

Applying Nudge Thinking to Mediation Series

Part 1: Changing the 'choice architecture' around mediation is the key

– getting beyond the voluntary/compulsory debate

by John Crawley

In a recent book 'Nudge', Thaler and Sunstein argue persuasively that we are all potentially 'choice architects' – 'we have responsibility for organising the context in which people take decisions'. Like more traditional forms of architecture there is no such thing as 'neutral' design. What we do, particularly if we are in a position of influence, will influence the choices people make. The opposite poles of the choice architecture are compulsion and free choice. Compulsion – mandating people to do things, often with punitive consequences if they default, is founded on the idea that people may behave badly if not directed to do otherwise, and that people do not know what's best for them and others. The opposite is behind the free choice approach.



Governments, peoples, faiths and tribes have over the centuries fruitlessly positioned themselves at either pole and much conflict has consequently ensued. The compulsory / voluntary debate about mediation reflects these poles and all the value differences they embody. There is much evidence to suggest mediation works, but the general public and many private and public institutions remain to

be convinced. The voluntary / compulsory debate has split opinion within the mediation community for the twenty plus years I have been in the profession. I respect the energy and eloquence on both sides but this debate has had no discernable impact on the choices potential parties make about mediation.

Thaler and Sunstein have the answer I think. They believe and give persuasive research evidence to suggest more impact would be achieved by a hybrid approach which they call 'libertarian paternalism' – 'we argue for self-conscious efforts... to steer people's choices in directions which will improve their lives... to influence choices in a way that will make choosers better off, as judged by themselves.' This involves 'nudges' – 'any aspect of the choice

architecture that alters people's behaviour in a predictable way without forbidding any options... Nudges are not mandates.' Positioning mediation more plainly and attractively where people can see and sample it is a 'nudge' – making it compulsory is not.

In the next two articles in this series, I will suggest a number of 'nudges' which would significantly change the choice architecture around mediation.

The White Paper – Nudging Mediation: Applying 'Nudge' thinking to increase the use of mediation and cut the cost of conflict in the workplace – is published at:

http://cmpresolutions.co.uk/pdfs/CMP_Resolutions_Nudging_Mediation.pdf



This article is Part 1 of 3 in this series.

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CMP Resolutions work to Close, Manage and Prevent disputes at work through skills development, mediation and investigation services.

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