

Helping clients deal with commercial disputes

Mediation is worth considering if a client has a commercial dispute that might be expensive, embarrassing or time-consuming, explains Andrew Hildebrand. Arranging to mediate is easy and cases usually settle on the day.



What do you do when a client needs help dealing with a problem that involves commercial or legal issues and personal ones? For example, a dispute with a business partner, a family member over financial or probate issues, or with another business?

An effective alternative

For some clients, litigation may be the right way forward but what about when it isn't? A client may not want to be seen to be backing down or going to war. They may be worried about the costs involved, the stress of having to live with it for another couple of years or what it might do to an underlying relationship. Maybe emotions are clouding their ability to work out what they really need and the best way of getting it.

Well, there is an effective alternative and one that usually gets a dispute settled there and then. It is called mediation and because

of some of the similarities involved, clients who respond well to psychotherapy are likely to find it an appealing option.

So, what is commercial mediation and how does it differ from litigation and other alternative dispute resolution (ADR) options?¹

What is commercial mediation?

Commercial mediation is a way of resolving disputes between two or more parties. The process is confidential and usually takes just a day.

The mediator – who is impartial and independent – helps the parties negotiate their own settlement which, once signed, is binding and can be enforced at court.

¹ As opposed to either family mediation or as part of UKCP's complaints process

Commercial mediation is very effective. Ninety per cent of UK commercial mediations settle and at a fraction of the cost that litigation would involve. Mediations are also simple to set up.

Typical disputes where mediation works well

Mediation is particularly useful where there is a relationship involved, where interpersonal dynamics are getting in the way or where there is an unresolved emotional angle. For example, where someone doesn't feel they have been properly respected or treated fairly or where they want an apology.

And you don't need to wait until damage has been done. Mediating can be like marriage guidance, with the mediator testing whether a business relationship



Andrew Hildebrand is a leading commercial mediator and a member of the Civil Mediation

Council. In September, Andrew will be running a seminar about using mediation to resolve client disputes. Please call 020 7286 0272 for further details.
<http://hildebrandmediation.com>.

Case study

A widower was contemplating making a will and was concerned about how his children might react. Instead, he decided to mediate, hoping that it might also enable him to correct financial imbalances between them during his lifetime.

Ahead of the mediation, I met family members separately and confidentially to establish their aspirations, needs and concerns.

On the day, the father explained his finances and intentions, and the children, their respective needs. We discussed what they wanted to achieve as a family and considered the available options and associated property transactions. By 6pm, we had created a road map, which also identified additional information they needed to obtain or discuss with professional advisors, potential problems and fallback solutions.

Inevitably, it wasn't a linear process. We also had to manage some difficult family ructions, which, to their credit, the family used as an opportunity to design and agree rules that would improve dialogue between them and make future conversations more effective and less damaging.

is salvageable and, if it is, helping the parties work out what needs to change to get it back on a constructive footing. Or, if it isn't, helping them achieve the best way of divorcing safely and inexpensively without destroying themselves or the business.

How does mediation differ from litigation and arbitration?

Cost-effective: It costs more to file a claim at court than it does to hire a mediator to settle it.

Speed: Disputes get resolved in weeks, not months or years.

Flexible: You can raise whatever issues you like (non-legal ones too) without compromising your legal position and agree whatever outcome suits you best.

Confidential and risk-free: Discussions and settlement terms stay confidential. If you don't want to settle, no one can force you, eliminating any danger of being saddled with an unwelcome legal ruling.

Why does it work?

Most legal disputes are, at their heart, disputes between people. A termination dispute, for example, may be about legal concepts like 'rescission' and 'repudiation' and the commercial ramifications, but it is also invariably about how the people involved have been impacted.

The first thing a mediator does is create a temporary ceasefire and engage with people so that, no matter how bruised they are by what they've been through, they trust the mediator enough to let him or her help them. Unlike a judge or a litigator, a mediator looks for what unites people, not what separates them.

In a sense, a mediator often operates in a sort of 'no-go zone', one that can feel too directive or commercial for a therapist to undertake, yet too 'touchy feely' for a lawyer.

A standard and growing part of the litigation landscape

The judiciary are strong supporters of mediation and parties involved in claims for under £100,000 will probably soon be required to consider mediation before litigating.

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Research in UKCP: brief reports

This article is the first of what the Research Faculty Committee (RFC) hopes will develop into an occasional series, comprising brief reports of completed research carried out by UKCP members. In particular, we intend that the series offers a forum for dissemination of the research of students on UKCP accredited training programmes.

Future articles may include summaries of clinical research, such as case studies and small scale projects or larger ones, such as Practice Research Networks (PRNs). We would like some issues to focus on specified topics. The RFC would like to make this an ongoing part of the Psychotherapist and is keen to receive contributions either from individuals or members of training organisations. If you are interested in submitting a summary or developing an article, please contact us initially at research@ukcp.org.uk.

In this first article are three summaries of MA dissertations undertaken at the Minster Centre, London. The Minster is developing reflexive, creative approaches to research, using a range of methods. These summary reports outline projects conducted using different qualitative methods and each has been written up in a way that could be seen as mirroring the method used.

Angela Cotter (Issue Editor & RFC Member) and Carol Martin (Chair, RFC)



Angela Cotter is a psychotherapist in private practice and a lecturer at Regent's University. She is

co-vice chair of the RFC. Angela's specific research interests are: action research; intersubjectivity of therapeutic relationships; the 'wounded healer'.



Carol Martin is Chair of the RFC. She is a lecturer and director of the doctoral programme in

Clinical Psychology at the University of Leeds. Previously she also worked in the NHS.

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