

## **The Cost Benefit of Mediation**

by Lesley Allport

The recent review of Civil Litigation costs by Sir Rupert Jackson (January 2010) highlighted the financial savings in using mediation and pointed out its under use within the courts. Feedback from a number of providers and stakeholders indicate that much of this is due to lack of awareness and knowledge of the process, as well as general reluctance to engage in it or encourage others to do so. The Report recommends a change in culture, an awareness campaign and an 'authoritative' ADR Handbook, "to be used as the standard work for the training of judges and lawyers". While the Review is to be welcomed it calls for a response in some areas.

### **Compulsory Mediation**

Inevitably, it seems, the cry for compulsory mediation goes up as the 'antidote' to low take up. Thankfully Sir Rupert himself argues against this, suggesting a) that parties should receive encouragement with incentives and b) that judges should have discretion to give directions specific to the case. Compulsory mediation has been tried and it doesn't work! People cannot be forced to negotiate – particularly where they still have recourse to the law if mediation has not resolved issues. To 'push' people to mediation simply encourages a 'push back', while undermining its key principles: those of self determination and informed choice. Mediation is effective because it offers people a managed opportunity to articulate their differences and concerns while remaining in control of the outcome. For those who are unable or unwilling to take on that responsibility mediation is not the right vehicle.

### **The Benefits of Mediation**

These go so far beyond financial savings! Some sources in the Review acknowledge that mediation gives people a chance to talk about 'impact', hear 'a response', maybe an apology, but also 'saves time... prevents damage to relationships and reputation, alleviates stress, achieves remedies beyond the power of the court'. For many these appear secondary. Sir Rupert's Review sets out to be an examination of litigation costs, but in my view its conclusion calls for a greater examination of the wider benefits of mediation - not fully understood within courts, workplaces, neighbourhoods or families. The wealth of mediation practice happening away from the courts, largely overlooked, has a lot to contribute. It is illuminating to see and

experience the work of, for example, mediators in the workplace, managing a process that slowly breaks down the seemingly insurmountable barriers erected after a long sickness absence; periods of isolation with little or no communication with colleagues. There is the work of family mediators, dealing with money yes, but also with the lasting relationships between parents and their children, and the re-definition of a meaningful co-parenting relationship. I'm not just referring to the existence of legally trained lawyer mediators (an imaginative leap in itself for some) but to highly experienced and skilled practitioners working within the voluntary sector – actually the home of family mediation. To see some of these people at work challenges the idea, articulated in the Review, that a mediator must have a legal background to work effectively.

### **A legal background as a requirement for mediators?**

There is value in contextual knowledge for any mediator. However 'expertise' has its own risk – that of dependency on the mediator for a solution. This kind of intervention within court procedures is both valuable and appropriate though potentially moves away from mediation to something closer to assisted negotiation - a different skill to one which sets out to facilitate a positive conflict interaction between parties, and where legal training would be of less use.

### **Conclusion**

The real cost benefits of mediation go far beyond financial savings into the realm of supporting healthy interactions, equipping people to learn from their differences and dealing with them constructively. The alleviation of stress, the restoration of confidence and autonomy, the rebuilding of relationships... and these are only starters. There are many valid and useful forms of ADR about which there is not enough dialogue and exchange... aaah! ...and so, back to that idea about a Handbook! The enormous diversity of practice in terms of purpose, approach and context, makes the compiling of an authoritative Handbook no small challenge – but that's another article!



**Lesley Allport is Head of Mediation Services at CMP Resolutions.**

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

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