

Reforming Justice Reforming Scotland

Addressing Conflict outside the Court System

Practitioners' Workshop

Some Reflections from a civil/commercial perspective

**a couple of caveats...
and a backdrop**



... a little test to start us off...

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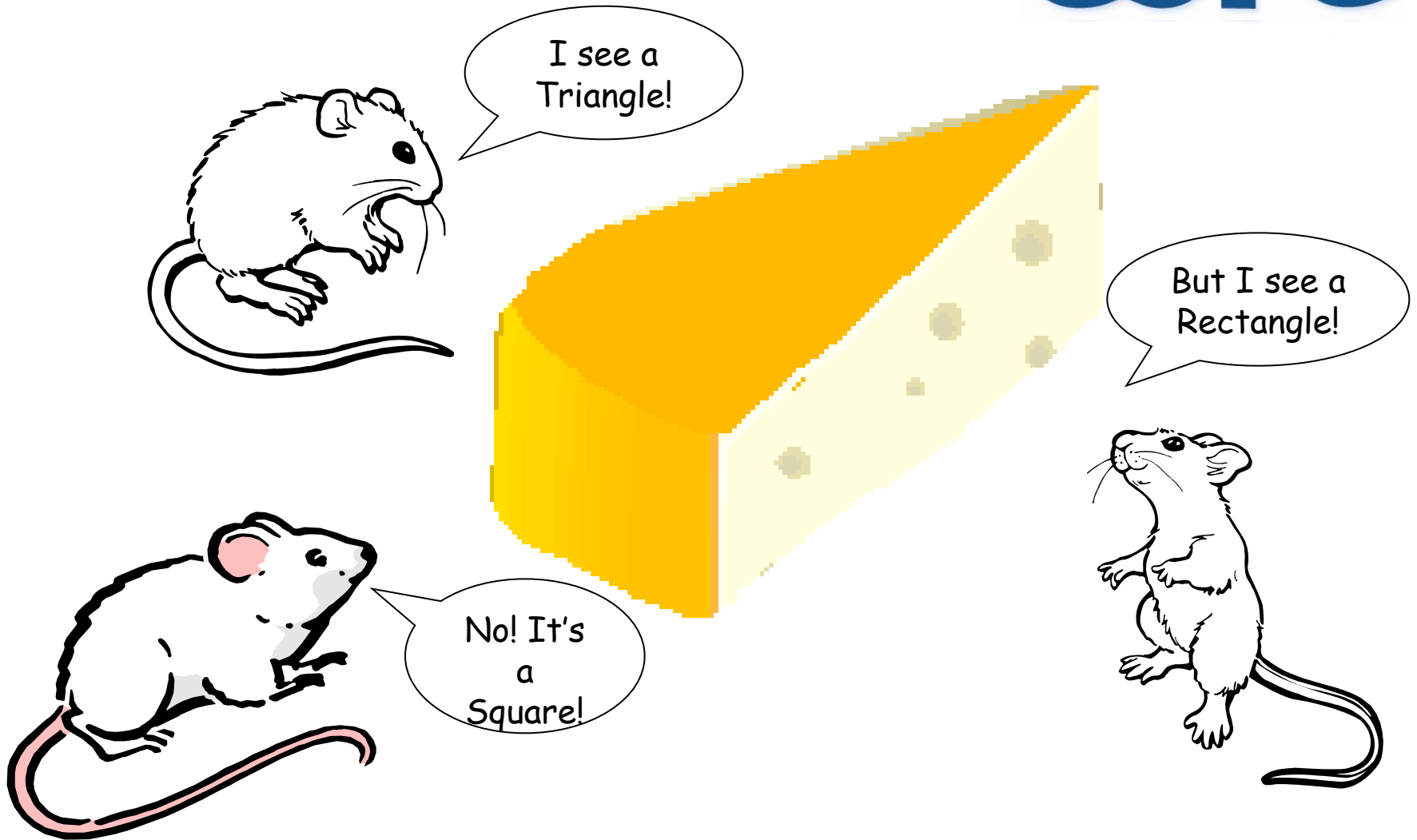
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What we see is all there is....?

Keep your Filters Clean!

There are several sides to most
stories.....

It just depends on where you are standing.....
or where you start from.....



Should we look at things afresh?

Do we need to challenge our
assumptions?

Ideas do matter!

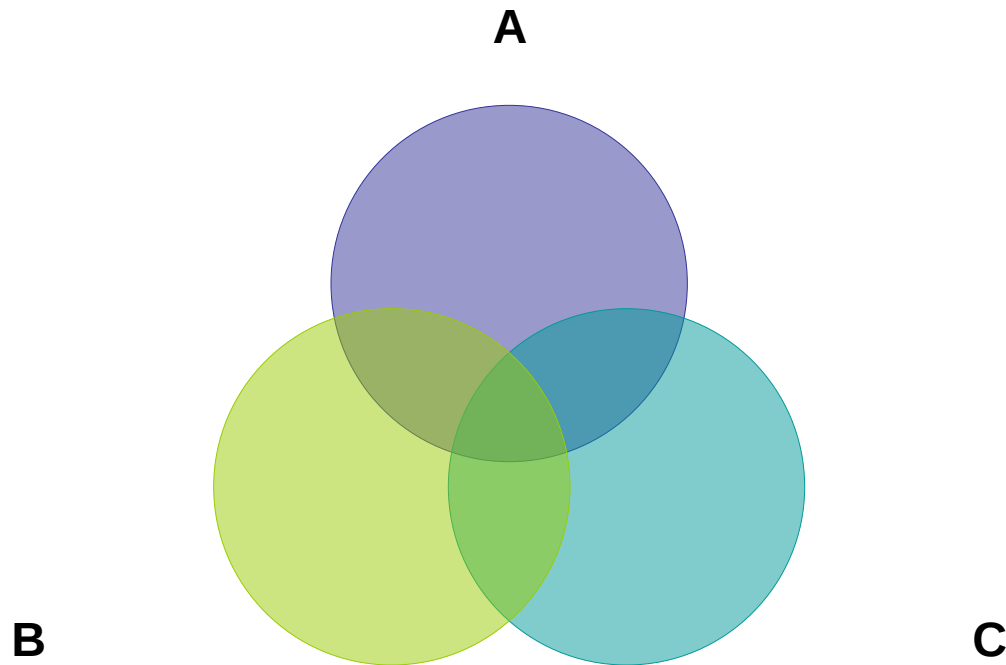
Addressing difficult situations,
disputes and “offending”
- when things go wrong

A new Scotland: the road less travelled...?



Mediation in civil and commercial disputes

The need: to find the **common** ground



Some Key Elements

- Setting objectives: what are we really trying to achieve?
- Building relationships: separating people from the problem: *respect and rigour*
- Gaining understanding - what it's really all about: the underlying issues - multifaceted
- Developing options – finding possible, creative ways forward
- Making decisions – finding a solution(s) which really works

What does it mean?

? Moving from

- positions to needs
- polarisation to consensus
- adversarialism to collaboration
- judging to cooperating
- rights to interests
- remedies to options
- fault to accountability
- blame to responsibility
- paternalism to autonomy
- hierarchies to engagement
- coercion to participation
- debate to dialogue

from courts to ...?

is this “Justice”?

**is “Reforming Justice”
the real issue?**

does it matter?

**what might we do
differently...?**

...and how...?



A Protocol for Respectful Dialogue

8 Commitments?

“We[, the signatories to this protocol,] agree that it is in the interests of our [business, organisation, employees, and those with whom we contract/do business] that all communications are conducted civilly and with dignity. Therefore, we agree to:

- listen carefully to all points of view and seek fully to understand what concerns and motivates those with differing views from our own;
- acknowledge that there are many points of view and that these have validity alongside our own;
- show respect and courtesy to all individuals and organisations with which we have dealings;
- express our own views clearly and honestly with transparency about our motives and our interests;
- use language carefully and avoid personal or other remarks which might cause unnecessary offence;
- ask questions if we do not understand what others are saying or proposing;
- respond to questions asked of us with clarity and openness;
- support what we say with clear and credible information wherever that is available.”