

# Catalyst Mediation

## A Case Study in Contract Terminology.

### Brief details of the dispute

Party A had was a large company who employed Party B as a specialist advisor. Party A had used broad terms to instruct Party B to perform a particular task on the outcome of which Party A might make an acquisition. Party B duly confirmed their instructions in writing and proceeded. They submitted their report, the acquisition went ahead and later Party A found they had paid for assets that hadn't existed. They sued Party B for professional negligence. Party B counter sued for unpaid invoices to a value of £120,000.

### Particular features

- Relationship issues: the case had been going for 18 months and relationships were very poor and the case was about to go to the Court of Session.

### Mediation

Party B believed they had clearly undertaken what they were asked to do, and it was not their fault if Party A had gone ahead with their acquisition. The fact that the assets didn't exist was Party A's problem. Party A believed that what they had required was perfectly evident and they had made the acquisition on poor information. Both sides had gained their Board's approval to commit considerable funds to deal with the issue with the result that reputations and possibly jobs were at risk.

### Outcomes

With the help of a mediator who understood the language and meaning in it's context, it soon became clear that miscommunication at several levels on both sides had contributed to the problem. The issue revolved around the interpretations of "due diligence" and "verification". While technically Party B had carried out due diligence as they had said they would, the task Party A had indicated was necessary was verification. As the cost of the work done by Party B was roughly equal to party A's claimed loss from the acquisition, the main financial issue was the legal costs on both sides. The mediators were able to encourage a conversation between the Parties and their legal advisors on costs so the Parties were able to deliver their objectives to their Boards and the advisors maintained their Clients. Party A and B agreed to send junior managers to work with each other for a 3 month period to create a greater understanding of how they could work together in the future.

### Learning points

- Understanding the language of a particular industry can help a mediator gain insight into the key issues. This gains trust from the Parties and assists the mediator when helping the Parties to clarify the issues.
- 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 and wholly positive 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 three years.

### Mediation Length

8 hours on one day.

### Client Comments

*"We achieved a reasonable compromise in the circumstances, with quite substantial savings in litigation time, particularly important in view of the seniority of staff involved."*

*"The mediators had a good grasp of the issues and appeared even handed and fair"*

*"The main benefit of mediation was the flexibility of outcomes - the same result could not have been achieved by litigation. The dispute was resolved in a far quicker timescale than if litigation had proceeded which was extremely important, as was the costs saved and the confidentiality."*

### Mediation Budget

Total cost circa £6,500 between the Parties.

