



WELCOME

Welcome to the fourth edition of the Vital Spark – incorporating news and views from Catalyst Mediation people and clients. Previous editions have been distributed only to our mediators, trainers and investors. However, there is so much going in the field of mediation that we have decided to publish this and future issues more widely. We are glad to say that activity has continued to develop for us since the last issue, with some very gratifying feedback from clients. There is also considerably increased interest from the courts and solicitors. We hope that you enjoy this issue and will let us have your feedback. David Semple and Jeremy Scuse.

PRO MEDIATION LITIGATORS ON OUR WEBSITE



We asked solicitors whether it would help them if our website contained a list of litigators who are mediation friendly, to help those with a dispute identify a partner on the other side who would be open minded to the use of mediation. The response was very positive and we have now launched this section of our site at <http://www.catalystmediation.co.uk/>

Over 36 litigators are now listed, including the entire dispute resolution departments of two firms and more names are coming all the time. The legal department of the NHS in Scotland have also asked to be listed after their recent successful mediation, in the hope that they will be able to settle more cases out of court. If you wish to be included, please email jeremy@catalystmediation.co.uk.

MEDIATION CHANGES A CLIENT'S INTERNAL PROCESSES

Following a successful workplace mediation, this Government Client has asked us to undertake a second mediation and has been working with us to change their internal contracts and processes to include mediation as a first step in their dispute resolution mechanism. The following is a quote from their feedback after the mediation

“ I am in no doubt that had I been more familiar with mediation and made it available at an earlier stage then the formal proceeding which were time consuming for a significant number of staff (and consequently costly) would have been avoided.”

PRE-MEDIATION MEETINGS “FOCUS THE MIND”

“My client came out of the pre-mediation meeting feeling extremely reassured about the process and the way in which things would proceed. As she knew what to expect, she was more relaxed as a result.”

The use of Pre-Mediation meetings with the Parties seems to be leading to more successful mediations. Client feedback suggests they are helpful in reducing fears and focussing the mind on the negotiations to come. The meeting allows the party to “vent” about the case to an empathic listener for perhaps the first time in years and this can help them to become more objective about the dispute. At a cost of around £200, one Client believed it had saved money by shortening the mediation and making it more likely to succeed.

THE BENEFITS AS OTHERS SEE THEM

“ A very considerable amount of time, money and stress has been saved. I believe that it was possible to find in mediation a successful tool for resolving a dispute which had all the hallmarks of a long lasting case about it. The skilled involvement of the mediators enabled us to reach a very good outcome, which was within our control.”

Although we know the benefits mediation can bring it is always heartening to see the same thoughts being expressed by first time users. This particular case had been running for three years and was potentially very messy, with deeply held views on both sides that could have been damaging had they been publicised through an open trial.

PAST CLIENTS HELPING OTHER FIRST TIME USERS

To date all our Clients have agreed to talk to a potential mediation user about the benefits of mediation, what it can and can't achieve and how Catalyst Mediation assisted.

By matching past Clients with similar disputes to the potential client's, this is proving to be a valuable, independent source of information, not only in allaying fears about what happens in a mediation, but also in enabling the first time user to justify mediation as a time and cash saving step, rather than an additional cost.



MEDIATION SUGGESTED BY COURT OF SESSION JUDGE

In what may be a first, we are to conduct a case where mediation has been suggested by a Court of Session Judge. This may be one result of the meeting of senior Judges and Sheriffs in June this year that considered evidence from the UK and abroad for the use of mediation in commercial cases. A new committee established to co-ordinate the introduction of mediation in Sheriff Courts and the Court of Session, suggests the question is now not if, but how soon.

NEW SHERIFF COURT SCHEME: TENDERS EXPECTED

A tender document is expected to be issued by the Scottish Executive in the next two weeks, asking for tenders to run a new mediation scheme in the Glasgow Sheriff court, the largest in Scotland. Unlike previous pilots, mediators will be paid and there is likely to be no limit on the value of the case. By tendering in a joint venture with a leading solicitors' professional body, we hope to introduce the use of mediation to a wider range of solicitors and sheriffs, providing them with training in which cases may be suitable as well as the mediation service itself.

LAWYERS' OBLIGATION TO ADVISE CLIENTS ON ADR?

According to the Court of Appeal (England) in Halsey (2004) "All members of the legal profession who conduct litigation should now routinely consider with their Clients whether their disputes are suitable for Alternative Dispute Resolution.

This is congruent with the recent comment from the Law Society of Scotland that to discuss mediation with a client is a sign of best professional practice. We are also told that it is becoming clearer to the legal profession that happy clients are not only paying clients but also the source of valuable introductions.

HOW DO JUDGES REGARD ADR?



According to Lord Justice Ward in the Court of Appeal in Burchell v Bullard (2005), "not only the high rate of successful outcomes being achieved but also its (ADR's) established importance as a track to a just result, running in parallel with that of the court system. Both have a proper part to play in the administration of justice. The court has given its stamp of approval to mediation and it is now the legal profession which must become fully aware of and acknowledge its value. The profession can no longer with impunity shrug aside reasonable requests to mediate"

INCREASING LITIGATION BUDGETS

Recent research into the cost of business disputes by the Centre for Effective Dispute Resolution (CEDR) and CMS Cameron McKenna reported that 41% of companies surveyed had seen an increase in their litigation budgets over the last two years. The same report showed that 79% of companies found mediation a more effective way of resolving disputes and the same percentage stated it had reduced their litigation costs. This is not surprising given that CEDR also reported that 75% of mediations reach a settlement in one day as opposed to a lengthy court case.

MOCK MEDIATION OPENS MINDS

At a recent Central Law Training day, we ran a dummy mediation for lawyers and the senior legal managers of several major banks, using a case where several delegates played the disputing parties. The role-play was paused at several points to allow the audience to raise questions during the two hour session. Pre and post role play feedback was interesting in the changed perception from many of the sceptics in the audience. Particular points raised were a better understanding of mediation as "facilitated negotiation", the role of the mediator and the ability of the parties, including their legal advisors, to retain control of the outcome in a calmer, more objective atmosphere.

We have also been asked to do the same at the next meeting of the Chartered Institute of Personnel Directors, who are becoming aware of the benefits of mediation in a world of increasing legislation.

ANY COMMENTS?

We always welcome comments from readers that help to improve the information provided or provide an alternative point of view. If you would like to contact us, please do so through any of the means below.

In the meantime, you may wish to review our website, whose content is being updated regularly to include all the information that users and prospective users may wish to know. If you feel that something could usefully be varied or added, your suggestions would be most welcome.

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