

## Mediation Examples

1. A serious breakdown in relations had occurred in a firm of financial advisers. At a moment of high tension, a leading player was told to leave. He did so and sought legal advice. A claim was launched in court for unpaid bonuses, commission allegedly due, damages for breach of contract and loss of share options. The whole affair was damaging to all concerned and the publicity of a court action was bound to be detrimental. While monetary issues were important, personal reputation and saving face were critical. A day of mediation provided the platform for a full discussion of the options. A deal was struck, made possible by personal acknowledgements, combined with undertakings on future communications with others and a financial settlement.
2. This was a claim for professional negligence with the sum sued for in excess of £500,000, in the field of building and construction. The mediation was conducted on two separate days, both preceded by short preparatory meetings involving the solicitors. On the first day, while considerable discussion took place which narrowed the issues significantly, one of the results was a clear understanding of the difference in the expert views which had been offered on each side and of the need for the experts to conduct a further visit to the building in question to carry out more detailed investigations. The second day of mediation took place six months after the first, after the experts had carried out their investigations and six or so weeks prior to the proof date. As a result of these investigations and further reflection by the parties and their advisers, a resolution was achieved on the second day.
3. Two contractors had a long-standing commercial relationship. However, external commercial factors changed. One party wished to alter the arrangements between them. The other argued that the change constituted a breach of contract. The matter could have been fought out and resolved in a court. Neither side wanted that. They worked with their lawyers and a mediator to find a commercial solution that met their needs going forward. To do that, each side had to draw on the goodwill of past years and acknowledge mistakes or misunderstandings in recent communications. It took a day and a half of talks to reach a new ongoing commercial arrangement.
4. A commercial project was entered into. Party A relied upon the professional services of Party B in order to provide advice and assistance in the development of the project. The project was designed to generate significant profits over many years. For a variety of reasons, the project was not successful and the parties had a rather acrimonious separation. The result was court action in which Party A sought hundreds of thousands of pounds from Party B, alleging professional negligence and substantial loss of profit.

Some 6 or 7 years after the events which led to the allegations, the claim was heading towards a court hearing which might have lasted for two or three weeks – or more, and cost tens of thousands of pounds – or more. The parties decided to try mediation. A mediation was arranged and attended by lawyers for each side with experts and other advisers to assist, in addition to the parties themselves. The parties themselves were involved throughout all the discussions. At the end of one

day of the mediation process, the parties reached an agreement which brought the dispute to an end, closure to the long-running conflict and an end of further expenditure. The total cost to the parties of the mediation service, including arrangements, preparation, venue costs and mediator costs was less than £5,000.

5. This was a situation in which parties were involved in the retail distribution sector. There was an issue about intellectual property rights, including trademarks, as well as allegations concerning possible defamation and access to customers. The matter had been dragging on for a considerable period of time, with court actions raised. It is fair to say that the parties and their advisers came to mediation without expectation that the matter could be resolved. After a day of intense negotiations and overnight to reflect on possible options, the parties reached a solution which focused on commercial interests and which was designed to benefit the businesses in a way which was beyond the parties' contemplation when the mediation process began.
6. This was a dispute involving a fairly senior public sector employee. There was a serious breakdown in communication between the employee and the employers. Claims were made which would have resulted in possible court action, reference of the matter to an Employment Tribunal and other possible avenues. Substantial sums of money were involved and there were questions about whether or not the employee could remain in employment or perhaps be moved to another job. There was a lot of anger on all sides and concern about the way in which the dispute had escalated. In the course of one day, the parties were able to find a solution which avoided the matter being taken to an employment tribunal or an action being raised in court. The parties had been given an opportunity to express how they felt about the situation which arose and to move on from what was becoming an intractable and damaging conflict.
7. A young mother died in hospital after a routine operation, leaving her husband and two children. Questions arose about the nursing regime and the decisions made by the supervising doctor. These included questions about the procedures which had been used and the extent to which either the nursing staff or the doctor were responsible for a failure to diagnose the patient's true condition and to treat it effectively. The case was proceeding towards a court hearing 6½ years after the death of the patient.

Mediation took place over one day. Following a series of private meetings between the parties (and their solicitors and other representatives) and the mediator at a neutral venue, the case was resolved. It was agreed that a sum of money would be paid to the patient's husband and children. It was also agreed that the husband could discuss current procedures with the hospital. Mediation brought closure and certainty for each of the parties and avoided what could have been a lengthy court hearing along with the continuing stress, additional expense and the possibility of unwanted publicity.

8. This matter related to the funding of a business start-up and allegations of wrongdoing by business advisors, with the result that the business had failed to obtain the necessary financial support. Some years after the initial events, and against the background of litigation and other failed attempts to achieve a resolution, the issues were addressed at mediation. The shareholders and directors of the business had a number of financial claims including loss of salary, loss of a capital asset and expenses. There were complex issues about whether or not fault could be established on the part of the advisors and, in any event, what the outcome for the business would have been even if funding had been obtained. The parties faced the prospect of more years of litigation and the costly expenditure of time and effort which would have distracted them from the future development of business.

In a series of meetings facilitated by a mediator, the parties sought to articulate and refine the issues between them. The strength of the legal cases and the potential value of the business, had it been successful, were explored by taking the views of lawyers and accountants. These views were then taken into account in assessing the likelihood of success on each side. As a result of this process of risk analysis, the parties were able to find common ground which allowed them to arrive at a result acceptable to both sides. This was achieved in private, in a co-operative manner throughout and, reflecting the many layers of the dispute, in a period of months from start to finish. The cost to each side (in money and non-money terms) of the mediation process itself was relatively small compared with the alternatives which would have been available. The parties acknowledged that, without the mediation process, they would not have achieved such an outcome.