

MEDIATION COMPARISONS RSA / UK



**CONFLICT
DYNAMICS**

TRAINING
& DISPUTE
RESOLUTION
SERVICES

USE OF MEDIATION UK

- Not mandatory - solicitors /HR refer, organisations ask, PAP induces, Judges refer
- 2003: less than 2 500 ; 2022 :17 000
- 2021: 89% online ; 2023: 47.6% online
- 2022:
 - 72% settle on the day ; 20% shortly thereafter ; 8% unresolved
 - 37% women ; 8% POC ; 6% disability ; 5% lesbian, gay, bisexual
 - women aged 54 ; men aged 63
 - experienced £3 893. pd ; Less experienced £1 781. pd
 - prep. 6.3 hrs ; 7.4 mediation day ; 2.1 follow-up = 15.8 hrs
- Growth sectors: prof. neg; employment/workplace ; personal injury ; financial services ; energy ; pharmaceuticals



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PRACTICE UPDATE

UK

- Returning to in-person
- Increased pre-mediation engagement, online
- Creative use of process
 - Move away from mediation day to mediation projects
 - Multi- faceted DR processes in big projects by public bodies etc e.g. nationwide roll out of superfast broadband
 - Increasing use of hybrid processes - facilitative mediation stage and then evaluation if settlement not reached
- More tech. less paper: DocuSign, document management software, soft copies of prereading materials

SA 2022 to 2023

98 enquiries ; 32 took place

Men 43% ; Women 57%

W 48% ; POC 52%

- Workplace
- Contractual
- IP
- Family
- Labour / Mgt
- Partnership / Shareholder
- Mergers / Acquisitions; Trusts / Wills / Probate; Matrimonial Finance; Medical Negligence; Land Ownership; Community; Employment

LEGAL UPDATE

UK

1999 – Woolf reforms to Civil Procedure Rules and Practice Directions aimed at avoiding litigation and promoting settlement between parties

2002 - Dunnett v Railtrack - established risk of a cost order for refusal to engage in mediation

2004 - Halsey undermined this by saying that mediation was not mandatory and blocked Judges from being able to order parties to mediate

2023 - Churchill case vs Methyr Tydfill challenging this using the concept of 'integrated mediation' as opposed to ADR

FROM: “It is one thing to encourage the parties to agree to mediation, even to encourage them in the strongest terms. It is another to order them to do so. It seems to us that to oblige truly unwilling parties to refer their disputes to mediation would be to impose an unacceptable obstruction on their right of access to the court...under Article 6”

Lord Justice Dyson , Halsey [2004]

TO: “..... any form of ADR which is not disproportionately onerous and does not foreclose the parties’ effective access to the court will be compatible with the parties’ Article 6 rights. If there is no obligation on the parties to settle and they remain free to choose between settlement and continuing the litigation then there is not..... “an unacceptable constraint” on the right of access to the court.”

Lady Justice Asplin – CJC report on Mandatory Mediation

LEGAL UPDATE

UK

2023 - Ministry of Justice consultation on mandatory mediation

I am pleased to confirm the Government's intention to fully integrate mediation into the court process for civil claims valued up to £10,000. We will aim to make mediation an essential step for all claims for specific amounts of money....

...We also remain committed to integrating mediation in the court journey for higher value civil claims.

...These reforms are not about restricting people's access to the courts, but about expanding their avenues to redress. The goal behind this change is not just a more efficient, effective, and sustainable justice system; it is swifter and better outcomes for the people who use it. “

Lord Bellamy KC, 'Increasing the use of mediation in the civil justice system: Government response to consultation

LEGAL UPDATE

UK

Civil Justice Council report on pre-action protocols

Judicial ADR Committee

- Litigation is to be a last resort
- Compliance with the PAPs is to be mandatory except in urgent cases
- Draft General PAP to apply when no specific sector specific PAP
- DR required to be attempted – not specific about the process to be used
- If a third party process has been used which does not lead to settlement, parties will not be required to use such a process again within later proceedings, unless it was a non- neutrally run process.

LEGAL UPDATE

SA

- MB v MB 2010 the last relevant case
- Kalagadi Manganese (Pty) Ltd and Others v Industrial Development Corporation of South Africa Ltd and Others 2021
- High Court Rule 41A
- Magistrates Court Rules 70 - 79
- Gauteng Practice Directives?



TRAINING UPDATE

UK

Civil Mediation Council

- Training provider registration
- Mediator registration

International Mediation Institute

- Training provider registration
- Mediator registration (qualified & certified)

40 hours training with assessment

Participative methodology

High student faculty ratio

Mostly face to face now

SA

DiSAC / ADRP-SA

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