

SORA mediation update for NAF – Jan 2019

At the NAF meeting in May 2018, SORA presented a paper seeking views, worked examples and potential case studies. We again thank the NAF members for their helpful contributions. Since that time, we have been continuing to explore the possibilities of formal mediation, so this paper is by way of an update on our (slow, but hopefully steady) progress.

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We again met with **Scottish Mediation** to seek clarification regarding issues arising, in particular the questions raised at the NAF, but also to seek input as to how to take mediation forward as an approach.

We have subsequently produced a first draft of a one-page “*what formal mediation is and isn’t*” document (Appendix 1) which we hope addresses many of the queries raised at last May’s NAF meeting.

Karen Ramoo (**Scottish Land & Estates**) expressed interest in our mediation work at an early stage, so we met with her and she has subsequently confirmed that SLE is supportive of the concept of formal mediation as an approach. We also discussed the potential for a wider working group exploring the case for formal mediation in order to ensure more interested parties are engaged and represented. We are now in the process of approaching other organisations to gauge their interest in being more closely involved.

In light of the Land Reform Review Group’s Final Report recommendation of updated guidance, specifically referring to mediation and arbitration, we contacted Malcolm Duce (**Scottish Government**) in November. This updated statutory Guidance to access authorities required by the 2016 amendment to LR(S)A is still being developed. A draft will go out to consultees in due course, but Malcolm was very clear that the work we are doing on formal mediation is very much welcomed as it will inform the development of the guidance.

In late November, we met with Hamish Trench (**Scottish Land Commission**). Hamish agrees there is potentially scope for much greater use of mediation in relation to wider land use issues. The Commission are currently undertaking a pilot study to trial the use of formal mediation in relation to agricultural holdings cases and the feedback so far is positive – including the apparent resolution of a dispute of many years duration. They will be formally reporting in due course. Their pilot is a £10,000 project self-funded by the Commission as part of their Tenant Farming work. Although the lead for outdoor access guidance lies with SNH, we have been invited to come back to the Commission for their further input as some of their own work will be directly applicable to our own endeavours.

We are still seeking input from access authorities, SNH and others; this work is ongoing. However, it is important to note that many of the people and organisations we have spoken with are of the view that SNH need to again be bringing the Code to the attention of the public.

Suggested next steps

In our SORA mediation paper to the NAF last May, we stated that in order to advance the case for formal mediation as a potential solution for some access problems, we require either worked examples where formal mediation has already been used successfully in practice, or potential case studies to take forward to test the approach. Unfortunately, we have as yet not located any successful worked examples. However, a number of possible case studies have been suggested, so there is the potential for just the type of pilot mediation project SLC are conducting in their own current area of interest. To be clear, we are not proposing any such pilot should be a stand-alone SORA project - if formal mediation in access disputes is to achieve wider acceptance then it needs “buy-in” from all potential sectors, be they representatives of landowners, land managers, the various users of recreational access and access authorities. **We seek the NAF’s support for a pilot mediation study.**

A further step is generally raising the profile and understanding of formal mediation as a useful process. At this stage, we suggest a training session on the use of formal mediation for NAF representatives and Access Officers. **We seek expressions of interest from NAF attendees.**

Eleisha Fahy (*ScotWays*) and Eddie Palmer (*Scottish Canoe Association*)
on behalf of SORA, 10th January 2019

The Scottish Outdoor Recreation Alliance (SORA) is an informal grouping of outdoor recreation bodies working together to pursue the following objectives:

- *a forum for structured discussion and networking between organisations representing outdoor recreation interests.*
- *seeking to positively influence whoever necessary at national level to enable individuals to exercise their legal rights of access.*
- *identifying existing and potential issues or concerns of mutual interest.*
- *developing, where appropriate, a cohesive approach or response to issues, opportunities and consultations of mutual interest/concern.*
- *strengthening and providing a stronger united voice for organisations representing outdoor recreation.*

SORA members are British Horse Society Scotland, Cycling UK Scotland, Developing Mountain Biking in Scotland, Mountaineering Scotland, Ramblers Scotland, Scottish Canoe Association, Scottish Sports Association and ScotWays.