general population and also the ages of those working in other comparable professions, such as law. Whilst a professional such as a lawyer might aim to become a partner in their 30s or 40s, there is not the similar trajectory in the mediation profession, with many in this age group struggling to get any work. There is also a discrepancy in terms of lower value work (which might be expected to go to younger mediators) also being taken by those who are older.

Conventional wisdom may suggest that the reason for this deviation in age is due to the fact that mediation is often seen as a second or third career and thus would have an older group doing it. However, this may actually not be the case as can be seen by the below graph.

### Age of Participants on CEDR Mediator Training Course



So, whilst 55.5% of those who train to be Civil and Commercial mediators are under the age of 50, just 22.5% of those who are working as Civil and Commercial mediators are under the age of 50. The difference is even more noticeable when commercial mediations only are looked at. No respondents under the age of 40 were involved in more than 10 commercial mediations a year

and of the group of mediators who are doing more than 10 mediation cases a year, just 12.5% were in the 40-50 age categories. Whilst this figure should be viewed with some caution as there may be participants who train in mediation at a younger age to use in their legal practices rather than to work as independent mediators, it does appear to indicate a gap between those training and that getting mediation work.

There is no indication that this is anything to do with the ability of the mediators to handle cases; the number of accreditations awarded and their calibre are consistent across age groups<sup>8</sup>. Rather it appears that when these younger mediators are accredited as mediators, they are not able to get work, through panels and selection. Where younger mediators have been selected, they tend to be in the areas of employment and workplace or scheme work rather than in commercial contract mediation.

Therefore, we would take from the statistics that there are points of attrition for mediators under the age of 50 in getting selected to join panels and in getting selected for mediations.

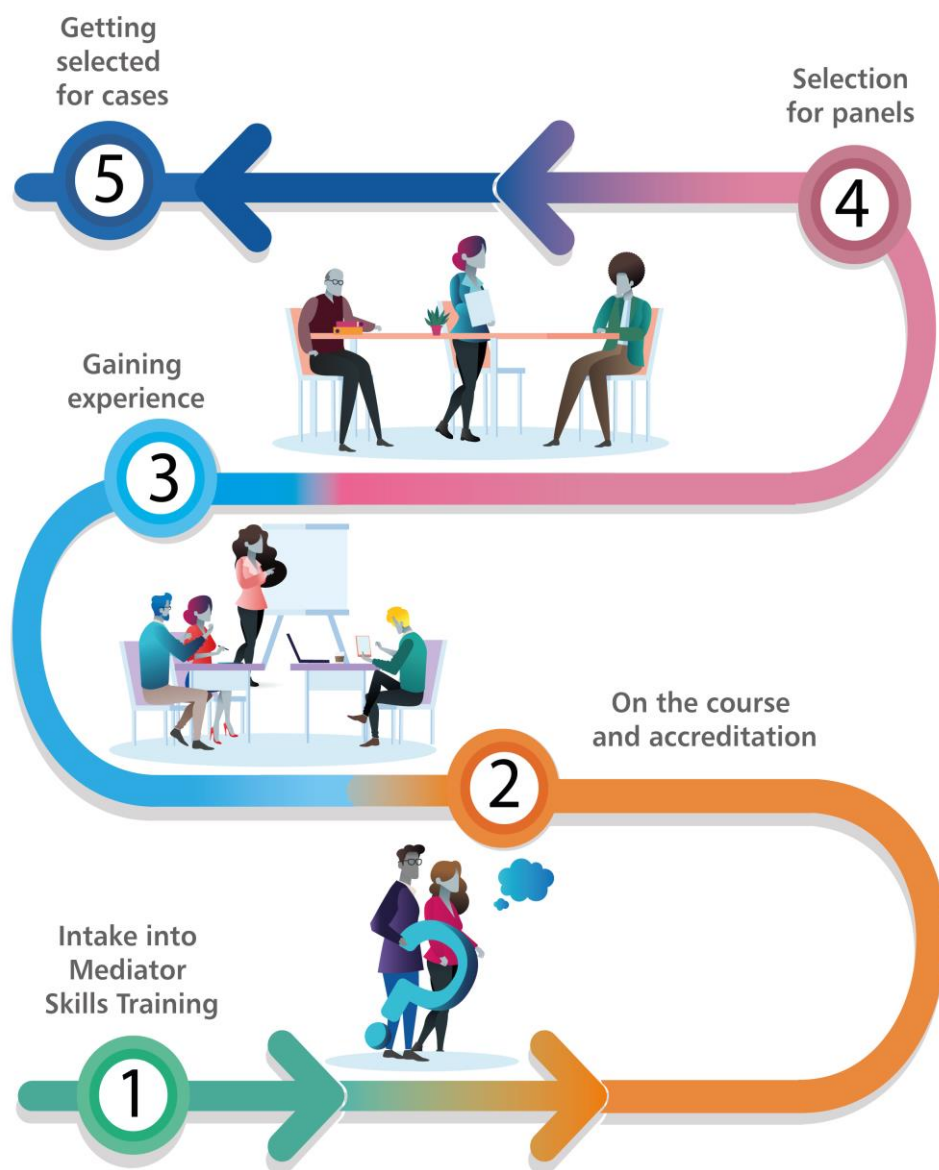
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<sup>8</sup> Based on analysis of CEDR assessment scores for all CEDR mediator accreditation assessments in 2017 in UK and abroad. Levels of “Outstanding” and “Competent” grades are consistent across age groups.

# The Mediator Progression Path – A process for understanding barriers to mediation

## Overview

In order to understand the specific barriers that can be faced in a mediator being selected to get commercial cases we looked at the overall “progression path” of a mediator from choosing to become a mediator at all, through to getting regularly selected as a mediator by parties for commercial work. For each major stage of the pathway, with the aid of our focus groups and secondary research of other professions, we identified potential barriers to progression and proposed possible recommendations for improvement.



# Barriers and Recommendations at each stage of the Mediator Progression Path

## Stage 1: Choosing to become a mediator



The first stage of the mediator progression path is in an individual deciding to become a commercial mediator at all. In order to make that decision a potential mediator needs to be aware of commercial mediation, consider themselves as able to succeed and have the means and time to train.

One of the most important barriers in this first stage is in an individual's own knowledge of commercial mediation and their own self-belief that they will be successful both in gaining accreditation and in pursuing a career following the course.

The biggest factor in determining how an individual perceives their own capabilities is the extent to which they can see role models with similar characteristics to themselves succeeding on the course and as professional mediators. Research shows that without such role models an individual perceives a challenge, such as becoming a mediator and finding work, as harder and less suited to them than if such a role model existed.

For example, due to the lack of BAME mediators working in the commercial mediation space, this may have a knock-on effect to potential BAME mediators coming through who may perceive the field as unwelcoming or particularly challenging for them.

Similarly, for women who wish to become commercial mediators specifically, the relative lack of women working in the commercial mediation space, as opposed to the family, community and workplace mediation space can reinforce perceptions as to commercial mediation being a male profession as opposed to family and community mediation being female.

By contrast, the existence of a role model (and ideally more than one) who has not only achieved success but also has a clear path and route for how they achieved such success can be beneficial to an individual in making a goal seem more realistic and achievable and of improving their own self-belief.

Other factors that are relevant at this stage for diversity relate to the financial cost of training to

become a commercial mediator (in the region of £2000-5000) which can deter younger people and those who are working part-time, and the practical commitments of the course itself – being that they normally require participants to give up an entire week for an intensive commitment of learning and assessment. Again, this is likely to particularly disadvantage those whom have less financial mobility or ability to give up that amount of time due to job or family commitments. Again these people tend to be younger and/or female.

## Recommendations

The recommendations for this stage can be split into three main categories.

Firstly, there needs to be more active encouragement by mediation training providers of those from different backgrounds to apply to train as mediators. This encouragement should be explicit and we would argue that there needs to be both a recognition of the issue of a lack of diversity and an encouragement that the next generation of mediators needs to have more women, BAME mediators and younger mediators. We would encourage mediation organisations to find these potential mediators from as many different backgrounds as possible.

A prominent point of this active encouragement is to also increase the use of role models by mediation training providers and organisations. Mediation training providers should actively show women, BAME and younger mediators who have had successful careers and feature them in campaigns and on their websites. Taking it one step further it is even more persuasive if these role models are able to speak with potential mediation trainees at open and outreach events and on a one-to-one basis. It is important also that role models are not just people at the top of the profession but also show mediators at different stages of their careers including those who are working in a more junior capacity. Role models should ideally be identifiable, relatable and current.

Secondly, there needs to be a change in the information that is given to potential mediation training candidates with specific advice given to applicants about the challenges that are faced by those becoming mediators (particularly with regard to initially getting work) and how to overcome these challenges. A suggestion that has worked in other industries is to produce a myths and reality website which explicitly addresses the issues that candidates may have about training to and becoming a mediator. For example, the information may address issues such as whether it is possible to become a commercial mediator if an applicant is under 35, or the degree of commercial experience that is necessary. Those who advise potential applicants on training to be a mediator, for example course managers, should also be trained and able to give accurate information with applicants about becoming a commercial mediator and ways that all mediators can increase the likelihood of their getting work and or overcoming barriers that they may face.

Finally, it was discussed that financial barriers are frequently an impediment to mediators from different backgrounds (especially those who are self-financing) from training to be mediators. Course providers should both review their course pricing generally but also think about whether it is appropriate to offer bursaries or discounts for those who would otherwise not be able to afford the course. Alternatively, course providers could look to partner with relevant partnership organisations to provide discounted places, or potentially to run a lower cost courses.



To summarise:

- There should be a greater use and promotion of BAME, Female and Younger commercial mediator role models by providers to attract new mediators to the profession
- Training providers should review their promotional materials to encourage diversity. Staff who speak to prospective applicants should be trained to help all applicants to understand how they can overcome barriers to becoming a mediator.
- Training providers should consider giving financial support to mediators from under-represented backgrounds to encourage them to undertake the course.

## Stage 2: On the Mediation Course and gaining accreditation



The second stage relates to an individual's experiences on the mediator accreditation course and their chances of accreditation.

At this stage, it is the first time that the individual finds themselves in direct comparison with other trainee commercial mediators and also being assessed by others as to their capability as a mediator.

The strongest potential barriers here are to do with the culture of the mediation course and any associated characteristics the course has as to what a commercial mediator should be like; and the trainers and assessors' potential unconscious bias as to what a "good mediator" is.

In looking at the culture of the mediation course, and commercial mediation generally, we looked at the extent to which commercial mediation can be perceived as a "male" type of work.

The most pressing area of secondary research in relation to this is social role theory which looks at the types of occupations most commonly associated with women and men.

In looking at roles which are stereotypically considered female or male, it is observed that whilst men's roles are usually characterised by pragmatic skills such as "being masterful", "goal oriented", "instrumental" and "independent", women's roles are characterised by altruistic attributes such as "being cooperative", "friendly", "generous" and "educational". We conducted an experiment with male and female mediators asking them to assess what their top three skills were as mediators:



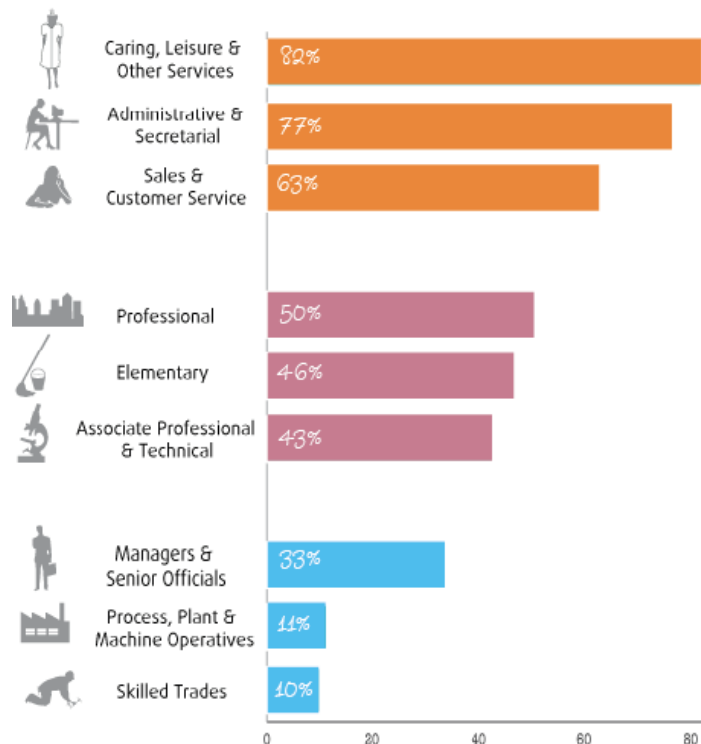
Word cloud of female mediators' skills for themselves



Word cloud of male mediators' description for themselves

Whilst women emphasise qualities that may be perceived as softer such as "empathy", "approach" and "calm", men emphasise qualities that may be perceived as more direct and action-orientated such as "ability", "skills" and "process".

This has an interesting impact on the perceived characteristics of the commercial mediator. A commercial mediator is perceived as being "professional", a category which is equally represented by women and men according to social role theory (see table below).



Industries by percentage of women working in these fields, UK and US

The question we need to explore further is, if and how commercial mediator skills courses influence the perception of the role of a commercial mediator through the language used on the course, e.g. perceived male words (“commercially minded”, “problem-solver” etc.) using male names and pronouns for the mediator, the choice of case studies or references trainers make in the context of commercial mediation which could support a certain perception.

These potential implicit assumptions as to what makes a commercial mediator can also feed into how assessors and trainers unconsciously respond to participants on commercial mediation courses. Whilst it is likely to be the case that assessors do not actively perceive a successful candidate as being “white” or “male” or “older”, they may have unconscious biases as to what a mediator looks like which may disadvantage certain types of mediator. For example, if there is an emphasis on having a “strong presence” to open a mediation and “command authority”, an assessor may have a default preconception that an older man who has been working as a lawyer for twenty years will have this over a younger man who has had a shorter career. Therefore the first candidate may have to do less to demonstrate this behaviour (as it is assumed that they will have it and the assessor is unconsciously looking for affirmation) than the second candidate where the assessor does not have this positive assumption.

Research (Reeves, 2014) has shown that when experiments are done on judging performance of professionals where the only variant is gender or race (e.g. reports being submitted for marking where half a sample is told it was composed by a white candidate and half by a black candidate”), women and BAME candidates will receive less positive and blander comment than white men and are more likely to receive recommendations for further support rather than being passed through without comment.

Therefore, it is important that a course reflects the actual diversity of the commercial mediation profession and seeks to reduce any prejudices or assumptions of behaviour.

## Recommendations

The recommendations in this stage are to do with improving the nature of the course to enable a greater diversity in those who are gaining accreditation as mediators and to reduce implicit bias.

In looking at the courses providers themselves, it is beneficial for mediation training providers to review both the structure of the course (materials, course structure, assessment criteria) and the delivery the course (the trainers and how the course is delivered).

In looking at the materials for the course, attention needs to be given to whether the course presents an assumed view of who a mediator or parties are, or are overly designed for a particular group (e.g. those with extensive legal experience). Role plays need to be reviewed to see if they reflect modern society. They should be revised with regard to looking at the vocabulary and adjectives used to make sure that they are not consistently referring to parties and mediators as male (or predominantly male). As far as possible gender neutral terms should be used so that a mediator is referred to as "the mediator", not "he or she". Role plays should also be looked at for modernisation so that they reflect modern business (e.g. references to social media, new technology etc.) rather than dated old-fashioned business. The ultimate point is that roleplays should be accessible for all, and not have any particular advantage (or perceived favouritism) to one particular person over another.

When looking at other materials, these should also be revised to be as inclusive as possible. Bibliographies at the end of course materials for example should be reviewed to be gender and culturally diverse.

One interesting area for further consideration and development is the review of Assessment criteria and mediator competency frameworks for potential unconscious bias, such as over-emphasising factors like "commercial acumen", or through giving criteria which are more likely to favour one group over another (e.g. "having a commanding presence"). This would include considering how to frame mediator competencies in a way which while not minimising the competency necessary, does not unduly characterise it as masculine or feminine and therefore play into a particular social role in respect of gender, age or race.

In relation to the intangible factors, these also need to be thought about from a diversity and inclusion perspective. With regard to the overall feel and culture of the course, consideration should be given to whether there is a particular style of person that the course particularly appeals to and which makes others feel excluded or find it less difficult to participate in the course. For example, it is worth thinking about if the course has a particular dress code which is overly formal, or if the course starts extremely early and finishes late, which is likely to be less convenient to those who are part time carers. Even simple things such as whether participants are encouraged to socialise together or treat the course more formally can affect whether a course feels inclusive to a wider range of participants.

With relation to those who are delivering the training, and coaching and assessing on the course, they need to be from as diverse a group as possible. The lead trainers on a course should not all be from one gender and it helps if there is a variety of age, professional backgrounds and types of experience of the trainers, so that participants meet as many different mediators as possible. Trainers should be actively aware of the need to avoid unconscious (or conscious) bias and the need to be inclusive. As such trainers should not do things such as always referring to a mediator as "he" or make assumptions about the sort of people who should be commercial mediators. Trainers should also think about how they can encourage all of the mediators who train with them to find success and develop their own personal style.

In particular with reference to the assessment of mediators, in addition to ensuring the

competency criteria and assessment processes themselves are as free from bias as possible, coaches and assessors should be encouraged to explore their own biases in respect of what an effective mediator might look like generally and also specifically what biases may exist when looking for specific behaviours or skill sets. Training providers could do more to specifically examine the potential for unconscious bias during assessment and find ways to counteract this within their assessment teams. Regular group supervision and training on this specific area is recommended to raise awareness and counter unhelpful behaviours and group think.

Finally, we recognise that often courses are delivered without any follow up for participants or additional help. It would be positive to look at whether mediation training providers can provide additional bolt-on courses for all participants, as these are likely to help those who may not have had this exposure previously. For example, mediation training providers often already offer “law for non-lawyer” courses for mediators but they could also offer courses in commercial skills for non-commercial based mediators wishing to transfer (e.g. for employment mediators or similar), as well in topics such as marketing yourself as a mediator or developing professional networks.

To summarise:

- All training materials, role-plays and assessment criteria should be reviewed for unconscious bias. Materials should be created and used with the principles of diversity and inclusion.
- Trainers, coaches and assessors should receive training in unconscious bias and diversity and inclusion
- Training providers should review the ethos and culture of their courses to ensure that they do not disadvantage any group.
- Training providers should provide follow on courses and additional modules (for example, law for non-lawyer mediators) to support new mediators.

### Stage 3: Gaining Early Experience



The third stage of the mediator's progression path is the most individual and ambiguous stage. Whilst there is support and guidance in becoming a mediator and during the training and the accreditation process; and once a mediator joins a panel and starts receiving regular work, they also receive clear feedback, the stage in between of gaining experience and overcoming the first hurdles is largely down to the individual.

What makes this stage particularly challenging is that the individual needs to both build a network of contacts whilst also gaining experience and a reputation. There is a clear drop out from the number of individuals who have trained to become commercial mediators (over 10,000 in the UK) and those working as commercial mediators regularly (85% of commercial, non-scheme work is carried out by a core group of 200 mediators<sup>9</sup>).

This is clearly much easier for those who already have such networks from previous practice and who are also able to gain experience by being available for every opportunity, including at very short notice.

Those who are already part of various networks which can help them getting work and experience are likely to be older professionals and they are less likely to be younger mediators, women or BAME professionals. As the CIPD commented in a report in December 2017<sup>10</sup>, "minority groups are less likely to have the informal networks that assist with career progression and can provide information on 'the rules of the game' or role models."

The fact that mediators will often have to take a large amount of unpaid work experience sessions (such as shadowing mediators) also disadvantages those who are less able to take this time or who cannot commit to unpaid work. Those with more established careers are both able to use their networks to get opportunities quicker and are able to take time off more easily due to greater flexibility and control of their professional time. They are often also more easily able to accommodate issues, such as supporting a family or running a business which prevents others from being able to take these advantages so quickly.

There is a particular issue about part-time workers and those with carer responsibilities (who are more likely, but by no means exclusively, women) in gaining this experience. Due to the nature of

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<sup>9</sup> Mediation Audit 2018, p3

<sup>10</sup> CIPD, *Addressing the Barriers to BAME employee career progression to the top*, December 2017, p13



part-time work, these people's short notice availability and ability to start early and finish late (as is often the case with commercial mediations) is frequently less than for those who do not have these responsibilities.

## Recommendations

Getting early experience and moving from being a newly accredited mediator to joining a mediation panel and getting regular work is one of the hardest stages of the life cycle for mediators.

In terms of increasing the opportunities for new mediators to build their practices, the two main areas to look at are:

- increasing the access to networks for new mediators and
- the provision of "observerships", and how mediators get to see experienced mediators work.

With regards to networks, this is something where both mediation organisations and clients can lead the way. We would encourage mediation organisations to think about creating networks specifically for female mediators, younger mediators, as well as mediators from BAME backgrounds. These networks can share best practice but also look at ways of gaining traction in the mediation market. More generally there needs to be better signposting for everyone of ways to progress from being an accredited mediator to joining panels and these processes should be more transparent. For example, is there an encouragement for mediators to undertake community mediations or to do consumer work? Do they need to be members of certain networks? A very basic networking step which might be helpful as well is looking at increasing the use of "getting to know you" mediator sessions where more senior mediators and junior mediators meet.

With regard specifically to increasing the number of mediators getting access to observerships, All mediators should be encouraged to take observers for their mediations, rather than on an infrequent basis. The Civil Mediation Council and providers can play an important role here by strengthening the obligations of those experienced mediators to give back and provide opportunities to new mediators coming through perhaps with a particular emphasis on providing opportunities to those who perhaps don't have their own networks into observing experienced mediators. As much as possible observers should also be randomised with mediators (especially when they are assigned through mediation bodies) so that there is a sharing of experience and all mediators have equal opportunities to view experienced mediators.

To summarise:

- Providers and clients should increase the number of networks specifically for younger mediators, BAME mediators and female mediators.
- Mediator Observerships, shadowing, and work experience support should be assigned on a random basis
- Experienced mediators should be encouraged to take new mediators from pools of new mediators as assistants or for work experience, rather than only take those they know.
- Providers should consider having pathways to panels, to enable mediators to progress from accreditation through to selection.



## Stage 4: Selection for Panels



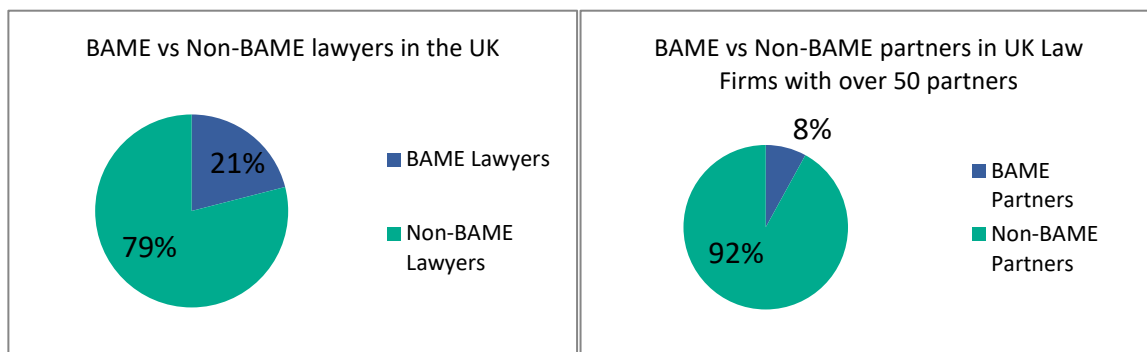
Whilst many mediators have successful independent practices taking direct referrals, the majority of working commercial mediators (including those who also operate independently) will be on mediator panels. These panels, such as the CEDR UK Panel, are smaller groups of mediators who are collected together and have central administrative support and structuring. Being on a panel allows a mediator to gain access to any scheme work that the panel has (for example, specialist work or fixed fee schemes) as well as allowing them to be put forward for other work for which the provider gets requests.

The issue with panels from a diversity and inclusion perspective is often that it's unclear how panels are created and how an individual would progress from being an accredited mediator, through to joining a panel. The lack of transparency means that it can be difficult for new mediators to know how to join panels

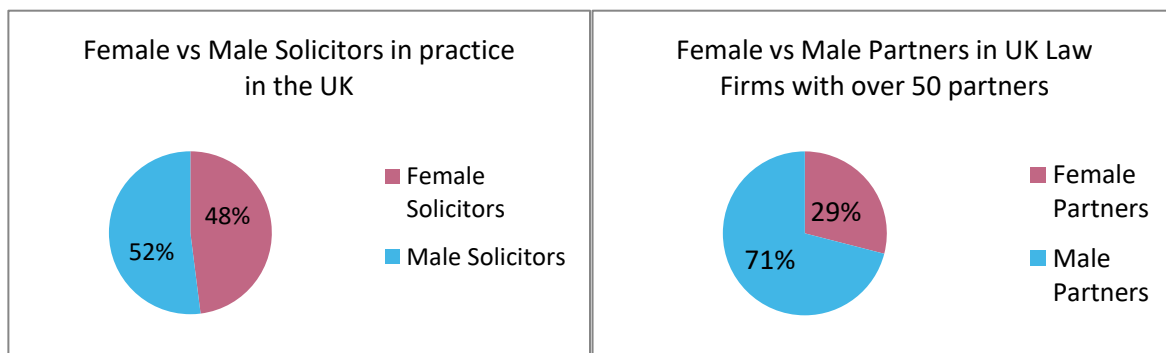
In dealing with such a system, those who do not have the networks to know about (or get selected for) certain types of panel are likely to remain excluded from that group and therefore there can be no progress in terms of developing mediators from backgrounds dissimilar to the norm or in helping these mediators to get work.

In panels with criteria for selection, often it can be based on unconscious bias or indirect disadvantage due to the criteria used for selection. For example, criteria for selection may include a mediator's accreditation status, their mediation experience, their professional background and external reputation; their field of expertise and their availability and effectiveness to take work. For other panels, there may be no clear selection criteria at all and it may be on a "who knows who" basis.

All of these factors are likely to unconsciously disadvantage BAME mediators, younger mediators and women due to their proportionally lower chance of satisfying these criteria, or having the appropriate networks. For example, if a mediation panel is looking for someone with 15 years' experience as a partner at a commercial law firm, that person is naturally unlikely to be a younger mediator but they are also less likely to be from a BAME background or a women due to the fact that these individuals for diversity issues in other professions are less likely to have these qualities. We know that BAME candidates and women are less likely to be senior partners of large law firms, so such a selection requirement disadvantages them.



*Ethnicity in the legal profession<sup>11</sup>*



*Gender in the legal profession<sup>12</sup>*

Similarly, if there is a specific requirement to look for a candidate who has worked in the technology sector (for example), it is more likely that the panel will recruit a man due to gender imbalances, than if the requirement is to look for a candidate who has worked in Human Resources, where it may be harder for a man to get this position. In both instances the issue that arises here is that often the subject matter expertise is characterised as “essential” when in fact it is less important and it is actually having a variety of styles of mediator which is more pressing.

Finally, with regards to availability and putting mediators forward, there can be a tendency of panels to only select mediators who are the easiest possible options for the panel. That is to say mediators who are available always and who have no additional requirements. Whilst this is understandable, this is likely to disadvantage (and prevent them from getting selected), those who have other commitments, e.g caring responsibilities or are perceived as having them.

What is counter-intuitive here is that whilst mediation is often seen as a great profession for those who to work part-time or occasionally<sup>13</sup>, the actual nature of the need to be frequently available at short or relatively short notice to get work, and with the additional burden of working outside of regular working hours, can make the job impractical for those with caring responsibilities. One female respondent reported how she had to abandon a line of work after realising that getting told at 10am that she had a 3 hour mediation from 5-8pm that evening 40 minutes’ drive from her house, meant that she had to find someone to look after her 18-month-old child at short notice and prepare and do the mediation in one day. She described how on the drive back, she determined that she could not do these cases any more.

<sup>11</sup> SRA, How Diverse are Law Firms, <http://www.sra.org.uk/solicitors/diversity-toolkit/diverse-law-firms.page>

<sup>12</sup> SRA, How Diverse are Law Firms,

<sup>13</sup> <https://www.prospects.ac.uk/job-profiles/mediator>, (accessed 21 March 2019) for example states that “Part-time work and job sharing are both possible” for mediators.

## Recommendations

In looking improving diversity in the selection of mediators on to panels, recommendations can be split into three main areas. Overall, diversity needs to be a core organisational issue for those who run panels, and they need to look at how they can make a commitment to improving diversity and inclusion within the mediation profession.

Firstly, the process for selection for the majority of panels needs to be made clearer and more transparent. At the moment, selection for panels is often unclear, which makes it harder for those who are “outsiders” to apply or be selected for positions on the panel. Selection for panels should always be made on selecting the best candidates from a pool of applicants in a fair manner, not from personal connections between a potential mediator and those making the selection.

To make a process more transparent, there should be a clear method for how new mediators can apply and/or are selected on the websites of the panels, as well as ideally access to someone who can explain the process for application. A greater use of technology may also make it easier for some applicants to apply. Whatever the process, a clear statement and commitment to diversity should be provided by those selecting panels with a public commitment to not discriminating based on any of the protected characteristics under the Equality Act 2010.

A way of increasing diversity in the profession, particularly with regards to age, is to look at the seniority of panels and whether there is potential for having tiered panels with junior mediators (in terms of experience) as well as more experienced mediators. Often mediator panels use very senior applicants for all work, which reduces access to the profession and means that there is little career path for mediators. By stratifying work more clearly, there would be greater choice for clients (and potentially a greater take up of mediation with lower value or mid-market cases). There could also be increased use of mentorship from practising mediators to help new mediators to develop their skills and build their practices.

In terms of the actual selection of new panellists, this should be done by a diverse panel and as much as possible avoid being made by a single individual. Those selecting panellists should be actively aware of the need to improve diversity in the profession and should adopt a clear process for selection which includes diversity criteria as part of the selection process. There needs to be a regular commitment to awareness raising from panels and a demonstration that panels are selected based on inclusive principles with regards to protected characteristics.

Selection criteria should be reviewed in the same way as assessment criteria for accrediting mediators to remove unconscious bias and be performed on key competencies. It may be useful to use HR experts to look at selection processes to make sure that they are neutral in limit unconscious bias. In particular, thought should be given as to whether there are any criteria (for example, availability requirements) which are likely to favour some candidates over others. “Experience” is commonly a key criteria for selection for panels but may be poorly defined, or overemphasise commercial or legal experience over mediator ability. Panels should in our view be emphasising mediator experience and ability as the main criteria for selection. Marketability is also often used as a key criteria for panel selection. Whilst this may be an understandable quality for panels to look for, it can be harder for those who have not already had established careers, to be considered marketable by panels. Therefore, thought needs to be given to explicit what is meant by marketability and how candidates can overcome this.

Finally, whatever method is used, there needs to be feedback given to applicants on why they were or were not successful. This aids fairness and removes the potential for selection for non-diverse reasons.

To summarise:

- Panels should have clear transparent criteria for selection and a clear process. Guidance should be available for all applicants as to how panel selection is made.
- Selection for panels should be carried out by a diverse group who have received unconscious bias training.
- The criteria for selection for panels should be reviewed to ensure that they are inclusive. The fundamental selection points for panel selection should be mediator experience and ability.
- Panels should consider having tiered panels of more senior and junior mediators to allow entry into the profession from newer mediators.
- Feedback should be given to all applicants who apply for panels.

## Stage 5: Case Selection: Getting put forward by providers and selected by parties



The final stage of the mediator life cycle is the one that may be most familiar to clients, getting put forward by providers and selected for cases by parties.

There are several ways that a mediator can be selected for a case.

In scheme work and fixed fee mediation, it is often the case that the parties do not get to select their mediator. Rather the mediator is put forward by the provider. This does not mean that there are no diversity or bias issues at play; the mediator still needs to come from the provider's panel of mediators and there will be selection by an individual, but it may be lesser than when selected by a party.

In other cases the parties will be involved in selecting a mediator. From the analysis of the 2018 Audit and from talking with parties and mediators, it can be seen that in approximately 50% of cases, parties will go directly to a mediator whom they know they want for the case. In a further 25% of cases, there will be discussion amongst the lawyers of the parties (potentially with provider support) as to who should be selected as a mediator. In the final 25% of cases parties will ask a provider to help them determine who should be the mediator and the provider will put forward names and biographies of a selection of mediators (classically three but sometimes more) for the parties to select from.

This means that in the vast majority of commercial work, the parties have a very firm selection over who the mediator is without guidance. This can lead to a stagnation in terms of selection and the clear possibility of bias or preference to a certain mediator. Similarly, even in situations where the provider is involved, there is still the possibility for unconscious bias in terms of selection.

In looking at who gets selected to be a mediator, we can see that parties will often say things that lead to certain likely outcomes as to who the mediator might be.

One professional client told us how they look for someone with "grey hair and maturity" to be the mediator, stereotypically lessening the chance of that selection being of a woman or a younger mediator. Another client told us about the "risk factor" for picking a mediator and that they look to lessen this by picking someone who is as similar to the most senior lawyer working on the case as possible as you can't get blamed for selected someone who is similar to that person. A third lawyer mentioned how they have a tendency to look for an "elder statesman" when selecting a mediator, again using terms which imply an older male, and someone who is most probably white.

Other clients will talk about some of their requirements for a mediator, often using the same language that was used in selecting mediators for panels, such as requiring 20 years' commercial experience, or wanting a "lawyer". Whilst there may be comfort in the familiarity of working with mediators who have similar backgrounds to the legal client, the upshot of this is that it is likely to discriminate against those who don't share those backgrounds.

In essence therefore the selection process of mediators for individual cases reinforces the diversity biases already inherent in the profession as outlined in previous section of this report.

In contrast to that, there is an increase in clients who are actively looking for diversity in mediation selection and who will ask for suggestions of mediators from different backgrounds. There is also a commitment from some clients to try and find new mediators to keep the dynamic fresh.

In looking at selecting mediators therefore there needs to be attention paid to both the mechanics of how mediators are selected to be put forward by providers but particularly in relation to unconscious bias and preventing parties from selecting mediators on characteristics which are likely to support certain groups of mediators over others.

## Recommendations

In looking at how mediators are put forward by providers and selected by parties, it would be positive to have a wider conversation with lawyers and clients selecting mediators as well as looking at specific changes that can be made.

With regards to the big picture, there would be benefit to having a wider campaign about the use of different mediators for different disputes, and the benefit of using a diverse pool of mediators. In the same way that you cannot select the same judge for every case that you do, you shouldn't select the same mediator. Both mediators and providers should try and avoid being the only mediator used by parties, as this can make the process less effective. Parties should be encouraged to pick mediators based on their mediation style and ability to facilitate. Parties should also be encouraged to use fixed price mediation for smaller value mediations. Fixed price mediations often do not let parties choose their mediator but rather assign someone who is qualified from a panel. The random selection of a mediator from a qualified pool would encourage the use of different mediators and would help open up the profession.

For the mediator profession more widely it would be good to have industry wide standards (e.g. led by the civil mediation council) as to what standards are for mediators and the profession and what standards aren't. The industry needs to challenge a lack of diversity and actively promote using different mediators. Providers should be encouraged to produce a diversity report looking at how mediations have been taken with regards to gender, race and age factors and how they are working to promote diversity. There may also be benefit to inclusion in industry awards of awards specifically recognising new talent as well as rewarding providers and firms which champion diversity within how they select mediators.

With regards to the particular selection of mediators by clients, we would suggest that there should be attention paid to looking at how mediators are recommended by providers and selected by parties. Where a firm asks to look at multiple mediators, providers should aim to provide a diverse list of mediators. There could also be a mediator diversity pledge from law firms (as some are already requesting) that mediators suggestion lists always have a diversity of gender and other factors for selection.

In looking at the written materials provided about parties, in line with the recommendations

above, the factors that are most relevant to the mediation (mediation experience and mediator style) should be emphasised and promoted. Other factors should be included but it is important that parties are recognising the mediator's experience and style in the role of mediator when they are making a decision.

Unconscious bias is a factor for all – lawyers, parties, providers and mediators. Everyone should be encouraged to be responsible for checking against unconscious bias in the way that they select mediators. We would like to have a discussion with everyone about how to help put these points into practice and provide against unconscious bias.

For providers, we would encourage the following steps to be taken. Firstly, there should be always be a commitment to put forward a mix of genders when a request for a list of recommended mediators is made. Mediator biographies should be reviewed to see that they do not have unconscious gender role references within them in a similar manner to how training case studies are reviewed. In some instances, it may be useful for providers to give "blind" CVs for selection, which do not feature photographs or names of candidates to reduce bias further. Finally, all who provide advice to clients on how to select mediators (specifically case managers but also those working in more business development functions) should receive unconscious bias training in relation to how to promote all mediators.

For clients and users of mediations, we would encourage them to review any internal panel or pool of mediators that they use for diversity, and to make a commitment to have gender, race and age diversity on any internal panel. When asking for external recommendations, we would encourage clients to only accept a list of recommendations of mediators, where there is diversity demonstrated in the suggestions. Finally, we would encourage clients to seek to actively review and renew their internal panels of mediators to prevent stagnation and to promote new talent on a regular basis.

To summarise:

- Mediation providers and clients who have lists of preferred mediators should review these lists and panels for diversity and inclusion.
- When presenting lists of mediators for clients to select, providers should endeavour to provide diverse lists. Clients should also request diverse lists from mediation providers and reject non-diverse lists.
- Mediator CVs and documents to clients should be reviewed for unconscious bias in presentation or stereotyping. Providers may want to present blind CVs of mediators.
- Client advisers should be trained in unconscious bias and how to deal with this, including from clients.
- Clients should be encouraged to use fixed price mediation with random mediator selection for lower cost work.
- Clients should be encouraged to use different mediators rather than routinely using the same mediator.
- All mediation providers should produce annual reports on diversity and inclusion, with regards to their panels and selection.

## Summary of Mediator Progression Path and Recommendations for Change

Progression Stage	Path	Function of Stage	Groups most affected	Potential reasons for barriers	Recommendations Summary
<b>Do I fit?: Choosing to become a commercial mediator</b>		An individual's knowledge of and belief in self to become a commercial mediator	BAME mediators  Women (to a smaller extent)	<ul style="list-style-type: none"> <li>• Lack of role models</li> <li>• Lack of self-belief</li> <li>• Financial/practical issues</li> </ul>	<p><b>Mediation Commercial Knowledge</b></p> <p>Mediation Training Providers should</p> <ol style="list-style-type: none"> <li>1) Use Targeted marketing &amp; awareness raising</li> <li>2) Use Role models as influencers for new groups</li> <li>3) Create a Diversity commitment of organisations (responsibility)</li> <li>4) Target diversity multipliers (e.g. women in business groups; BAME groups etc)</li> </ol> <p><b>Perception of commercial mediation</b></p> <p>Mediation Training Providers should</p> <ol style="list-style-type: none"> <li>1) Create myths &amp; reality webpages for mediation training providers</li> <li>2) Revising marketing/website material to make it aligned to diversity mission</li> </ol> <p><b>Unconscious Bias specific recommendations</b></p> <p>Mediation Training Providers should</p> <ol style="list-style-type: none"> <li>1) Regarding age, introduce training for course managers about effective advising for age</li> <li>2) Target campaigns at different communities</li> <li>3) Generally, providers should be more curious in asking questions when speaking to potential delegates and not so quick in telling people that they won't make it as a mediator.</li> <li>4) As far as possible options should be given for gaining skills etc to people who might struggle to be independent</li> </ol>



				<p>mediators, rather than telling them that they are not suitable.</p> <p><b>Finance</b></p> <p>Mediation Training Providers should look at introducing</p> <ol style="list-style-type: none"> <li>1) Financial support/bursaries</li> <li>2) Partnerships</li> <li>3) Flexible payment/flexible delivery models</li> <li>4) Low cost courses (offer discount)</li> </ol> <p>For those who cannot otherwise afford the course but would increase the diversity of the profession</p>
<p><b>Do I fit?: On the mediation course and gaining accreditation</b></p>	<p>How well an individual does in training to become a commercial mediator and in gaining accreditation</p>	<p>BAME mediators</p> <p>Younger mediators</p> <p>Women</p>	<ul style="list-style-type: none"> <li>• Culture of commercial mediation courses favours certain groups</li> <li>• Unconscious bias on the part of trainers and assessors as to what a “good” mediator is</li> <li>• Practical factors</li> </ul>	<p><b>Perception of a good candidate (by people on the course)</b></p> <p>Mediation Training Providers should</p> <ol style="list-style-type: none"> <li>1) Review any Competency framework for assessing candidates for inclusivity</li> <li>2) Train trainers and staff members/course managers in diversity.</li> <li>3) Make sure that there is a diversified training group (assessors, trainers, coaches)</li> <li>4) Introduce diversity &amp; inclusion Guidelines/process mechanisms for trainers</li> </ol> <p><b>Culture of the Course</b> (materials, role play, venue)</p> <ol style="list-style-type: none"> <li>1) Role plays should be revised for: <ol style="list-style-type: none"> <li>a. Vocabulary</li> <li>b. Adjectives</li> <li>c. Gender neutral terms</li> <li>d. Modernising the terms</li> </ol> </li> <li>2) Bibliographies of course material should include a diverse mix of authors</li> <li>3) Pre-course activities should be looked at to see if they can help encourage diversity</li> <li>4) There should ideally be access to role models <b>before</b> course; as well as focussing on understanding myths &amp; reality</li> </ol>

				<p>and providing peer mentoring.</p> <p>5) Mediation training providers should look at “getting the feel right” for example with dress code.</p> <p><b>Unconscious Bias</b></p> <p>1) Mediation training providers should look at providing more bolt on options (e.g. commercial skills training; client awareness, legal awareness) for delegates.</p> <p>2) There should an increase in digitalisation of parts of the training to allow for familiarisation outside of course and help those who learn best at their own pace</p> <p>3) Mediation Training providers should challenge unconscious bias of trainers and look at cultural stereotypes (including potentially positive stereotypes but which can limit, e.g. women are caring, younger people are more energetic etc).</p>
<p><b>Gaining experience and developing a practice</b></p>	<p>How an individual gains work experience through shadowing or other methods; their ability to network and use contacts to build a practice; their gaining of and ability to take lower paid work</p>	<p>BAME Mediators</p> <p>Women</p> <p>Younger Mediators</p> <p>Older Mediators</p>	<ul style="list-style-type: none"> <li>• Need for individual to have large amounts of availability and flexibility to take opportunities</li> <li>• Need for individual to take low or unpaid work</li> <li>• Mediation favours those who already have established networks which disfavours those who don't have those contacts</li> </ul>	<p><b>Access to Network</b></p> <p>1) New Mediators should be able to use the provider network to increase their access to different mediators</p> <p>2) Experienced mediators should be encouraged to take observers as a default to their practice rather than as an exception</p> <p>3) Mediation providers should collectively create a culture of the profession which encourage development on mediation</p> <p>4) Mediation Providers should introduce a Process/system that matches mediators with observers</p> <p>5) Mediation Providers should ensure randomised process of mediator-observer match up</p> <p><b>Access to mediation client and work</b></p> <p>1) Mediation Organisations should provide better signposting to new mediators about how to find work and build networks</p> <p>2) Mediation organisations should consider prioritising creating networks for certain groups E.g. Younger mediators</p>

			<ul style="list-style-type: none"> <li>Requires level of technical knowhow and readiness to take opportunities due to competitiveness of market</li> </ul>	<b>Unconscious Bias recommendations</b> <ol style="list-style-type: none"> <li>1) Mediation Organisations should encourage the use of getting to know mediator sessions. Discourage mediators or providers from having selection of observers based on qualities other than availability.</li> <li>2) Mediation Organisations should look at bringing in financial support options for certain groups to help them to undertake observerships/work experience.</li> </ol>
<b>Panel Selection: Joining a Panel</b>	Whether an individual gets selected for a panel	BAME mediators Younger Mediators Women Non-lawyer mediators	<ul style="list-style-type: none"> <li>Lack of clarity in selection process requirements for panels</li> <li>Deliberate lack of diversity or supporting new mediators by some panels</li> <li>Unconscious bias on the part of panel selectors looking for easier to sell mediators</li> <li>Individuals' own circumstances preventing being able to join panels (e.g. due to availability requirements)</li> </ul>	<b>Perception of the provider</b> <ol style="list-style-type: none"> <li>1) Providers should have a transparent process and criteria for selecting mediators</li> <li>2) Providers should provide access to someone who can explain the process neutrally to potential applicants</li> <li>3) Providers should consider providing access to career coaches for some mediators?</li> <li>4) Providers who also accredit mediators should consider having a clear pathway from accreditation to joining a panel for mediators(stages 3+4)</li> <li>5) Providers should pledge to support a requirement of diversity and make a public commitment to improving this</li> <li>6) Providers should have a diversity of selectors, making the panel selection decisions, e.g. mix of gender, age and race etc.</li> <li>7) Providers should give feedback to applicants as to why they have been declined from panel</li> </ol> <b>Perception of the Individual</b> <ol style="list-style-type: none"> <li>1) Providers should allowing individuals to have access to open days/clinics/online Q+A sessions, eg. Facebook Live</li> <li>2) Providers should also improve use of technology for those trying to join panels.</li> </ol>

				<p><b>Unconscious Bias specific recommendations</b></p> <ol style="list-style-type: none"> <li>1) Panel selectors should look at what is classified as “experience” in selection for panels and make sure that it is mediation experience that is emphasised, not other types of experience.</li> <li>2) Providers should look at engaging with HR experts in relation to selection processes to make sure that they are neutral and limit unconscious bias</li> <li>3) Provider should consider introducing a tier system for mediators of less experience and more experienced (similar to how barristers’ chambers show how many years’ post qualification someone has). This would help mediator panels to encourage having less experienced mediators on panels, rather than only going for more experienced mediators.</li> <li>4) Providers should consider Marketability as a factor for considering mediators – actively and openly address issues related to marketability rather than ignoring the issues. i.e. rather than not selecting a non-lawyer female because she unconsciously might be difficult to market as a mediator; in selection process address how this issue of marketability could be overcome. Do not just go for people who are easy to market.</li> <li>5) Panel Selectors should be vocal in selection process about potential for unconscious bias and how selecting panel going to counter this; compare other similar processes (e.g. Judge/QC selection for this)</li> <li>6) Panel selectors should have a clear criteria and assessment for selection for panels to reduce unconscious bias</li> <li>7) Providers with training capabilities should create opportunities for those who do not have certain qualities</li> </ol>
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				to gain them; e.g. law for non-lawyers; commercial training options for community and family mediators to cross-convert; commercial awareness classes etc.
<b>Case Selection: Being put forward by providers and selected by parties</b>	Whether a mediator gets forward for a case by a provider and selected for a case by a client	Women Younger Mediators BAME mediators	<ul style="list-style-type: none"> <li>Unconscious/conscious bias on the part of the selector – “looking for a grey-haired mediator”; want an “elder statesman”</li> <li>Lack of diversity in putting forward names by providers</li> <li>Unnecessary experience requirements for the mediator which disfavour certain groups (e.g. 20 years’ commercial experience requirement for a small fixed fee case)</li> <li>Availability issues</li> <li>Pre-conception of case type by gender</li> </ul>	<p><b>Written communication of mediators</b></p> <p><b>Written communications about mediators should be revised by providers to:</b></p> <ol style="list-style-type: none"> <li>1) Present mediators to clients in unbiased ways</li> <li>2) Promote diversity</li> <li>3) Balanced biographies of mediators – e.g. do not overemphasise litigation experience</li> <li>4) Emphasise skills as a mediator in promotion</li> </ol> <p>Providers generally should:</p> <ol style="list-style-type: none"> <li>5) Look at how recommendations are made to address diversity pledges</li> <li>6) Work with lawyers on who they select and encourage them to consider new as well as familiar mediators</li> <li>7) Consider creating a Mediator diversity pledge from law firms. “I want a diverse list of mediators when presented”, so that lists of mediators are not all of one gender for example.</li> </ol> <p><b>Unconscious Bias specific recommendations</b></p> <ol style="list-style-type: none"> <li>1) Mediation Organisations should conduct a campaign explaining what commercial mediation is and what it isn’t. i.e. it is about having a great facilitator for your problem; it is not about getting an industry expert in to tell you the answer.</li> <li>2) Providers should encourage parties to use a selection of mediators; actively discourage parties from repeatedly choosing the same mediator again and again, e.g. the same mediator should not do all 10 cases for one client in a calendar year. Mediators and providers should try and prevent this. Comparison with how you would never have</li> </ol>

				<p>the same judge for all 10 of your cases, so you shouldn't with a mediator.</p> <ol style="list-style-type: none"> <li>3) Provider should discourage parties from picking a mediator based on perceived outcome (e.g. we got this outcome with this mediator/type of mediator before and therefore we want the same). Instead encourage parties to pick on facilitation/mediation style</li> <li>4) Providers should promote the use of fixed price mediation as a norm for many cases and that mediator selection is not something that should be overly expected with lower value cases.</li> <li>5) Providers should consider surveying/asking clients as to what they think an effective mediator is. Ask them for criteria. Challenge unconscious bias suggestions (e.g. "he must be a commercial lawyer." – can challenge as to why "he", and why a "commercial lawyer" etc.</li> <li>6) The Mediation community should consider having Community-wide standards (perhaps administered by the CMC) as what standards are for mediators and actively challenging bias.</li> <li>7) The mediator community should look at the use of awards and nomination systems to help identify undiscovered talent. E.g. recommendations of mediators under 40; BAME mediators; female mediators etc.</li> <li>8) There should be encouragement that checking against unconscious bias is the responsibility of everyone. The (1) Mediator, (2) Lay Client; (3) Law Firm and (4) provider</li> <li>9) There should be encouragement of all providers to produce a diversity report.</li> </ol>
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## Conclusion and Next Steps



From our report, we can see that there are significant steps for improvement within the mediation profession for it to become reflective of the community that we aim to serve. As the world becomes more varied, so too should we.

As mediators, we know that every conflict is a challenge and an opportunity. We hope now to take this learning and work with the entire community of parties, mediators and the wider public to understand what this means for you and how we can implement the recommendations of this project.

Over the next 12 months, the CEDR Foundation intends to reach out and discuss the barriers for diversity and potential recommendations with law firms, mediators and other mediation providers. CEDR also intends to look at putting into place in its own practice, the recommendations within this report.

As we approach the 30th anniversary of mediation in the UK, we look forward to seeing it grow and develop once more.

The CEDR Foundation is supported by its members and CEDR services who make these projects possible.

**Our CEDR Foundation Members**

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**GOWLING WLG**



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**HFW**

**Matheson**

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*This report does not necessarily reflect the views of our members and they were in no way involved in its writing.*