

# Catalyst Mediation

## A Case Study in Construction.

### Brief details of the dispute

Party A was an educational establishment who employed Party B as a specialist advisor and supplier. Party A had claimed the work done by Party B was defective and had cost Party A some £800,000. Party A had received an adjudication that Party B was liable for less than half this sum. Party B had made the adjudicated payment, but Party A then commenced a court case to recover their legal costs, an additional £65,000. Both Parties were still working together on another project and the court case was putting this at risk.

### Particular features

- Contract Issues : Party B still felt the adjudication had been unfair and based on incorrect information.
- Legal Issues : the risk that a Court case would reopen the question of Party B's liability and result in a greater award being made to Party A.
- Relationship issues: the case had been going for 4 years and relationships were strained.

### Mediation

Party A believed the adjudication had clearly shown Party B was liable and therefore should also pay Party A's legal costs. Party B believed the adjudication was unfair and did not require them to pay the legal costs. Party A then suggested a settlement figure that was lower than their actual legal costs, which Party B rejected "on principle".

### Outcomes

With the help of a mediator, Party B was able to discuss the risks to them of not settling through mediation. Their advisors were able to discuss this with Party A's advisors and come to an agreed view of the risks of continuing with the Court case. The mediators were then able to create a conversation between Party B and their legal advisors where Party B were able to accept the risk of a greater award being made by the Court than the suggested settlement value. They were also able to set the suggested settlement value against the value of a continuing business relationship and the potential to work with Party A to ensure that future work would not create the same problems.

### Learning points

- Understanding the language of a particular industry can help a mediator gain insight into the key issues.
- The role of legal advisors is often central to enabling a Party to identify and balance the short and long term risks to their business of not reaching a solution.
- Even when a dispute has been going on for years and there is suspicion on all sides, frank, facilitated discussions can still lead to unexpected outcomes.

### Note

Mediations are always confidential unless the parties agree otherwise, so while many details have been changed, the Clients comments are verbatim and the outcomes factual.

### Dispute Duration

The conflict had been ongoing for four years.

### Mediation Length

8 hours on one day.

### Client Comments

*"We achieved an acceptable compromise in the circumstances, with the potential to retain a working relationship that had been under threat."*

*"The mediators seemed to understand the issues and were supportive in allowing us to discuss the risks and rewards of settling through the mediation."*

*"The main benefit of mediation was the ability for our Clients to maintain a working relationship. Had this gone to court further delays and arguments could have damaged their ongoing relationship."*

### Mediation Budget

Total cost circa £6,500.

