

## **Mediation and Conflict Management**

### *What is Mediation?*

Mediation is now recognised as one of the fastest and most cost-effective routes to achieving settlement of a dispute. Going to trial is expensive and stressful, often taking months or years of costly litigation, with no guarantee of an outcome that satisfies the parties when you get there.

Mediation (sometimes referred to as ADR, or Alternative Dispute Resolution) is used where opposing parties want to find a solution yet for some reason cannot reach a settlement. Most people involved in a dispute would rather reach a settlement than go to trial.

### **Comparison with litigation**

- Formality and flexibility – the mediation process is informal with no pre-ordained rules. The litigation process is formulaic, rigid and the judge decides the outcome.
- Speed – a typical mediation will take place during one working day or less. Achieving judgment through the Courts can take years.
- Cost – mediating is cheap and potentially saves thousands of pounds.
- Confidentiality – the whole mediation process is confidential and without prejudice. Parties may speak freely and openly. Litigation is “on the record” and public.
- Relationships – there are rarely any winners in litigation and relationships are typically soured for ever. Mediation gives the parties the power to make their own decisions and preserve relationships
- Control and choice – in mediation the parties are in control of their own destiny. The process is voluntary. In litigation the Judge decides, which may not be in either party’s interest.
- Solutions – problems are resolved by the parties

### *Types of Mediation*

#### **Facilitative**

- The mediator structures a process to assist the parties in reaching a mutually agreeable resolution
- The mediator asks questions
- The mediator validates and normalises the parties' points of view
- The mediator searches for interests underneath the positions taken by the parties
- The mediator assists the parties in finding and analysing options for resolution
- The mediator does not make recommendations or give an opinion as to outcome of the case
- The mediator does not predict what a tribunal would do in the case
- Parties in control of outcome. Mediator in charge of process

### **Evaluative**

- The mediator assists parties by pointing out weaknesses in their case
- The mediator predicts what a tribunal would do
- The mediator makes informal and formal recommendations
- The mediator is concerned with the rights of the parties, not needs and interests
- The mediator helps the parties and advisors evaluate legal position and costs
- The mediator structures the process
- The mediator directly influences the outcome of the mediation

### **Settlement**

- Also known as compromise mediation
- The mediator encourages incremental bargaining towards a compromise
- The mediator controls the parties and the process
- The mediator seeks to determine the parties' bottom line
- The mediator uses persuasive interventions to move parties from initial positions to compromise

### **Transformative**

- The mediator empowers the parties
- The mediator gets the parties to recognise each other's points of view, needs interests and values
- Parties structure both the process and the outcome of the mediation

### **Pros and Cons**

- Proponents say facilitative and transformative mediation empower parties, help the parties take responsibility for their own disputes and the resolution of such disputes. Critics say that facilitative and transformative mediation takes too long, and too often ends without agreement. There are legitimate worries that outcomes can be contrary to standards of fairness and that mediators in these approaches cannot protect the weaker party.
- Proponents of transformative mediation say that facilitative and evaluative mediators put too much pressure on clients to reach a resolution. They believe that clients should decide whether they really want a resolution, not the mediator.
- Proponents of evaluative mediation say that clients want an answer when they are unable to reach agreement, and they want to know that their answer is fair. Critics of evaluative mediation say that its popularity is due to lawyers and advisors who choose evaluative mediation because they are familiar with the process. They believe that the clients would not choose evaluative mediation if given enough information to make a choice. They also worry that the evaluative mediator may not be correct in the evaluation of the case.
- Mediators tend to feel strongly about these styles of mediation and there is a healthy and useful debate. The opinion of The Chartered Institute of Arbitrators is reiterated:

facilitation is a robust and effective model and from that basis mediators can proceed on a contingency basis. There is no one model, rather a selection of techniques which can be employed depending on the circumstances.

- There appear to be more concerns about evaluative and transformative mediation than facilitative mediation. Facilitative mediation appears acceptable to almost everyone, although some find it less useful or more time consuming. However much criticism has been levelled against evaluative mediation as being coercive, top-down, heavy-handed and not impartial. Transformative mediation is criticised for being too idealistic, not focused enough, and not useful for business or court matters.
- Another concern is that many lawyers and clients do not know what they may get when they end up in a mediator's office. Some people feel that mediators ought to disclose, prior to clients appearing in their offices or at least prior to their committing to mediation, which style or styles they use. Other mediators want the flexibility to decide which approach to use once they understand the needs of the particular case.

### **The 6 C's**

- Consensual
- Control
- Cost savings
- Continuing business relations
- Confidentiality
- Creative

### ***Conflict management***

Having explained the principles of mediation, it will be readily observed that these may be applied to any conflict situation. It is a common misconception that conflict is always bad. In reality, conflict can be extremely positive and creative, provided that it is managed effectively. The principles of mediation may be applied to absolutely any dispute or conflict, not just in circumstances where litigation proceedings have started but also where parties wish to manage a potential conflict (e.g. creation of joint ventures and partnerships)

Henry Minto

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henry.minto@btinternet .com  
00447775950522

## My profile

### Why choose Henry Minto as your Mediator?

1. Excellent people skills
2. Specialist in property, planning, construction
3. Adopts a "this is your day" philosophy
4. Skilled in understanding what motivates people
5. Considers there is "no right or wrong"
6. 30 years' experience as a solicitor in private practice
7. For Henry, it is a case of "solutions not problems"
8. Displays energy, optimism and a "can-do" attitude
9. Flexible and straightforward
10. Failure is not an option!

### Areas of Expertise

- Partnership/Joint Ventures
- Company Law/Shareholders
- Motor Industry
- Sale/Purchase of Goods and Services
- Development Agreements
- Property/Real Estate
- Property Development/Investment/Management
- Planning
- Possession
- Private Equity
- Compulsory Purchase
- Easements, Rights of Way, Trespass, Boundary
- Construction
- Utility Charges
- Rights of Light
- Neighbour/Nuisance
- Dilapidations
- Profit Shares
- Professional Negligence
- Landlord/Tenant
- Finance, Banking, Loans & Mortgages
- Contract / Torts (including conversion)
- Party Walls
- Defamation/Libel
- Breach of Lease
- Commercial
- Cohabitation claims
- Wills, Probate, Inheritance, Trusts
- Royalties
- Education
- Employment
- VAT
- Unpaid fees
- Golf/Sports Clubs

### Fees

I adopt a flexible approach to be 100% certain that the level fits the circumstances. I am happy to take on a mediation whatever the value or location.

### **Qualifications and Experience**

For 30 years, I have been a lawyer in private practice specialising in the real estate and construction sectors. I am a mediator accredited by the Chartered Institute of Arbitrators. I am also Chairman of Highgate Golf Club. This is an ideal forum for me to apply my mediation skills!

The single most powerful experience I have had is that the principles of mediation may be applied to absolutely any dispute or conflict. As will be noted from the cases with which I have been involved, these relate to a wide variety of subject matters, not just where litigation proceedings have started but also where parties wish to manage a potential conflict (e.g. creation of joint ventures and partnerships)

### **Recent Cases**

#### **Shareholder Disputes/Partnership/Joint Ventures**

- dispute with shareholders of a private company
- partnership dispute
- shareholders dispute
- property joint venture/partnership dispute
- multi-national real estate joint venture
- dispute between tenants in common

#### **Finance/Mortgages/Loans**

- repayment of loan including secured instalment provisions
- possession claim
- repayment of loan relating to residential property
- dispute between finance company and borrower

#### **Private Relationship Break-Up**

- financial dispute between co-habitees following break up
- cohabitee dispute relating to property
- cohabitees' dispute on termination of relationship

#### **Wills/Probate/Inheritance**

- claim by charity beneficiaries under a will for breach of trust and sale of property at an undervalue
- family dispute about distribution of inheritance

#### **Sale/Provision of Goods and Services**

- claim by solicitors for unpaid fees in divorce proceedings
- claim for payment for private nursing services
- alleged defective workmanship relating to a lift
- dispute relating to unpaid estate agents' fees
- subcontractor dispute about air conditioning installation
- dispute relating to alleged overpaid professional services
- claim for unpaid professional services
- claim for defective flooring and consequential loss
- shipping dispute
- dispute relating to photocopying services
- dispute relating to letting agency fees
- unpaid invoices

#### **Property/Real Estate/Land**

- boundary dispute
- party wall dispute
- claim for rent arrears and dilapidations
- right of way dispute
- claim for breach of contract – property

- dispute between landlord/management company and tenants of large residential block
- landlord and tenant dilapidations
- possession claim
- dispute regarding joint sale of property
- neighbourhood dispute
- party wall dispute
- rental arrears and dilapidations

#### **Motor industry**

- dispute between garage owner and car spray company
- insurance claim

#### **Royalties**

- book publishing dispute
- dispute relating to non-payment of musician's royalties

#### **Education**

- claim by student for reimbursement of course fees from an educational establishment
- claim for unpaid private school fees
- university fees

#### **Employment**

- claim for breach of restrictive covenant in employment contract
- settlement of terms of employment
- compensation claim for constructive dismissal

#### **Utilities**

- claim for overcharging for services on mobile home park
- dispute relating to overcharging of electricity at commercial premises

#### **Defamation**

- claim for defamation and malicious falsehood

#### **VAT**

- claim for unpaid VAT on commercial premises
- claim for unpaid VAT relating to services to residential premises

#### **Professional Negligence**

- negligence claim against solicitors
- professional negligence - accountants
- professional negligence - surveyors
- professional negligence - insurance brokers

#### **Construction**

- redevelopment and refurbishment costs dispute

#### **Golf/Sports Clubs**

- golf club disciplinary
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**Henry says** "There is a sense of relief for me to have "moved on" from being exclusively a solicitor in the property arena. Now that I have arrived in the world of mediation, I can honestly say that it is, without a shadow of doubt, the most powerful method of resolving a dispute. The buzz I get out of a successful mediation is incredible and everyone wins!"

#### **Away from the office**

"I love walking, pilates, playing golf, skiing, art, cinema, theatre, travel and current affairs. I am married and live in Hampstead."

### Recent Feedback

"[Henry] quickly established a good rapport with the parties and they felt at ease speaking and getting things off their chest - the mediator's input in facilitating this was very significant" Counsel

"Henry was very good with the parties and the way in which he conveyed himself. He was of great service to the cause and is a shining example of what a good mediator is" Susheel Gill Heer Manak

"An excellent mediation; Henry was very professional, open to listen to various arguments and clear and succinct in mediating. Thanks" John O'Brien Insurance Medical Group

"Your discussions before the mediation were instrumental (but that does not take away from your excellent steering of the actual mediation)" Assistant Mediator

"Without your intervention as mediator, we couldn't have come to a settlement, let alone speak to each other about our problems, and become friends again" 2 young men fighting (literally!) over a £300 debt

"One of Henry's key strengths during the mediation I attended was his ability to reflect on his past experiences both professionally and personally and use this information to help open all parties' eyes to the key issues at hand which as a result really helped to facilitate the agreement reached on the day of the mediation" Sammy Naghi Observer

"[Henry was] terrific in bringing the parties to the mediation and in driving the mediation itself. It appeared to be doomed at various stages but Henry brought it to a settlement" Craig Howell Williams QC

"My faith in mediation is now fully restored" Counsel

"Thank you for mediating this dispute to an amicable resolution" London Solicitor

"It gives me great pleasure to express my gratitude to you for all of the efforts you have made during the time of preparing the final draft of the Settlement" Composer

"You have the Midas touch" Joe Cooper Oxford Park Homes

"Both my client and myself were delighted with the helpful attitude and invaluable assistance of Mr Minto in resolving this dispute" John Clement Turbervilles

"Henry had been recommended to me as a Mediator, who has helped me to resolve my employment law dispute 4 weeks before going to the Tribunal. Was very pleased with the results, received what I was aiming for with successful help from Henry. Would recommend him to anyone appreciating personal approach and time/cost effective solution" Employee in hairdressing business

"Without Henry's attention and persistence I doubt this situation would have been resolved. Excellent - like a dog with a bone that won't let go! Superb communication skills" Lawyer at Xact

"The... high risk call that was made was to have both lay parties speak directly in the absence of their legal representatives. This could have led to an emotionally charged confrontation. I think it was in fact the [mediator's] judgement call that led to settlement. I was most impressed with the way the mediator managed to create an environment which allowed the parties themselves to find an amicable settlement, ending a bitter three year long dispute previously headed for the courts" Edward Culver Argent Chambers

"I thought he did well at persuading parties to "park" contentious issues to explore the areas of common ground, he also did really well at keeping my clients (who had been "hit" by late disclosure of crucial evidence) at the table" Rawdon Crozier KBG Chambers

"I was very impressed with your handling of the matter. I particularly like the way you built up a rapport with some very strong characters, and of course your use of silence was very powerful. You demonstrated a quick grasp of the contentious issues and worried away at them until they became no longer contentious! I was also impressed with your insight into what was going on beneath the surface" Tim Concannon Barrister

"Both parties showed a very negative attitude towards the mediation process. This was a difficult starting point for the mediator but he ensured both parties saw the positive of the part settlement that they achieved" Observer

"I enjoyed meeting Henry Minto. He was well prepared, made every effort to find out what made us tick and was very easy to talk to" Dewar Hogan

"I was impressed with your tenacity and your determination to get a result" Observer

"The mediator was really friendly and that helps a great deal. I liked the fact that the mediator was prepared to take into account some ongoing feedbacks, for example on a comment he made on the merit of my case. That is really a strength because it is difficult for people to admit that they made a mistake" Unrepresented party

"I found Henry Minto to be an excellent mediator. He grasped the commercial essentials straight away and was effective in communicating his views. One particular plus was that he was prepared to enter into vigorous and frank debate on issues on which there might be disagreement – which is not something that can be said for all mediators. I would have no hesitation in appointing Henry as mediator again and, indeed, have a couple of appointments already in mind for him" Gary Finnis Kingsley Napley

"As always, Mr Minto was very good. He was as robust and as committed to settlement as ever and as always, you were aware that he was being even-handed to both sides. He communicated his points and the position very clearly. It is always difficult to assess the significance of the mediator's input to settlement, as one never knows what is going on in the other room. However, from [the other side's position] before the mediation, I have no reason to believe that Mr Minto's input was otherwise than crucial" Gary Finnis Kingsley Napley

"We were given a genuinely Rolls Royce service by a top class mediator. Henry Minto is a highly skilful and experienced practitioner and the client was very very fortunate to have such a distinguished mediator" John Critchley Field Court Chambers

"It was great to meet you finally and I cannot thank you enough for your role in bringing this case to an end and for your help and support over the past year plus. You were really marvellous and I am full of admiration and gratitude for the work you did for me. I can now look forward to a new era in my life. I have so many other more interesting intellectual and practical things that have been put on hold not to mention a social life. I have now got my freedom back, thanks in large part to you" Party to mediation

"Henry was a pivotal cog in helping the parties to finally resolve this long and difficult dispute. There were times when agreement did not seem likely, but Henry's "ten minute" rule to allow him to liaise with the parties before one party walks out, ultimately proved to be decisive in the end because if it wasn't for that, it is unlikely that the case would have settled as it did. He was a truly fantastic mediator" Mark James Rix & Kay

"I thought you did a tremendous job and am honestly surprised you managed to pull them together. Hats off for continuing" Observer

"On the day, you were on time and did not rush the discussion from our point of view. You asked pertinent questions, made sensible and pragmatic suggestions to advance the process and your follow up was thorough and completed to our satisfaction. We felt that you were a good mediator, able to explain each party's position to the other clearly and succinctly. You demonstrated patience, which was key to the success of this particular mediation. We were clear from your communications what was expected of us. We believe that your input was significant in helping to resolve our client's dispute with the other side. This was a complex mediation requiring patience and a calm and sensitive approach in respect of our opponent. We would not hesitate to use your services again" Rickerbys

"Henry was a very organised mediator which was instrumental for the agreement on the day" Barry Wheeler Landlocked Limited



"*Invaluable contribution*" George Josselyn In-House Counsel Sellar Properties

"*I was impressed at the empathy and understanding shown by the Mediator and the Assistant Mediator, not only to the Parties but also to their respective advisers, in a particularly difficult mediation*" Solicitor for the Defendant

"*Your perseverance to the end and not giving up....was admirable*" Observer

"*Henry was enormously patient, understanding and energetic throughout a long and sometimes frustrating day and I'm sure the parties would not have reached any kind of deal without Henry's determination*" Observer

"*I'd like to thank you for your efforts yesterday. I felt you did the best you possibly could under the circumstances and made a determined effort to bring the parties to a settlement. Indeed I was sufficiently impressed with your efforts that I will consider nominating you as a mediator in future cases*" Peter Smith E.ON Energy Solutions Ltd Legal Team

"*Both myself and my client are extremely grateful to you for your efforts*" Mohinder Gill Sternberg Reed

"*Couldn't have done it without his involvement*" Respondent